# CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME X

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**Thursday, the 6th October 1949**

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

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## ADJOURNMENT OF THE HOUSE

**Mr. President :** Honourable Members are aware that they have been discussing a very important question in their other capacity in the adjoining room and it has been suggested to me that we might adjourn today to enable the discussion of that question to be completed by this evening. I have said that personally I would have no objection if the Members of the House have no objection. I would therefore like to know if honourable Members have any objection to this.

**Honourable Members :** We have no objection.

**Mr. President :** Then we shall adjourn. The next question is, at what time do we meet

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## MEETING TIME FOR THE HOUSE

**Some Honourable Members :**At 10 o'clock.

**Other Honourable Members :**At 9 o'clock.

**Seth Govind Das** (C.P. & Berar : General) : Let us meet from Nine to one.

**Mr. President :** I do not see which opinion is stronger, but I can see that opinion is divided.

**Shri M. Thirumala Rao** (Madras : General) : Without consulting the House this meeting was summoned at 11 o'clock today. Let it stand for tomorrow also.

**Mr. President :** In the Rules it is provided that normally the Assembly will begin at 11 o'clock. I have summoned it at 11 o'clock in accordance with the rules.

**Shri M. Thiramala Rao :** Then why consult the House now ?

**Mr. President :** I am consulting it about the adjournment. We adjourn now. From tomorrow it is open to fix any time. But I shall be glad to consult the convenience of Members.

**Shri R. K. Sidhva** (C. P. & Berar : General) : Let us have it from 9-30 to 1-30.

**Mr. President :** That is a compromise between 9 and 10.

**Shri Rohini Kumar Chaudhuri** (Assam : General): Let it be from 9 to 12-30 or 1 P.M. because at 1-30 one feels terribly hungry.

**Pandit Hirday Nath Kunzru** (United Provinces : General) : I suggest you should have it from 10 to 1 or from 9 to 1, if you want to have four hours, but not from 9-30 to 1- 30.

**Shri Alladi Krishnnswami Ayyar** (Madras : General): 10 o'clock would be all right. I suggest 10 o'clock as a compromise, and for this reason. We from Madras are generally accustomed to take our meals by 10 o'clock; we do not take lunch and all that kind of thing. Therefore it will be much better to have it at 10 o'clock-because 11 will be too late.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : I think, Sir. that 10 to 1 will be all right.

**Mr. President :** It all depends upon the quantity of work we have to get through.

**Shri K. M. Munshi** (Bombay : General) : Sometimes we may have to meet twice a day.

**Mr. President :** I do not object to that. We will adjust the timings according to the quantity of work we have to get through.

**Shri Biswanath Das** (Orissa : General) : 9 to 1 is not acceptable to us. I would suggest 3 to 7 p.m.

**Shri R.K. Sidhva :** We must have two sessions later on.

**Several Honourable Members :** Let it be from 9 to 1.

**Mr. President :** I would suggest one thing, if the Members do not mind. I would suggest that to begin with we start at 10 o'clock tomorrow and then we see what progress we are making. If we find that we are able to complete the work with three hours every day then we can continue from10 to 1. If on the other hand we find that the progress is not satisfactory then we shall think of changing the timings. If this finds approval we shall begin at 10 o'clock tomorrow.

**Several Honourable Members :** That is agreeable.

**Mr. President :** The House stands adjourned till 10 of the Clock tomorrow.

The Assembly adjourned till Ten of the Clock on Friday, the 7th October, 1949.

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# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

**Friday, the 7th October 1949**

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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.

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## TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:--

**Shri Samaldas Laxmidas Gandhi:** (Junagadh).

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## DRAFT CONSTITUTION-*(Contd.)*

### Article 306

**Mr. President :** We shall now proceed with the consideration of the articles relating to transitory provisions.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Sir, I move:

"That for clauses (a), (b) and (c) of article 306, the following clauses be substituted "

> (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *Kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
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> (b) (offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court."

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause (a), it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause (a) is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present decontrolled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub- clause (b) of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c),

Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

**Mr. President :** May I enquire of Dr. Ambedkar ? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have considered that.

**The Honourable Dr. B. R. Ambedkar :** This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-clause (a), I certainly have no objection.

**Mr. President :** I speak from my experience which is now rather out of date.

**The Honourable Dr. B. R. Ambedkar :** I think it is rather desirable to include that item.

**Dr. P. S. Deshmukh** (C. P. & Berar: General) : That may be done in consultation with the Agriculture Department.

**Mr. President :** That is what I suggest.

**The Honourable Dr. B. R. Ambedkar :** I think we shall add that. I can put in, foodstuffs including cattle fodder.

**Mr. President :** Cattle fodder including oil cakes and other concentrates.

There are certain amendments to this. Amendment No. 2. Dr. Deshmukh.

**Dr. P. S. Deshmukh:** Sir, I move:

"That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words 'State in the words 'State with respect to be substituted."

"That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words and brackets coal (including coke and derivatives of coal)' the words 'coal, coke and derivatives of coal be substituted."

These are more or less of a drafting nature, although the first one that I have moved would make some difference if my wording is preferred. However, I do not wish to press them and I am prepared to leave them for the consideration of the Drafting Committee.

**Mr. President :** There is an amendment printed in Volume II in the name of Pandit Kunzru.

**Shri Brajeshwar Prasad** (Bihar: General): I have an amendment Sir.

**Mr. President:** Yes, you can move it.

**Shri Brajeshwar Prasad:** Sir, I move:

"That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Volume 11) in article 306, for the word 'five' the word 'fifteen' be substituted."

The members of the Drafting Committee are of opinion that they will be able to tide over the economic difficulties with which we are confronted in the transitional period within a period, of five years. That is the only purpose why article 306 has been brought in this Draft Constitution. am of opinion that within five years they will not succeed in their venture. The economic crisis with which we are confronted is not only of a national character. It has an international bearing. I am of opinion that, as a result of the economic structure of the capitalist society and as a result of the war, the whole structure of human society is crumbling down and India especially is passing through a period of decadence and decline. The entire fabric of our society is in the melting pot. I feet that revolution is knocking at our doors. Matters like foodstuffs and minerals should have been kept within the purview of the Government of India, but now the only thing that we can do is to keep these under the Government of India at least for the transitional period. The period of transitions will cover a period of fifteen years and not five years.

But no crisis can continue for a longer period and if it continues longer, it will mean the end of the State. Either we tide over the crisis or the crisis will tide over us. It will bring utter chaos such as we are witnessing in China today if the crisis continues for more than fifteen years. So we must surmount these difficulties within this period.

The basis for this Constitution is federal in structure. I hold the opinion that centrifugal forces will become so strong that the process of amendment will have to be resorted to in order to change this Constitution. We must take into consideration the political facts of our life. With this background in view article 306 ought to be modified. My amendment is very reasonable. In the concluding portion of article 306 it has been said that all laws passed under this article to the extent to which they are inconsistent with the main provisions of this Constitution will cease to operate. I think this is unnecessary and undesirable. The work of centralization which will be achieved within five years should not be undone. The provincial Governments must accept the laws passed within this period of five years or fifteen years if the House accepts my amendment. The scope of article 306 is also limited from another point of view. We have given powers to Parliament to deal with production, supply and distribution etc., of these commodities. The entire gamut of these subjects ought to have been brought within the purview of the Government of India. Why this limited sphere ? This limited power is not desirable. I think fissiparous forces ought to be circumvented if we are to become a powerful nation.

**Pandit Hirday Nath Kunzru** (United Provinces : General): Sir, I move:

"That in clause (a) of article 306 after the word 'coal' the words 'charcoal, firewood' be inserted."

I am sure the House is well aware that under the Defence of India Act the prices of charcoal and firewood were controlled. But for the power delegated to the provinces by the Government of India the provinces would not have been in a position to control the prices of these two articles. The Defence of India Act is no longer in force and it is

therefore desirable to amend clause (a) of the article placed before us by Dr. Ambedkar in order to include these two things. I understand that after the Defence of India Act expired these things continue to be controlled by the Government of India under the provisions of an Act amending the Government of India Act, 1935, passed by Parliament in 1946. There is no mention of charcoal or firewood there. But it is believed that they are included among the derivatives of coal. I am totally unable to accept this explanation. No one has challenged the action taken by the authorities in fixing the prices of charcoal and firewood but had anybody done so, I doubt whether any Court would have accepted the plea that charcoal or firewood was a derivative of coal. What we understand by coal, generally speaking is anthracite. Charcoal is the derivative of wood, and certainly not a derivative of coal. Neither charcoal nor wood can be regarded as a derivative of coal. It is, therefore, necessary to provide for the control of the Government of India expressly in respect of both these things. The common man is concerned with them. When we are providing for the control of the Government of India over a number of other things, it is both desirable and necessary that we should think of the needs of the poor man too, and take power in the Constitution to control the prices of those articles also, that affect his household budget. We all know how serious the position was during the war, in respect of these articles, and we also know how high their prices still are. We usually think of the high prices of foodstuffs, and few people realise that the high prices of charcoal and firewood are matters of as much anxiety to the poor man as the high prices of the foodstuffs.

As Dr. Ambedkar is in a mood to consider suggestions to amend the clauses placed before him, I hope that he will take this matter too into consideration and take power to see that the clause (a) is so amended as to give complete power to the Government of India to control trade in charcoal and firewood also.

**Mr. President :** These are all the amendments. Does anyone wish to say anything about the original proposition or any of the amendments ?

**Prof. Shibban Lal Saksena** (United Provinces : General): Mr. President, Sir, in this article, we have provided that certain subjects which normally form part of the State List should be in the Concurrent List for the first five years. At present also there is a similar provision in the Government of India Act (Adaptation) 1946 which is intended to tide over the present period. But the period fixed here in this article seems to me to be too short. This article says that for the first five years these items which are mentioned in the State List, it may be necessary to have in the Concurrent List so that necessary action may be taken by the Parliament. I would in this connection commend the amendment moved by my Friend Shri Brajeshwar Prasad to the effect that this period of five years is too short and that it should be for A longer period. If found unnecessary, we may cut it short, but there is no harm in having provision for a longer period in the Constitution.

Secondly, Sir, I would have liked that the Subject of relief and rehabilitation too had been mentioned in this list of subjects to be put in the Concurrent List. I do not know if it is the intention to omit this Subject from the Concurrent List. If not here, this subject should be mentioned somewhere else in the Constitution so that Parliament may be able to make proper laws for the relief and rehabilitation of millions of people who have been.....

**Mr. President :** Entry 33B of Concurrent List includes Relief and Rehabilitation of

persons displaced from their original places on account of the partition. So, you will see, it has-been provided.

**Prof Shibban Lal Saksena :** Sir, I am glad it has found a place in the Constitution. I will not say anything further about it. I shall withdraw my suggestion, But I feel that the period of five years should be extended.

**Mr. President :** Does anyone else wish to speak ? Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar :** Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

**Mr. President :** And the Ministry of Agriculture also. You may consult that Ministry also.

**The Honourable Dr. B. R. Ambedkar :** Yes, Sir, I will consult the Ministries concerned.

**Mr. President :** Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4 ?

**Dr. P. S. Deshmukh :** I am not moving it.

**Mr. President :** Then I put No. 5-amendment of Shri Brajeshwar Prasad.

The question is:

"That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Vol. II), in article 306, for the word 'five' the word 'fifteen' be substituted."

The amendment was negatived.

**Mr. President :** Then I put tile amendment moved by Dr. Ambedkar.

The question is:

"That for clauses (a), (b) and (c) of article 306 the following clauses be substituted:--

> '(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
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> (b) offences against laws with respect to any of the matters mentioned ill clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those

matters but not including fees taken in any court'."

The amendment was adopted.

**Mr. President :** Then I put the article as amendment by Dr. Ambedkar's amendment.

The question is:

"That article 306, as amended, stand part of the Constitution."

Tile motion was adopted.

Article 306, as amended, was added to the Constitution.

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**Article 309**

**Mr. President :** Then we take up article 309.

**The Honourable Dr. B. R. Ambedkar:** There is all amendment by Shri Brajeshwar Prasad adding a new article 307A.

**Mr. President:** But shall we take it up now ?

**The Honourable Dr. B. R. Ambedkar:** It may be kept back.

**Shri T. T. Krishnamachari** (Madras: General) : The new article suggested by Pandit Thakur Das Bhargava in amendment No. 3303, Volume II may, I think be disposed of.

**Mr. President:** Well. Pandit Thakur Das Bhargava ? He is not in the House. There are two others who have given notice of it. Lala Achint Ram ? Shri Deshbandhu Gupta ? None of them is moving the amendment. The amendment of Mr. Brajeshwar Prasad also cannot be moved.

I will put article 309 to vote. There is no amendment to it.

The question is :

"That article 309 stand part of the Constitution."

The motion was adopted.

Article 309 was added to the Constitution.

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## Articles 310-A and 310-B

**Shri T. T. Krishnamachari :** The next article *viz*., 310 is linked to article 308. These two may be considered together.

**Mr. President:** Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

**The Honourable Dr. B. R. Ambedkar :** Sir, with your permission I move amendment No. 12 in a slightly amended form, thus:

"That after article 310, the following new articles be inserted:-

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| Provisions as to Comptroller and Auditor General of India. | "310-A. The Auditor-General of India holding office immediately before the date of' commencement ofthis Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement". |
| Provisions as to public Service Commissions. | 310B. (1) The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members. |

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to bold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members."

Sir, these articles merely provide for the continuance of certain incumbents of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General. There is no matter of principle involved in these articles.

**Dr. P. S. Deshmukh :** Sir, I move

"That in amendment No. 12 of List I (First Week), in the proposed new article, 310-B, after the words 'commencement of this Constitution' wherever they occur, the words 'whose services have not, for any reason, been terminated' be inserted."

I intended to move a similar amendment to article 310 also. My difficulty is that in case the proposed new article stands as it is, the question will arise as to whether every one who happens to be a member of a Service Commission of State even when the States have one combined Commission will have to be continued as a member of the Commission for the group of States. According to the article as it is worded, there will be no power left to the Government but to continue every single individual who is holding any post on the Commission at present even after the commencement of the

Constitution. If a member whose services could be terminated on the formation of a joint service commission for a number of States could not be so terminated if the wording of the article is to remain as it is. There is no provision there to terminate the services of some members. Every one would have automatically to be kept on. I think it will lead to considerable expenditure of money. I therefore propose that the words I have suggested may be included so as to reduce the number of persons who happen to be there in a particular area as members of the public service commission of that area.

**The Honourable Dr. B. R. Ambedkar:** I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

**Mr. President:** I will first put the amendment of Dr. Deshmukh to vote.

The question is:

"That in amendment No. 12 of List I (First Week), in the proposed new article 310B, after the words 'commencement of this Const on' wherever they occur, the words 'whose services have not, for any reason, been terminated' be inserted."

The amendment was negatived.

**Mr. President:** I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

The question is:

"That after article 310, the following new article be inserted:--

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| Provisions as to Comptroller and auditor- General of India | '310-A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement.' |

The motion was adopted

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

"That after article 310-A, the following new article be inserted:-

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|---|---|
| Provisions as the Public Service Commissions. | 310B. (1) The members of the public Service Commission for the Dominion of India holding officeimmediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to bold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members. |

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the 0needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date members of the Public Service Commission for the

corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined tinder the rules which were applicable immediately before such commencement to such members.' "

The motion was adopted.

Articles 310-A and 310-B were added to the constitution.

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## Article 311A

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

"That after article 311, the following new article be inserted:-

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| Provisions as to Provisional President. | '311A. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office. |

(2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President'."

**Mr. President:** There are two amendments to this. One is for the deletion of the word "provisional" before the word "President":

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

"That in amendment No, 28 of List II (First Week), in clause (1) of the proposed article 311 A the word 'provisional' be deleted."

"That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words 'provisional President' in the first place where they occur. the words 'President so elected by the Constituent Assembly of the Dominion of India,' be substituted."

"That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words 'the Provisional President' in the second place where they occur, the word 'President' be substituted."

**Dr. P. S. Deshmukh:** Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

**Mr. President:** The article and the amendments are now open to discussion.

**Shri R. K. Sidhva** (C. P. & Berar: General): I have an amendment standing in my name:

"That in amendment No. 13 in the proposed new article 311B for the word 'provisional' wherever it occurs, the

word 'first' be substituted."

I am glad, Sir, that Dr. Ambedkar has agreed to leave out the word "provisional" before the word "President", because I cannot see how you can have a provisional President. The House, duly constituted, will elect the President. He may be the first President, but you cannot call him "provisional". The word "provisional" will mean that somebody has nominated him. I do not want any aspersion cast on our first President and I therefore thought that the word "first" will be more appropriate. Under the Government of India Act of 1935 when Orissa was separated from Bihar and N. W. F. Province was created into a separate province, and when Sind was separated from Bombay and constituted as a separate province, during the transitory period, the Governors of these provinces were called the first Governors although they were nominated. I think that the word "provisional" will be unjustified and unfair to use in connection with our first President whom we shall be electing under the provisions, of this Constitution. I am therefore glad that the Drafting Committee has omitted the word "provisional". I would prefer the word "first" but the omission of the word "provisional" serves my purpose, and I have no objection to it. With these words, I commend the amendment for the acceptance of the House.

**Prof. Shibban Lal Saksena:** Mr. President, Sir, clause (2) of article 311A as moved by Dr. Ambedkar says that in the event of the occurrence of any vacancy in the office of the Provisional President, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution. My point is that that Parliament should not be called "provisional". I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the word "provisional" before the word "Parliament", as he has done in the case of the President.

**The Honourable Dr. B. R. Ambedkar:** I do not think there can be any great objection to the retention of the words "provisional Parliament" I do not propose to make any change in that. It would not be called the "Provisional Parliament" but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

**Shri R. K. Sidhva:** But I thought that Dr. Ambedkar has agreed to omit the word "Provisional".

**Mr. President:** No, this is with reference to the Parliament. Mr. Shibban Lal Saksena wanted that the word "Provisional" should be omitted before the word "Parliament".

**Dr. P. S. Deshmukh:** If that is so, I would like to move my amendment for the deletion of the word "Provisional" in the other place also.

**Mr. President:** Does your amendment refer to Parliament also ?

**Dr. P. S. Deshmukh:** Yes, Sir.

**Mr. President:** Mr. Shibban Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is:

"That in amendment No. 23 of List II (First Week), in clause (1) of the proposed article 311A the word

'provisional' be deleted".

The amendment was adopted.

**The Honourable Shri K. Santhanam** (Madras: General): Does it mean the word "Provisional" will be deleted before the word "Parliament" also ?

**Mr. President:** No; that comes later on.

The question is-

"That in amendment No. 28 of List II First Week), in clause (2) of the proposed article 311A, for the words' provisional President' in the first place where they occur, the words 'President so elected by the Constituent Assembly of the Dominion of India' be substituted."

The amendment was adopted.

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

"That in amendment No. 28 of List II (First Week), in clause(2)of the proposed article 311A, for the words' the provisional president' in the second place where they occur, the word 'President' be substituted."

The amendment was adopted.

**Mr. President:** Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal Saksena.

The question is:

"That in clause (2) of the proposed new article 311A, the word 'provisional' occurring before the word 'Parliament' be deleted."

The amendment was negatived.

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

"That article 311 A, as amended. stand part of the Constitution".

The motion was adopted.

Article 311A, as amended, was added to the Constitution.

**Article 311-B**

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

"That after article 311 A the following new article be inserted:--

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| Council of Ministers of the provisional President. | '311B. Such persons as the provisional President may appoint in this behalf shall become members of theCouncil of Ministers of the provisional President under this Constitution, and until appointments are' made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution |

shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under the Constitution.' "

**Dr. P. S. Deshmukh:** Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move:

"That in amendment No. 13 above, in the proposed new article 311B, the word 'provisional', wherever it occurs, be deleted."

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

**Mr. President:** I take it that Dr. Ambedkar accepts the amendment.

**The Honourable Dr. B. R. Ambedkar:** Yes, Sir, I do.

**Prof. Shibban Lal Saksena:** Sir, I cannot understand this provision. On the day the new Constitution comes into force the present ministry ceases to exist and a new Council of Ministers should be sworn in. There should not be a provision as:

"all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under this Constitution."

I think the first act of the new Constitution must be the swearing in of the new Council of Ministers. When the new Constitution comes into being it is but meet and proper that the President should call in the new Ministers to their office. If we want to provide for something, we should provide for a care-taker ministry. Let the old Ministry not be called the Ministry of the new President. I would therefore suggest that this article should be amended. You may say that until the President appoints the new Ministry the old ministry shall continue as a care-taker ministry. It looks odd that the old ministers should automatically become the Council of Ministers of the new President. There is some lacuna which should be remedied so that on the 26th January 1950 when the new Constitution comes into force the old Ministers become care-taker Ministers till the new Ministers take charge of the Government that same day.

**Shri H. V. Kamath** (C. P. & Berar : General): Sir, there is some force in Mr. Saksena's contention. The point that he has sought to make out is that on the day the new constitution comes into effect the whole Council of Ministers must formally cease too, exist, and they might be sworn in again. I think this is very desirable when we are promulgating the new Republic and inaugurating this new Constitution. It may be necessary that the same Ministers should be sworn In on that day.

**An Honourable Member:** Not necessary.

**Shri H. V. Kamath:** It may not be necessary, but it is very probable that the same Ministers who were Ministers before the commencement of the new Constitution may be sworn in. But from the point of view of constitutional propriety and decorum I think we will be acting wisely if the Council of Ministers bodily, en bloc, resigned on that

day. The Prime Minister should submit the resignation of the Council of Ministers to the President and the President should call upon the Leader of the House to form a new Cabinet under the appropriate article of the new Constitution.

There is another point in this connection. Our Constitution has adopted an oath of office which believe is slightly different from the old oath under which ministers were sworn in. We have now an invocation of God in the oath, but if a minister happens to be an agnostic or atheist he may make solemn affirmation. Considering this matter from these various aspects I think it would be wise on our part to provide for this contingency, and to lay down that on the day the Republic is proclaimed and the Constitution inaugurated the Council of Ministers should resign formally and the President calls upon the Leader of the House to form his own cabinet again.

There is one more point which I would like Dr. Ambedkar to consider. It is a verbal objection. Are Dr. Ambedkar and the Drafting Committee quite sure that this expression "Ministers *for* the Dominion of India" is quite correct? I do not like it myself. I object to the word "for". Is it not more correct to say "Ministers of the Dominion Government of India" or "Ministers of the Dominion of India"? "For" is not quite appropriate, but if Dr. Ambedkar and other linguistic experts hold that "for" is all right, I have nothing to say.

**Shri Brajeshwar Prasad:** Sir, I had no intention of speaking on this occasion but since my two friends Messrs Shibban Lal Saksena and Kamath spoke on the subject I take this opportunity to express my own views on the amendment. It would have been better if this word "Dominion" had been eliminated from this article. Personally I feel that with the advent of a new age and with the establishment of a Republic in India we should have a new Cabinet. I know that there are three figures in the Cabinet which are more or less indispensable. I refer to our great leader Pandit Nehru, the valiant Sardar and the greatest scholar of Asia, the great Maulana Saheb. These three figures are indispensable in the Cabinet. Other members of the Cabinet are more or less in the nature of migratory birds.....

**Mr. President:** I do not think the honourable Member is justified in making personal references to individual Ministers. We are not concerned with them. We are taking the ministry as a whole.

**Shri Brajeshwar Prasad:** I am sorry, Sir, if the word "migratory" means any reflection on our able Ministers. I thought that with the establishment of a real Republic in this country we should have men in the Cabinet who will command the enthusiastic support of young India as well. Therefore it is in the fitness of things that a wider range of choice is left in the President who may take new blood into the Cabinet which may be in accord with the needs of the hour. As far as the present members of the Cabinet are concerned I have nothing to speak against them personally, but I feel that with the new age new men are required. It is no use putting old wine in new bottles.....

**Mr. Naziruddin Ahmad** (West Bengal : Muslim): Mr. President, Sir, the point, though a very short one, raises a question of constitutional form. I think when the Governor- General ceases to function and a new President comes to take his place, the Ministers should vacate and should be reappointed. This seems to follow logically from first principles. The first reason is that the existing Ministers hold office "during the pleasure of the Governor-General". The "Governor-General" means the Governor-

General who is now functioning. This Governor-General would be defunct at the inauguration of the Constitution and would be replaced by some other official,--the Provisional President. There will therefore be a break on the 26th of January next, or whatever date is ultimately agreed upon, on which the new Constitution comes into effect.

As the Ministers appointed by the Governor-General and as they are constitutionally to hold office "during his pleasure", as soon as the office of the Governor-General becomes defunct, he ceases to be subject to any pleasure or pain and therefore the Ministers will no longer continue to hold office during his pleasure. Somebody else's pleasure--his successor's pleasure--comes to occupy the field. Pleasure is a personal factor and the successor's pleasure will not necessarily agree with that of his predecessor. Therefore the new President should appoint or reappoint the Ministers to indicate his own pleasure. Till the appointment is made, the old Ministry may at the most function as a Care-taker Ministry.

This is no doubt a matter affecting constitutional form, but it seems to me of fundamental importance.

**The Honourable Dr. B. R. Ambedkar :** Mr. President, Sir, this article 311B is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other articles which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have corn, minted upon the provisions of this article 311B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the--test of no confidence or confidence before the 26th of January, 1950--assuming that to be the date for the operation of the Constitution--this article 311B does not, take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311B, probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the New Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

**Shri H. V. Kamath:** The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

**The Honourable Dr. B. R. Ambedkar :** That will be taken undoubtedly. "Appointment" means taking the oath office. Otherwise there is no appointment.

**Shri H. V. Kamath:** On that very day?

**The Honourable Dr. B. R. Ambedkar:** Yes, certainly. On that very day. "Appointment" includes oath of office.

**Mr. President:** I shall put Dr. Deshmukh's amendment to vote--I take it that it has been accepted by the Mover.

The question is:

"That in amendment No. 13 above, in the proposed new article 311B, the word 'provisional Wherever it occurs, be deleted."

The amendment was adopted.

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

"That the proposed article 311B, as amended, stand part of the Constitution."

The motion was adopted

Article 311B, as amended, was added to the Constitution.

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**Article 312**

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

"That for article 31 Z. the following article be substituted :-

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| Provisions as to provisional Legislature in each State. | '312. (1) Until the House or Houses of the Legislature of each State for the time being specified inPart I of the First Schedule has or have been duly constituted and summoned to meet for the first section under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State. |

(2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not conic into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office as Speaker of the Legislative Assembly or President or the Legislative Council of a Province immediately before the

commencement of this constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.' "

The provisions are quite clean and I do not think that they require any explanation.

**Mr. President:** Are there any amendments to this ? I do not see any.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, I do not think that sub-clause (3) is at all necessary. When we have already said above that the Legislative Assembly of a State or the Legislative Council of a State will remain as it is, it is not necessary that we should also say that the Speakers or the Presidents of the respective Houses will also remain as they are, for, they go with the Houses. Secondly, what I feel is but I do not know Dr. Ambedkar always might again come forward with the plea that I being a layman, he does not take any notice of me--but what feel is that the wording perpetuates the Speaker and the President of the Houses. Why should we perpetuate them ? They are liable to be "no-confidenced" out from the Assembly, so to say, but we say they shall remain as Speaker and as the President. Will that not mean that they will be irremovable ? I do not want to emphasise further, I only want to point out these words:-

"Any Person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of the Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be....."

Why should we say that ? And then--

"..... of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause(1) of this article".

So long as those Assemblies and Councils function, the Speakers and Presidents of those Legislative bodies shall remain. Will that not be construed to mean that, even it the Houses do not want them and want to change them, they will not be able to do so ? That is the only little doubt that I wanted to express.

**The Honourable Shri K. Santhanam** (Madras: General): Mr. President, Sir I am frankly apprehensive of these transitional provisions. I do not see any definite provision fixing a time limit for the duration of these provisional Assemblies and Parliament. When France decided to constitute a Constituent Assembly after the war to frame a Constitution and act also as a provisional Parliament, they fixed a time limit of seven months. They said, "It will enact the constitution within seven months. If it is not able to do so, that Constituent Assembly will stand dissolved and will be re-elected". Now, if any such provision had been inserted in the constitution of this Constituent Assembly, I feel that this Constitution would have been finished long ago, but because there was no provision for the automatic dissolution of this Constituent Assembly we have now taken three years to frame this Constitution.

I do not know how many years the so-called provisional Parliament and Assemblies will take to conduct elections. I think it will be nothing short of a national disaster if these provisional Parliament and Assemblies perpetuate them selves. It may be *bona fide,* it may be *mala fide,* it may be anything. We know what human nature is and faced with the elections on the basis of adult franchise there is quite a possibility that Members may be apprehensive of being not returned and would like to perpetuate themselves for six months, one year or two years.

**Shri R. K. Sidhva :** What about Ministers? Are they not apprehensive?

**The Honourable Shri K. Santhanam :** Sir, Ministers depend upon Parliaments. If Parliaments are dissolved, Ministers will automatically go out. I cannot understand the logic of Members wanting to perpetuate themselves and saying only the Ministers.....

**Shri L. Krishnaswami Bharathi** (Madras : General) : Sir, it is a bad reflection on the Members of the House to say that they are apprehensive of elections. It is a reflection which it is not necessary to make.

**The Honourable Shri K. Santhanam :** I am not speaking about any particular person, I am speaking about human nature as such. I am riot speaking of Members of this House but of all the Provincial Assemblies. I think we are, here as the guardians of the people of India and we should care more for their interests than for anything else. I am speaking from the point of view of principle. If you give power to a body, you cannot say that they will not exercise it. The whole Constitution is full of checks and balances. We want to limit the power of future Parliaments by the Supreme Court. We have put in the Fundamental Rights to restrict it. But here we are giving powers to these provisional Assemblies and Parliament to perpetuate themselves almost indefinitely. Therefore, we must take some measures. Either put it in the Constitution or pass a resolution or take some other measures to fix a final and definite limit for these provisional Assemblies so that the people of India will know that the new Assemblies under the adult franchise will come into operation within a reasonable time. I think it is essential to do so. I do not think any individual should take it as a personal reflection; we want it for the future of the country and for the future of the Constitution because if the coming into force of the real Constitution is unduly delayed it may become out of date and we do not know whether there will be constitutional chaos. I want to prevent any such long interregnum or chaos taking place.

Therefore I am anxious that the Constitution which we have framed should come into full existence within six months or one year at most from the commencement of the Constitution on January 26. We must give a sort of assurance to the people of India that by January 26, 1951 or some such date the new Constitution will come into force. I think this is a matter in which every Member of this House is as much interested as myself. Therefore I hope no one will take my remarks as a personal reflection on any particular people or set of people. I would like to ask Mr. Bharathi whether it is not his duty to give the assurance which I am speaking of to the people of India. I hope he will join with me in giving that assurance.

**Shri L. Krishnaswami Bharathi :** Sir, may I draw the Honourable Member's attention to the fact that in this very House I pleaded that the elections should be held as early as possible?

**Prof. Shibban Lal Saksena:** Mr. President, I am very glad that my honourable

Friend Mr. Santhanam has drawn the attention of the House to this aspect of the question. I do feel that he is perfectly correct in saying that the Constitution should say after what time the new Assemblies shall come into power. It is really correct to say that unless we provide this thing, we may perpetuate ourselves for ever although I am sure this House will not do it. We have already passed a resolution that in 1950 we shall have elections. Still, that is only a sort of an advice. This Constitution should lay down a time limit. My honourable Friend has suggested one year. Well, it all depends on how soon our present Government and the new Ministry which will be appointed will be able to conduct the elections and complete the Parliament. Whatever time is fixed, let there be an upper limit, one year, one and a half years or two years at the most. Within these two years, the new Parliament and the new legislatures must be elected. If we do not want to put this in the Constitution, let there be a resolution which should say that by that date, the new Parliament shall be elected. It would be unfair for the country and for the people as a whole that they should not know how long it will take.....

**Dr. P. S. Deshmukh :** On a point of order, Sir, in the absence of an amendment to this effect, I do not think these remarks can have any consequence.

**Prof. Shibban Lal Saksena :** My honourable Friend Mr. Santhanam suggested.....

**Mr. President:** The honourable Member is entitled to speak generally on the amendments moved. He has drawn that conclusion from the amendment and he is commenting on it.

**Prof. Shibban Lal Saksena:** This article 312 does not say when the life of these legislatures will be over. If you read the article carefully, it says that they shall automatically become the new legislatures. You have not put in any time limit. They may continue for ever. Therefore, I say that Mr. Santhanam has raised a correct point. We must fix some time limit either in the Constitution I think that would be better--or by some resolution so that at the end of the upper limit, these legislatures should not have any power left and a new legislature should come into existence. This is necessary not only from the constitutional point of view, but for the people of the country, because they may say that there will be delay and so on and so forth. There must be something put down here that would work as a sort of an inducement to see that new legislatures are brought into existence as quickly as possible. I cannot say what limit should be put--one year or one and a half years or two years. Recently, new Unions of States have been formed and a period of one year may not be sufficient for making arrangements in them. At any rate, the period should not exceed two years. At the end of two years, we must have a new Parliament and new legislatures in every State.

**Shri B. Das** (Orissa: General): Sir, I was very glad to hear my honourable Friend Mr. Santhanam voice the view that lie is very anxious that the Constitution should come into effect to a certain scheduled date. My experience of my own Congress Cabinet is that they never keep to schedule. They have avoided shouldering responsibilities which are not the responsibilities of this House or the Parliament, but the responsibilities of the Cabinet. If we fix a time limit, say January 1951, it is the responsible duty of the Cabinet Ministers and the Ministers in the Provinces to delimit the constituencies and to prepare the voters' rolls. Can my honourable Friend Mr. Santhanam or any member of the Cabinet here present tell me how far they have

advanced to carry out the wishes of this august House ? We the representatives of the people arc to voice the conscious democratic opinion of the country. We have appointed these Cabinet Ministers and their Colleagues as the Executive to give effect to those constitutional aspects of the Draft Constitution. If they fail in their duties, it is no use asking this House to fix a certain date over dissolution. May I enquire suppose the date is fixed as 1st January 1951, and suppose the Executive, be that our own Congress Cabinet here or the provincial Ministries, fail to discharge this responsibility, will my honourable Friend Mr. Santhanam or those other Ministers present here tell us how the Constitution will provide either in the Constitution or in that resolution that this House will have to pass eventually, that a certain enforcement must be enjoined on the Cabinet here and in the provinces ? I can take the horse to the water, but I cannot make the horse drink. People can appoint the Ministers. But the Ministers must solve the problems for which they are appointed as the Executive head of the Government of India.

The past traditions of the Government of India and the provincial ministers do not show that they are in any hurry to do everything for democracy. I make no reflection on any Minister; but I say that their collective action to render social. justice, to remove poverty, since August 15, 1947, does not show that they are very keen to give effect to those democratic principles which have been incorporated in this Constitution. It is for the members of the Government and the Cabinet and their colleagues the other Ministers to deliberate and to bring forward a resolution which this House will consider with great sympathy. In spite of my wish to dissolve this House on the 26th of January 1950, I have no confidence, I have no hope even that the present Cabinet and their colleagues and other Ministers have thought over the problems to give full effect to this Constitution. The burden is on the shoulders of the Cabinet Ministers inside and outside and not on the Members of this House. But I am ready to support him that the House must consider a resolution and pass it that the Constitution should not be delayed. The responsibility for that, the implementation of that, is on the Cabinet Ministers here and in the provinces and not on ourselves, not on this democratic House.

**Shri H. V. Kamath :** Mr. President, with the speeding up of our railway trains in recent months, even of the notorious Grand Trunk Express, it was in the fitness of things that our Minister of State for Railways, Mr. Santhanam should come before the House and plead for the speeding up of the Constitution. It is inevitable, it is very desirable that he should do it, if all the Members of this House. But, even he cannot afford to forget that the Grand Trunk Express does not keep to schedule even today. Last Sunday when I arrived here, the Grand Trunk Express was five and a half or six hours beyond schedule.

**An Honourable Member :** The Punjab Mail also!

**Shri H. V. Kamath :** I do not know about the Punjab Mail; the Grand Trunk Express was six hours beyond schedule. I arrived at twenty minutes past two instead of at 8-10 or 8-15.

**The Honourable Shri K. Santhanam :** The honourable Member may remember that there were floods.

**Shri H. V. Kamath :** I am coming to that.

**Shri R. K. Sidhva :** With new engines, the trains are late.

**Mr. President :** I hope Members will not go in to the question of floods, delays in railway timings, arrival of trains. We had better confine ourselves to the Constitution.

**Shri H. V. Kamath :** I was just coming to that. The point raised by my honourable Friend Mr. Santhanam....

**Mr. President :** He did not raise the question of railway timings and floods.

**Shri H. V. Kamath :** I hope, Sir, you have appreciated the illustration I have given. The point I sought to make out was that we make up our minds and pass very fine resolutions, but there are hurdles created somewhere by something or other. I may remind the House that there are higher powers that rule the destinies of men and things. I would like Mr. Santhanam as a Minister of State to bear in mind that something may happen somewhere in this wide world upsetting all our plans. Suppose a war breaks out tomorrow in Europe--God forbid--then under the Constitution everything will be suspended under Chapter II and there would be no elections. Suppose, again, there is disturbance or insurrection in the country, an emergency is proclaimed and the President will take everything into his own hands.

I yield to none in my desire for early elections. Let them be held even in February next if need be, but they should be on adult franchise, and not under the old scheme of the Cabinet Mission. We passed a resolution last year asking for the preparation of electoral rolls as early as possible so as to facilitate elections in 1950. Have we implemented that in letter and spirit? How far have the Governments of the provinces and States gone ahead with this task of preparing electoral rolls? Mr. Santhanam must throw some light on this before he comes to the Assembly to plead for a deadline for elections under the Constitution. I am not opposed to dissolution of this Assembly; but what is the point in holding elections under the old scheme of 1946? If at all there should be elections, certainly we should have them under the new Constitution.

**Mr. President :** Mr. Santhanam did not think of the old scheme.

**Shri H. V. Kamath :** He mentioned the dissolution of the Assembly. and holding fresh elections.

**Mr. President :** Not under the Cabinet Mission plan.

**Shri H. V. Kamath :** I am sorry, Sir. Then the only course open is to have theta under this Constitution with which I am in agreement. But bearing in mind the difficulties that may arise, is he sure in his own mind that we will be able to hold elections if we fix a schedule? We can pass are solution as a directive to the various Governments to get in trim for the elections. Mr. Santhanam referred to the French Constitution. I have not read the latest French Constitution but I can point out to him that the Bonn Constitution as well as the Italian Constitution--the latest--do not fix a date for elections to be held under the new Constitution.

Regarding Mr. Tyagi's point, I am inclined to be in agreement with him, that there is no need for incorporation of clause (3) in this article. It seems that by force of habit we have incorporated this. May I point out to Dr. Ambedkar and the Drafting

Committee that Chapter 3 of Part VI refers to State legislatures? That is the main heading, and then officers of the State legislature is; only a part of it a sub-chapter. When we are providing for the continuance of the entire legislature of the State as an interim measure, is there any sense for specially mentioning the Speaker, and if the Drafting Committee and Dr. Ambedkar think it necessary, then why not mention the Deputy Speaker and the Deputy President of the Upper House also? They have been referred to in this chapter 3 of Part VI Otherwise, delete it altogether because they are comprised in the legislature as, a whole, and clauses (1) and (2) of this article 312 refer to the State legislature as whole, and therefore every thing else, including conduct of business etc. is comprised in this chapter 3. If this clause is deemed necessary, why not make provision for the privileges and immunities of members, saying that they will continue as before the commencement of the Constitution or something similar to that? I suggest therefore that clause (3) may be deleted.

**Mr. President :** Mr. Bharathi, I think you had better cut short the discussion of this matter which really does not arise out of the article moved.

**Shri L. Krishnaswami Bharathi :** Very well, Sir. I had absolutely no intention of speaking and I shall very briefly bring to your notice and the notice of this honourable House what we have done. Mr. Santhanam's point of view is that, unless we put down a definite date, there might be an impression created that this House is likely to perpetuate itself and delay elections with all its disastrous consequences. I want to bring to your notice and to the notice of this House that this House has already passed a Resolution moved by the Honourable Pandit Nehru on the 8th January 1949 when the Vice-President was occupying, the chair. I was only anxious to draw the attention to the aspect of the matter. The resolution reads thus:-

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislature under the new Constitution may be held as early as possible in the year 1950."

That is the resolution we passed on the 8th January 1949. Speaking on this Resolution Dr. Ambedkar has clearly indicated the scope of this resolution. I shall only read a portion.

"The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible election may be held, sometime in 1950, but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this Constituent Assembly desires that the election should take place in 1950, etc."

Therefore we have already passed a resolution, and unless Mr. Santhanam thinks this a mere pious resolution without any intention to give effect to it and I think he will not give that interpretation--this Assembly means and it the intention to hold elections as early as possible. I am only anxious that there should not be an impression created outside that this Assembly would like somehow to perpetuate itself. Far be it from our minds, to delay the elections a minute longer than is absolutely necessary by circumstances of the case, but there is this practical difficulty. Suppose we put in a date, what does it mean? If due to some unforeseen circumstances, we are unable to hold the elections, what are we to do? Therefore, what I say is, let it not be understood that the omission to mention a date means that this House wants to perpetuate itself. We have already passed a resolution and we propose to stand by it and it is the intention of the House to hold the elections as early as possible. Sir, this

is the only point that I want to bring to the notice of the House.

**Mr. President :** I do not think it is necessary to continue the discussion on this point. If I had notice that this point would be raised I would have got a report up-to-date with regard to the steps that have already been taken. and if possible, I shall place before the House, if not today, the next day, a report showing what steps have already been taken and what progress has already been made with regard to the preparation of rolls and other matters in connection with the elections. As was pointed out, it was passed by this Assembly that steps should be taken in this direction, and it is the Constituent Assembly Secretariat Which has been in correspondence with the Provincial Governments with regard to 'the steps which have been taken. And steps have been taken. I only desire Honourable Members to remember this that we have decided to have adult franchise, and if we just consider what that implies, the tremendousness of the task with be apparent. With our present population, and with the information at our disposal based on the enrolment of voters, it seems our electoral roll will comprise anything between 170 and 180 million names. The mere act of printing this is Stitch a big and tremendous job that the governments are being hard put to it, to find the presses which will under take this big job. I was my self calculating one day the thickness of the volume of the electoral roll for all the provinces and I found that it will come to nearly three-fourth of a furlong. If we bear that in mind, you will appreciate that if there is delay, the delay will not be intentional on the part of either the Provincial or the Central Government, but because of the bigness of the job itself

I think that should set at rest all speculations on that point. We are trying our best, and as at present advised, the information which has come to us from the Provinces leads us to hope that the elections will be held some time in the winter of 1950-51, that is to say, any time between November 1950 and February or March of 1951. That is what we are expecting. Of course, if unforeseen difficulties arise, we do not know what may have to be done at that time.

**Shri R. K. Sidhva :** Sir, after what you have said, I do not want to make any speech. But I only want to say that the speech that Mr. Santhanam has made might create a very bad impression in the minds of the public outside this Hall. Therefore, I am very glad, Sir that you have clarified the position, I need only add that Mr. Santhanam, a responsible Minister should not have spoken in such an irresponsible manner. After this Constituent Assembly is over, who is to fix the election date? It is the cabinet. Let them fix it after six months, but it is for them to decide, and it is not proper for him to say that the House wants to perpetuate itself. I am very glad, Sir, that you have indicated the great interest you have taken to see that the elections do take place as early as possible. I was obliged to make this statement lest Mr. Santhanam's remarks should create any wrong impression. I am very sorry that he has made the statement that he has made.

**Mr. President :** I do not think he said so. I do not think that the remark is justified. I do not want any further discussion. I do not think it is necessary. If any Member wants to speak about the article he can do so.

**Shri M. Ananthasayanam Ayyangar** (Madras : General) : Sir, elaborate provisions have been made for the retention of the existing House or Houses of Legislatures, and there are provisions for the appointment of Ministers. But there is no provision for the dissolution of any House even in this transitory period, in case that

becomes necessary. Sir, such a dissolution may become necessary, and from that point of view, Mr. Santhanam's suggestion becomes very necessary. Does anybody wish to prolong the life of this House? No. But having regard to the absence of provisions for the ....

**Shri R. K. Sidhva :** Sir, you said there should not be any more discussion on this point. Is this relevant?

**Shri M. Ananthasayanam Ayyangar :** I am only referring to the absence of provisions for dissolution of existing Houses of Legislatures. I am glad Mr. Sidhva has taken up the position of the President to say whether this is relevant or not relevant. I was only saying something about the absence of provisions for dissolution of Houses. If the House sits for three or four years, there should he some provision for its dissolution, if it becomes necessary. I therefore request honourable Members to consider this seriously. Are we to give a charter to the Legislatures, to the existing Houses to continue for over and for ever, even if it is not in the interest of the country? Many matters may happen which may require the Members going to the electorate. For instance, it may be a question whether prohibition should be introduced in some provinces where it is not introduced. Or it may be some other important matter on which we may have to go to the electorate. Then, what is to happen? That is a lacuna which must be filled up. I would urge even now that it is not too late to have a provision regarding dissolution of existing Houses.

Then as regards the privileges which my Friend referred to, I believe the existing Houses will continue to be governed and regulated by the existing provisions regarding the scope, subject matter etc. These will be governed by the Lists that are attached to this Constitution. In all other respects, such as the subject matter, the scope of jurisdiction and other activities, the rules and regulations under which they work, they will be governed by the Constitution. Therefore, whatever privileges are conferred upon the Members of Parliament in the earlier sections that we have passed, they will apply to the Members of Parliament. There is only this exception that there will not be election during the transitory period. All the other provisions regarding procedure in Parliament, and the powers of the legislatures in the Provinces will be regulated by the powers etc. which have been conferred by the Act.

**Pandit Lakshmi Kanta Maitra** (West Bengal : General) : Sir, I would like to get this clear. What dissolution is the honourable Member referring to?

**Shri M. Ananthasayanam Ayyangar :** The dissolution of House or Houses of Legislature. It may happen with regard to a particular matter. There may be serious difference of opinion, and they may have to go back to the country.. The dissolution may be by the Prime Minister or the Governor may dissolve the legislature so as to have a better verdict from the people regarding an important matter.

**Pandit Lakshmi Kanta Maitra :** He means to say that in the interim period a chance should be given to the electorate to give its verdict on a particular matter?'

**Shri M. Ananthasayanam Ayyangar :** Yes.

**Pandit Lakshmi Kanta Maitra :** Even during the interim period? And have a general election also ? Absurd.

**Shri M. Ananthasayanam Ayyangar :** It all depends how long the interim period lasts. If it is a short one, there may not be any need for the dissolution. But what if it is otherwise? We know every sitting Member win be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

**The Honourable Dr. B. R. Ambedkar :** Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

**Shri H. V. Kamath :** What about the clause concerning the Speaker?

**The Honourable Dr. B. R. Ambedkar :** That was there in the original draft-

**Mr. President :** I will now put article 312 to vote. The question is:

"That the proposed article 312 stand part of the Constitution."

The motion was adopted.

Article 312 was added to the Constitution.

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## Articles 312A to 312E, 312G and 312H

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

"That after article 312, the following new articles be inserted :--

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| Provisions as to provisional Governor of Provinces | '312A. Any person holding office as Governor in any Province immediately before the commencementof this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter It of Part VI of this Constitution and has entered upon his office. |
| Council of Ministers of Provisional Governors. | 312B. Such persons as the provisional Governor of a State may appoint in this behalf shall become members of the Council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution. |

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| Provisions as to provisional Legislatures in State in Part III of the First Schedule. | 312C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified. |
| Council of Ministers for States in Part III of the First Schedule. | 312D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made all persons holding office as Ministers immediately before the commencement of this constitution in the corresponding Indian State shall become and shall continue to hold office as members of the Council of Ministers of such Rajpramukh under this Constitution. |

For article 312E I propose amendment No. 21:

"That in amendment No. 16 above, for the proposed new article 312E, the following be substituted :-

'312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything, contained in this Constitution, be determined in such manner as the president may by order direct.' "

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| Provision as to Bills pending in the dominion Legislature and in the Legislatures of Provinces and Indian States. | "312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as, if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State. |
| Transactions occurring between the commencement of the Constitution and the 31st of March, 1950. | 312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor- General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement." |

I do not think there is anything necessary to say by way of explanation of these

articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word 'provisional' in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

**Dr. P. S. Deshmukh :** Mr. President, I move:

"That in amendment No' 16 above, in the proposed new article 312A, the word 'provisional', wherever it occurs, be deleted."

"That in amendment No. 16 above, in the proposed new article 312B, the word 'provisional', wherever it occurs, be deleted."

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as 'provisional'. I commend the amendments for the acceptance of the House.

**Shri H. V. Kamath :** I move:

"That in amendment No. 16 above, in the proposed new article 312E, for the words 'by Order directs' the words 'may, with the approval of parliament, direct' be substituted."

If my amendment is accepted by the House this new article 312E will read as follows:

"For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything contained in this Constitution, he determined in such manner as the President may, with the approval of Parliament, direct."

This 312E is somewhat different from the draft of the new article as it reached us a day earlier. Anyhow my amendment would apply to this draft article as well. The issue that this proposed new article raises is that of the elections to be held under this Constitution.

I believe the House will agree with me when I say that elections are a matter with which Parliament is and will be very intimately concerned, and will be interested in. I see no reason why Parliament should be left out of the picture so far as determination of the population of India or of any part thereof is concerned. We have just adopted an article providing for various matters upon the inauguration of the Constitution and the Proclamation of the Republic, and there will be an interim Parliament also functioning with effect from that date. To my mind there is no inherent difficulty about consultation by the President with this Parliament. I have not sought to provide that these matters must be provided for by Parliament. I only want that whatever measures, whatever action, whatever steps, are taken by the President in this connection must be laid before Parliament. My amendment comes to this, that whatever measures are taken by the President in this regard must meet with the approval of Parliament.

I do not wish to dilate or expatiate upon the desirability or the soundness of the

amendment which I have moved. I am sure it will commend itself to the House, considering the matter with which this article deals. In the determination of the population of India or any part thereof I do not want that the President should act on his own or on the advice of his Council of Ministers. It is a very vital matter concerning elections to legislatures and this House will do well to provide that any measures taken by the President in this regard should be laid before Parliament for its consideration, and approval or otherwise. Otherwise we will be striking at the very roots of the Constitution that we are passing, where normally the supremacy of Parliament has been recognised. We are providing for a sovereign democratic Republic, and I do not see why in this matter of elections Parliament should not be taken into confidence by the President. I cannot see any inherent difficulty in or objection of the President laying his measures before Parliament. The straightforward course will be for the President to lay his decrees in this connection before Parliament, seek its approval and obtain it.

**Mr. President :** There is no other amendment to this article; but there is an amendment of which notice has been given by Mr. Sidhva but that relates really to article 311 which deals with the Central Legislature. When that article comes up, that amendment will become relevant, but it is not relevant to this article which deals with the provincial legislatures. We shall hold it over until article 311 comes before the House for consideration. Does anyone else wish to say anything on this ?

**Prof. Shibban Lal Saksena :** Mr. President, Sir, this is an omnibus article which provides for the needs of the transitional period. I only want to comment on article 312E and here I support Mr. Kamath in so far as he wants that the population may be determined by the President but it must be approved by Parliament. In fact, the original article 312E was more comprehensive. The revised article 312E says-

"For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may be order direct."

I think this too wide a power to give to the President. Here is this House which, it is proposed, will become the new Parliament. This House is passing a Constitution and we are providing here for the transitory period. If anything arises during transitory period for which there is no provision in the Constitution, then this Constituent Assembly will still be there as the new Parliament. If there is any difficulty, it can be referred to Parliament and Parliament can make the necessary law for the purpose.

I therefore do not think that we should burden our Constitution with powers given to the President for things not provided for in the Constitution. It is quite possible that during the transitory period matters may arise for which there is no provision in the Constitution, but which we should not permit the President to be the authority to decide. This very Parliament will be there. If any lacuna is seen, the President can refer it to this House and this House can frame a law providing for that contingency. In fact, the members of the Parliament will be elected on the basis of population. For a population of not less than five lakhs and not more than seven and a half lakhs there will be one representative in this House. So, determination of the population becomes very important and this should not be left to the sweet will of the President, which means actually the advice of the Ministers. To leave such an important power in the hands of the President will, I think, be unfair to this House and to the country. The amendment moved by Mr. Kamath is very fair, and if there is any action taken by the President on such an occasion, it should be laid before Parliament.

Then, Sir, I do not see any provision here regarding constituencies. I would like Dr. Ambedkar to inform us whether there is any provision in the Constitution for the delimitation of constituencies. Or, does he want to leave it entirely to the Election Commission? Formerly, under article 312B the constituencies were also to be delimited by the President. I am glad that he has omitted the provision. I do want to know whether any provision is made in the Constitution for the report of the Delimitation Commission to be submitted to the Parliament for approval. It should in the normal course be submitted to the Parliament which will come into existence in the coming January.

**The Honourable Dr. B. R. Ambedkar :** I cannot accept this amendment. My Friends Mr. Kamath and Prof. Saksena have read a great deal into this article 312E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

**Shri H. V. Kamath :** Has Dr. Ambedkar any objection to the principle of my amendment?

**The Honourable Dr. B. R. Ambedkar :** I do not accept it. The import of this article is very limited. It is the determination of the population, not delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

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

"That in the proposed new article 312A, the word 'provisional', wherever it occurs be deleted".

The amendment was adopted.

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

"That in the proposed new article 312B, the word 'provisional', wherever it occurs, be ,deleted."

The amendment was adopted.

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

"That in the proposed new article 312E, for the words 'by Order directs' the words may, with the approval of Parliament, direct' be substituted."

The amendment was negatived.

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

"That proposed article 312A, as amended, stand part of the Constitution."

The motion was adopted.

Article 312A, as amended, was added to the Constitution.

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

"That proposed article 312B, as amended, stand part of the Constitution."

The motion was adopted.

Article 312B, as amended, was added to the Constitution.

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

"That proposed articles 312C and 312D stand part of the Constitution."

The motion was adopted.

Articles 312C and 312D were added to the Constitution.

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

"That proposed article 312E, as amended, stand part of the Constitution."

The motion was adopted.

Article No. 312E, as amended, was added to the Constitution.

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

"That proposed articles 312G and 312H stand part of the Constitution."

The motion was adopted.

Articles 312G and 312H were added to the Constitution.

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**Articles 313**

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

"That for article 313, the following be substituted :-

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| Power of the President to remove difficulties. | 313. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient: |

Provided that no such order shall be made after the first meeting of Parliament July constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament."

This is a reproduction of the provision contained in the Government of India Act which is necessary for the transition period.

**Dr. P. S. Deshmukh :** Sir, there are four amendments standing in my name, which I beg to move:

"That in amendment No. 23 of List I (First Week), in the proposed article 313, in clause (1), the brackets and figure'(1)'and clause (2) be deleted."

"That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, after the words 'The President may' the words 'on being moved by Parliament or any Provincial Legislature in that behalf' be inserted.,,

"That in amendment No. 23 of List I (First Week), in clause (1) of the Proposed article 313, for the words 'whether by way of modification, addition or omission' the words by way of modification,' be substituted".

"That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313,the words 'for their approval' be added at the end."

The very nature of my amendments makes quite clear the intention in regard to these amendments of mine. The powers under this provision as it has been proposed in article 313 are certainly similar to those which were conferred on His Majesty by section 310 of the Government of India Act. But the powers so conferred by that Act were considerably limited and there was in any case a limiting period of six months provided for in section 310. There is no such provision here and it is also not at all ascertainable as to when the first meeting of the new Parliament may be field unless the proviso "Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution" means a meeting of this House continued after the 26th January, the date on which the new Constitution will come into effect. In that case I would not like to press my amendment.

But if these powers which are going to be conferred on the President are to continue till the new Parliament comes into being and starts functioning, as appears obviously the case, then I consider that the powers are extraordinarily wide and the mere limitation of these orders being placed before the Parliament would not be quite enough. For even apart from the powers that we have conferred on the President so

far as the withdrawing of any of the provisions of the Constitution is concerned, this is a provision which is contemplated to be made specifically for the removal of difficulties. But if these provisions are meant to solve the difficulties, why should it not be possible to say that the proposal should emanate either from Parliament, or from the Provincial Legislatures ? if that safeguard is there, then there will be no difficulty in allowing the President, not only by way of adaptations to modify, but to add or even omit provisions from this Constitution. So in one of my amendments I have suggested that these modifications or additions or omissions should proceed only on the recommendation of Parliament or on the recommendation or suggestion of any Provincial Legislature.

It is obvious that the amendments I have proposed are in the alternative. There are two sets of amendments. If it is possible to provide that the orders in this connection of the President shall be limited to such matters as would be suggested by Parliament or the Provincial Legislatures, then there would be no need of the other sets of amendments. But if that is not acceptable then it would be necessary to provide that not only should the orders be laid before Parliament but they should also seek the approval of Parliament.

If it is possible for Dr. Ambedkar to throw any light on the observations I have made and to clarify the matter, I will see my way not to press these amendments. But I personally think that although it is based on section 310, there is no limitation so far as the time is concerned, and if we leave the provision as it is I think we are conferring very large and extensive powers of even omission and addition to the whole Constitution on the simple excuse that could be easily put forward that it certain provision leads to difficulties or certain other provision is necessary for the removal of a difficulty. There is no definition of the word "difficulty" and any difficulty which the President in his individual discretion considers a difficulty would be sufficient excuse for him to take advantage of this article and it will not be challengeable in any court of law. It is therefore capable of being misinterpreted to the detriment of the Constitution and the country. In view of that, I would suggest that this may be considered a little more carefully if possible or some explanation given so that I might decide whether to press my amendments or not.

**Shri H. V. Kamath :** Mr. President, there is an amendment in my name No. 3320 in the printed list of amendments, volume II--but I do not propose to move it. I would, however, like to say this much, that I am afraid that the Drafting Committee has not quite accurately described this transition through which we are passing. The sankrant which has overtaken us is somewhat different. The transition referred to by the Drafting Committee in this proposed article refers to the period between the Government of India Act, 1935 and this Constitution. There has been a slip somewhere--the Drafting Committee to my mind has tripped, and has not accurately described the present stage of this transition. We are being governed not under the Government of India Act, 1935, but that Act of 1935 as adapted by the Indian Independence Act of 1947. So my friend Dr. Ambedkar who has got such an eye to constitutional forms and propriety, and the constitutional pandit that he is, would do well, to describe this transition more accurately than fie has done. It would be more correct to say "the transition from the provisions of the Government of India Act, 1935 as adapted under the Indian Independence Act of 1947 to the provisions of this Constitution". It is plain as a pike-staff that the original Act of 1935 has ceased to exist and we are governed by the adapted Act. It would be better for him and the Drafting Committee to amend this--it can be amended--and I hope we will find it in a

different form at the Third Reading. The House, I am sure, will have no objection to this amendment. I have not given notice of it, but as Dr. Ambedkar moved it today it struck me that even he--it is said, "Homer nods' has failed to notice the inaccuracy or the impropriety of the description of the transition in which we are living.

**Prof. Shibban Lal Saksena :** Mr. President, Sir, this article is intended really to provide for any contingency which may arise during the transition from the Government of India Act, 1935, to the new Constitution. It is assumed that there might be some lacuna in the Constitution which we have drafted in regard to which the President should be empowered to make provisions during the transitional period. But I feel that the powers given to him in this article are very wide. It says "this Constitution shall.... have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient". Therefore the President is empowered to alter the Constitution, to omit sections of the Constitution or to modify them on the plea that it is necessary for the transition from the Government of India Act to the New Constitution. Of course, that means that if the Constituent Assembly had foreseen that contingency it would have made provision for it. I suggest that if the contingency should arise, which has not been foreseen and for which Dr. Ambedkar wants to empower the President with powers to modify, add or omit parts of the Constitution, this very House as Parliament should be able to do it. Why should not this very Parliament be then called upon to provide for the lacuna which may have been found.

I therefore think that this power is wholly unnecessary. What should be done is this: During this transitional period the Parliament should be empowered to provide for and fill any lacuna which may be discovered. To arm the President with power to omit something or to add something in the Constitution is something which is unparalleled in any other Constitution. It is most preposterous that the President should have this power even when this very Constituent Assembly will be there as the Parliament of the nation. This power for the President is wholly undemocratic and should not be allowed. The Parliament should be called upon to provide for and to fill any lacuna which may be found.

If Dr. Ambedkar insists on having it, then I would suggest that we accept the amendment of Dr. Deshmukh, amendment No. 33, so that if the President wants to make any modifications by way of additions or omissions then this Parliament should be called upon to approve them or disapprove them or modify them within a month or so. It must not be left entirely to the President to have such wide powers and the House should not arm him with these powers.

**The Honourable Dr. B. R. Ambedkar :** Sir, there seems to be considerable misapprehension as to the necessity of the provisions contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provisions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, it is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and tip to what period these powers

should be lodged in that particular authority. My Friend, Dr. Deshmukh, said that under section 310 of the Government of India Act, the power was to last for six months. I think file is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by article 313 would automatically come to an end on the day on which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to, him under 313 a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this : whether this power should vest in the President or it should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likely to arise. By Our Constitution we leave made considerable changes in the powers of taxation of the States Lind the Centre. On the 26th January next, when the Constitution comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and therefore this matter should be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House accepting article 313.

With regard to the point made by my Friend Mr. Kamath, I think he will realise that there is no error on the part of the Drafting Committee in referring to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, "Government of India Act, 1935", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

**Dr. P. S. Deshmukh :** May I ask a question? If the Parliament is asked to approve the order passed by the President would there be any harm?

**The Honourable Dr. B. R. Ambedkar :** But 'approval' means what? It may nullify the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

**Mr. President :** I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.

The question is:

"That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'each House of' be deleted."

The amendment was adopted.

**Dr. P. S. Deshmukh :** Sir, I beg leave to withdraw my amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave or the Assembly, withdrawn.

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

"That in amendment No. 23 of List I (First week), in clause (2) of the proposed article 313, the words 'for its approval' be added at the end."

The amendment was negatived

**Mr. President** I shall now put article 313 as proposed as amended by Dr. Ambedkar's amendment to vote.

The question is:

"The proposed article 313, as amended, stand part of the Constitution."

The motion was adopted.

Article 313, as amended, was added to the Constitution.

**Mr. President :** I think we have no other item on the Order Paper. We have to adjourn now.

**The Honourable Shri Satyanarayan Sinha** ( Bihar : General) : We may meet at ten o'clock on Monday.

**Mr. President :** We adjourn till Ten o'clock on Monday.

The Assembly then adjourned till Ten of the Clock on Monday the 10th October, 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

***Monday, the 10th October 1949***

**----------**

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.

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**TAKING THE PLEDGE AND SIGNING THE REGISTER**

The following Member took the pledge and signed the Register:-

Shri Hira Vallabh Tripathi (United Provinces : General).

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**DRAFT CONSTITUTION-***(Contd.)*

**New Article 283-A**

**Mr. President :** We shall now go on with the consideration of the articles, 283A- Mr. Munshi.

**Shri K. M. Munshi** (Bombay : General) : Mr. President, Sir I beg to move the new article 283A which is on List I of the Second Week. The article which I submit to the House runs as follows:-

| | |
|---|---|
| Provision for protection of existing officers of certain services. | "283.A. Except as otherwise expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of article 282-B of this Constitution or a service which was known before the commencement of this Constitution as an AR India service continues on and after such commencement to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement." |

Sir, as honourable Members will see, the original draft article which was circulated had these words:

"been a member of the service specified in clause (2) of article 282B of this Constitution or a Service which was known before the commencement of this Constitution as an All India Service."

This included a much wider category of civil servants and it has now been restricted only to members of the Civil Service of the Crown in India who continue on and after the commencement of this Constitution to serve under the Government of

India or of a State. Therefore, there is no material change except that the guarantee that was given by the Independence Act to certain members of the Civil Service has been continued and the wider implications of the clause as originally submitted has now been restricted.

In this connection, I wish to draw the attention of the House that in view of certain guarantees that were given before 15th August, 1947 by the leaders of the Nation who negotiated with the British Government some assurances found a place in Section 10 of the Independence Act. Section 10(2) of the Independence Act runs as follows:-

I am only reading the material part:

"Every person who having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appoint. ad day to serve under the Government of either of the now Dominions of of any Province or part thereof;"

(b) is not material for the purpose of this article-

"shall be entitled to receive from the Governments of the Dominions and the Provinces or parts which he is from time to time serving or, as the case may be."

The same words are adopted in article 283A. Practically this is a reproduction of clause 2 (a) of Section 10 of the Independence Act and follows the assurances that have been given again and again by our national leaders before 15th August and by our Government from time to time. I therefore submit that this article should be accepted.

**Mr. President :** There are several amendments to this article. 124-Mr. Kamath.

**Shri H. V. Kamath :** (C. P. & Berar : General Mr. President, I am missing Dr. Ambedkar today and I hope if he is unwell.....

**Mr. President :** He is engaged elsewhere.

**Shri H. V. Kamath :** I move amendments **124 up to 131 inclusive.

**Mr. President :** You need not read them. You may read the article as it would emerge after incorporating your amendments.

**Shri H. V. Kamath :** If the amendments that I propose were accepted by the House, this article 283A would read as follows:-

"Except as otherwise provided by this Constitution, every person who, having been appointed by the Secretary of State or the Secretary of State in Council to the Civil of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State, shall be entitled to receive from the Government of India or the Government of the State as the case may be, conditions of service as regards salary, leave and pension and rules of conduct and discipline, as similar as the changed circumstances may permit, to what that person was entitled to immediately before such commencement."

Sir, when I read this article 283A my first reaction was that it had been in a hurry. The construction of the article is, to my mind execrable, and I will not be far wrong if I say that the last portion of it seems to have been messed up very badly. I am talking about the construction of it, and I feel that if it is left as it is, the Drafting Committee

and ultimately the Assembly which passes it will be held up to ridicule. Perhaps partly be cause this is a foreign language, it is so, and this is an argument in itself to promote our *Rashtra Bhasha* as soon as possible so as to enable us to express ourselves much better in our own language.

Sir, the first amendment is a merely verbal one and I shall not bother to speak about it very much. I would leave it to the good sense of the Drafting Committee.

The second amendment-No. 125-deals with the antecedent of the words "Government of India and of a State." Naturally, to my mind, the sequence of that also must be "the Government of India or of a State" on the fines of their antecedent. Why put in the word "and". The correct word should be "or".

Amendment No. 126 seeks to substitute the phrase "as the case may be" for the words "which he is from time to time serving." It is not necessary to say "which he is from time to time serving". It may be that he is serving the Government of India or the Government of a State. But if you use the phrase, "as the case may be" it brings out the meaning equally well, and from the point of view of constitutional terminology or parlance also, I think it is a far better and a far happier expression.

Then I come to another verbal amendment which seeks to substitute the word "salary" for the word "remuneration." I feel that so far as the civil servants and public servants are concerned, "salary" is a much more dignified term than "remuneration." In all the other articles, I believe, we have used the word "salary" wherever this meaning was implied. We have been speaking of salary of judges, salary of the President and so also, I believe, the salary of the Ministers and the salary and allowances of the M. L. As. Here also, therefore, I think the more appropriate word would be "salary" and not "remuneration."

Now I come to that part of it which I said was messed up very badly. If my Friend Mr. Munshi and his colleagues on the Drafting Committee care to follow me in what I say, I am sure they will realise the mistake that has been committed, if their minds be open and not closed to any change. Here the language used is very very inaccurate and unhappy. The House will follow what I say when I refer to the part of the article beginning with "the same conditions ..... " up to the end of it. But before I come to that I would like to say a word about the word "receive". I could not find an appropriate substitute for that, but I feel it is a very inaccurate word in this context. Receive what? Receive conditions of service? Receiving rights as regards disciplinary matters or rights? That is a very inapt expression. I have never seen the word "receive", used in this context, though unfortunately I could not myself find another word for it. I would, however request the Drafting Committee to look into the matter again and when the third reading comes, I hope the word "receive" would be substituted by some other and better word.

If the House will carefully peruse the last part of the sentence, it will see the bad construction of it. It speaks of tame conditions and similar conditions or similar rights as respects disciplinary matters and all that. Now if it is the same, it is identical, but not similar. You cannot have both same and similar together. So one or the other has to be omitted. I have therefore suggested the word 'similar', so that the conditions may be as similar as possible, to those that existed, as circumstances permit. My amendments Nos. 131 and 128 refer to this part of the article. I have sought to say that what is intended is something similar to what existed before the commencement

of the Constitution and not the same. I am also sure that the Drafting Committee will agree with me that that is what they imply. Therefore, it will be more correct to say conditions and rules as similar to those existing, as the changed circumstances may permit.

Amendment No. 130 refers to the portion of the article which speaks of rights as respects disciplinary matters or rights. What exactly is meant, God only knows. The word "rights" is repeated. "Rights as regard disciplinary matters or rights". But there are no rights regarding disciplinary matters. There are rules of discipline, there is a code of conduct and there are regulations regarding discipline. But what is meant by "rights as respects disciplinary matters or rights" ? I have seen the service from the inside for some years, and I do not know what such rights are. There is only a code of conduct, there are no rights about discipline. When I read it once, twice, thrice, I wondered whether really the eminent draftsmen of the Drafting Committee had drafted it or somebody else had done it and the Committee had not looked into it closely.

One word more. Mr. Munshi has told us that Civil servants were given a guarantee by Government as soon as the Independence Act was passed on 15th August, 1947. So, that matter is not at all in dispute. But the whole article has been drafted so incorrectly that I would humbly request the Drafting committee to reconsider the whole matter and bring it up afresh, in correct and accurate language and with a happier construction, when it comes tip for the Third Reading.

**Mr. President :** No. 132, Mr. Naziruddin Ahmad.

**Shri Brajeshwar Prasad** (Bihar: General): What about amendment No. 14?

**Mr. President:** Amendment 14 refers to the previous draft.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. President, Sir, some of my amendments are of substance and some others are merely formal. I shall move only sub- numbers (iii), (iv) and (vii). Sir, I move:

> "That in amendment No. 1 of List I (Second Week), in the proposed new article 283A---
>
> for the word 'continues' the words 'shall continue' be substituted;
>
> for the words 'shall be entitled' the words 'and shall be entitled be substituted; and
>
> for the words the is from time to time serving' the words the shall from time to time be serving' be substituted."

My object in suggesting these amendments is that we are providing for the future of certain services. It seems to me that the provisions should tic in the future tense, but the present tense has been used here all along. Omitting a number of conditions, the bare sentence, article 283A is that "every persons who having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India continues on or after the commencement of this Constitution....." Instead of the word "continues" I propose that the words should be "shall continue". My idea is that we are providing for the future of these services, and therefore the

verb should be in the future tense. The other amendments are of a similar nature and do not require any further argument.

On a careful consideration of article 283A, it seems that the article, as has already been pointed out by Mr. Kamath, has been very hastily drafted. One glaring inconsistency from a drafting point of view has been pointed out by Mr. Kamath, namely the word "receive". The word seems to be totally inappropriate. I suggest that the Drafting Committee should reconsider the drafting in the light of some of the amendments and comments suggested and made in the House.

A further difficulty in the way of Members dealing with these articles is that these articles were circulated only yesterday at about nine or ten P.M. and then there was no time to consider the articles and to suggest amendments and to submit amendments to the office by five o'clock yesterday. That is the reason why some of the amendments have not been well-considered, and the word "receive" escaped my attention on account of hurry. I suggest that the Drafting Committee should reconsider the drafting of this article. There are a number of other small improvements which I have suggested and which I have not moved but I think they deserve the consideration of the Drafting Committee.

**Mr. President:** There is an amendment, notice of which has been given by Mr. Sidhva this morning.

**Shri R. K. Sidhva** (C. P. & Berar: General): I am not moving it, Sir.

**Mr. President:** Now the article and the amendments are open to discussion. There are one or two amendments proposing deletion. I do not take them as amendments.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, on principle I do not agree that any such commitments should be made by this Constituent Assembly, the liability of which goes to the coming Parliaments. In the case of these few civil service people, only some guarantees are being transferred over, I have no objection to that, but they should be transferred from Parliament to Parliament. If these guarantees are now confirmed by this Constituent Assembly they will go as a perpetual liability to the coming Parliaments. At this stage I do not think that any opposition to this move will have much backing; still I want to ask a few questions before I vote for these guarantees.

As it happens, in India today persons of the Civil Service having only seven, eight or nine years' service are acting in the Secretariat as Secretaries and Joint Secretaries and getting much higher pay, a pay which, if India were not, independent, they would get after serving for eighteen or nineteen years. So, speedy elevation has been given to many Civil Service people. I want to know as to what will happen to those Secretaries who are more than the minimum guaranteed number of "eight". As far as I know, only eight posts of Secretaries had been guaranteed. These posts cannot be reduced from eight to seven or six, but at present there are twenty-one Secretaries. Now, the original liability was to pay Rs. 4,000 per month to each of these eight Secretaries. Now, we are paying the same rate of pay to twenty-one Secretaries. I want to know whether after passing this article we will be entitled or not to reduce the number of Secretaries from twenty-one to eight. Now, if this is also a commitment that the coming Governments will have to pay twenty-one Secretaries and a number of Joint Secretaries at the present scale of pay--a number, which is much bigger than

the number originally guaranteed--is this not an extra liability on the future Parliament? Or will the future Parliament be free to reduce the number of the Secretaries?

Today, it seems to me that the bulk of benefit of independence bag gone to the Service people, and the other classes of people have gone down. The Service people are getting much bigger pay than they would otherwise get it if India were not independent. In understand that in Pakistan they have made a rule that every Civil Servant will either get the salary of the higher grade achieved by him after independence, or only thirty per cent. more than the pay he was getting before independence was achieved whichever is less.

There is no civil servant in Pakistan whose pay has been increased more than by thirty percent of what he was getting before the 15th of August 1947. But here, even very junior officers have got accelerated promotions on senior scales of pay on account of the opting of Muslim officers to Pakistan and the retirement of the European members of the Civil Services.

I would appreciate if Mr. Munshi would clarify as to whether, after the passing of this provision, it will be incumbent upon the future Parliament of India to maintain the same number of Secretaries on high salaries, or whether they will be free to reduce the number of Secretaries in the Secretariat, and pay them lower pay. Almost all the vested interests like the Princes and the Zamindars have gone. It is only the vested interests of the few Civil Servants that we are perpetuating by guaranteeing their interests. Will they be a perpetual liability on the future Parliaments?

**Shri T. T. Krishnamachari** (Madras: General): If it would help my honourable Friend to cut his argument short.....

**Shri Mahavir Tyagi:** I have had my say. If the honourable Member wants to enlighten me on this issue he may kindly explain to me as to what the position really is.

**Shri Rohini Kumar Chaudhuri** (Assam: General): Mr. President, Sir, I welcome this new article which has been placed before the House by Mr. Munshi. I welcome it because it enables us to maintain that standard of conduct which any civilised Government ought to maintain with regard to Civil Services which co-work under them.

In considering this article before the House, we have to bear one, fact in mind--that although a revolution has been going on in our country for a long time, the immediate reason for the transfer of power was not a revolution, a revolution which would justify our upsetting everything that had existed before. We should remember that the power that the previous Government had exercised was peacefully transferred to us, and, therefore, the obligations which they had entered into should be respected, as far as possible. In this particular case not only that obligation should influence our conduct, but there is a consideration, and that is that a guarantee was given by our leaders--leaders who had taken the most prominent part in achieving for us the liberty of the country. No matter whatever may be the criticism against us, we must respect and honour the guarantees given by our leaders.

While I fully support this article, I would like to make a humble appeal to the

members of the services. I would ask them to remember whether it would not be proper for them as a return of the gesture which we have shown by accepting this article, to renounce a percentage of the remuneration which has been given to them and which they will get by reason of the acceptance of this article. I remember, Sir, in 1931 when there was talk of retrenchment all over the country, the members of the I. C. S. whose salary could not be retrenched by the India Government, voluntarily submitted themselves to a cut in their salaries and allowances. While the European members of the Indian Civil Service could show such a gesture in the interests of this country, I am sure the Indian members of the Indian Civil Services, would not be found wanting in their sense of patriotism to their motherland. I believe, Sir, that there will be very little objection on their part in doing so, because they should remember that while the leaders of the Congress had given up their earning, had given up their vacation had given up their position in life and had gone into jail, the Civil Servants had remained quietly at their own desk, earning their own bread and doing their ordinary work. We did not grudge their doing so. If at that time all the members of the Civil Service had also resigned, there might have been great difficulty for us to carry on the work in the period of transition. I do not grudge their having done so at that time. But now as they are enjoying with us the liberty for which they have not made any sacrifice-of course, I am not talking of men like Subhash Chandra Bose and Mr. Kamath--who had resigned the coveted position out of a great sense of patriotism--now submit to a voluntary reduction of their remuneration.

Sir, in this connection we have to remember the position of some of the ministers *vis-a-vis* the status of their Secretaries. While the Ministers were drawing a salary ranging from Rs. 750 to 1,000 their I. C. S. Secretaries were drawing salaries ranging from Rs. 2,000 to 3,000. While the Ministers were trying to push their old motor-cars on the road in order to get a start-because they could not afford to have new motor cars-these Secretaries would pass by the Ministers in their new beautiful motor cars and just wave their hands to the 'Minister and say "Cheerio". He does not care to stop because his fashionable wife is sitting by his side. That sort of thing should not be repeated now. There should not be such a difference of status between the Minister and his Secretary. The only way of putting a stop to that would be to provide all Ministers with State cars. I had also seen that the Secretaries would not like to visit Ministers in their houses, because the Ministers of those days would not be able to furnish their houses in the manner in which I. C. S. Secretaries could do.

Therefore, while accepting this article, I would make an appeal to the services, once more, to give up their excessive income if they can do so. Let them come to the level of ordinary gentlemen and give up whatever they can. Even if they cannot give up whatever they can, do not let them have any luxury but try to invest their income in objects of national welfare. Give some charity for educational institutions or something of that kind or help in the uplift of the masses. That is what I would appeal. I support this article.

**Shri R. K. Sidhva:** Mr. President, Sir, while I believe entirely in the desirability of keeping the services of the State contented, the limit of that contentment should not be crossed over by the services. In this respect, it has been done so. With due respect to the members of that great service who are really serving the country, I would have preferred that this article should not have found a place in our Constitution. If we have made an agreement, we certainly are bound to carry it out and that would be a matter between the leaders and the services and it will be Known that it is faithfully carried

out. Why should it find a place in the Constitution?

Then again, this article is not happily worded. Probably the Drafting Committee has not paid proper attention to the wording. For instance, take this word "remuneration". Even in the case of the Prime Minister, the Ministers, the Speaker, the Deputy Speaker, the word "salary" is mentioned. But why is the word "remuneration" mentioned here? It is a little better word. It has better pomp than "salary". That is why it has been put in. The services people want something extraordinary for themselves.

Then they want the same rights as respects discipline. Now, we know what discipline means. It means conduct within the four walls of the rules. The words as put in here will create complications for the future governments. This Government knows what are these conditions, but if you put it into the Constitution, the future government would be embarrassed considerably if the services are permitted to do things as they like and at the same time demand the same disciplinary rights along with continuity of their terms. I know that we are bound to give the services the things for which we have made commitments. do not dispute that. But I feel that they should not find a place in the Constitution. The services should be content with trusting our leaders that they will faithfully carry out the commitments.

We are proud of the services. But is it desirable that they should dictate to us the terms on which they would serve ? It is very unfair. If you study the language of this article, you will see that they want to dictate the terms under which they want to serve us in the future. I had sent in an amendment. I did not move it, because if I did not want to embarrass the services. My amendment states that after five years of this Constitution, Parliament shall have the right to make any law relating to the conduct of the services. But I have not moved it, because I do not wish it to be understood by the services that we want to embarrass them, that we do not want to fulfill the promises that have been made. We are a nation trained to fulfil a commitment if it has been made. That is what we have been taught by our leader and we do want to do that. At the same time, I do desire that our services should not dictate to us. With these words, I hope the Drafting Committee will reconsider this matter.

**Dr. P. S. Deshmukh** (C. P. & Berar: General): Mr. President. Sir, I am afraid I cannot resist the temptation of submitting to this House that it is not not very proper to continue to have a provision of this nature in our Constitution. It was well and good for those Constitutions which were framed by the British people or the British Parliament to have a clause like this. We are now framing a Constitution of Free India. Indians are framing their own Constitution for themselves. Under these circumstances, I do not think any guarantees of this nature were at all necessary. If there is a guarantee, if we have given our word, that word as it stands should be quite sufficient not only for the I. C. S. and other covenanted services but for the whole nation, for every one of us. If we do not value that word, then there is not much to be gained either by the nation or by the Civil Services by relying on an article which is embodied in the Constitution. Even from the point of view of appearances, it does not look nice that you should go out of your way to single out a certain service which is really the remnant of the days of our slavery, of our dependence, and that, to be incorporated almost bodily, in the same fashion as it existed ill the Act of 1935. I do not think this was at all necessary. I do not think that the services are really, as described by Mr. Sidhva, insistent upon this. I for one do not think they are insistent. I do not think the Civil Service as a whole have been consulted recently after the attainment of freedom

or that they have passed any resolution or made any demand that their contractual relationship should remain intact. At least that is not my information. If they are given a chance. I have no doubt that they will probably be the first to say that they do not need any constitutional safeguard for their rights.

Secondly, if we really want to have a provision like this, then why should we have added these words "same rights as respects disciplinary matters... as similar thereto as changed circumstances many permit. ....". In my view this negatives the guarantee altogether. What is the meaning of "changed circumstances"? If the change in circumstances is going to enable any Government to change the contractual relationship that exists or the promises that have been made, then what is the guarantee worth? Any circumstances can at any time be utilised to go back upon the promises ? So I think we have created somewhat anomalous position. On the one hand we are solicitious of giving satisfaction to the Civil Service and they are a very intelligent class of people and on the other we are taking away all that we have given. I am sure they will know what we really mean by the use of the words "as changed circumstances may permit." Actually, we are trying to out-do the Britishers in following and imitating the 1935 Act. The I. C. S. was originally created by the British out of British personnel and they, at every stage when the political rights of Indian advanced, wanted more and more guarantees for those people who had come out of their country and were serving here. I am sure no Secretary of' State at any time was interested to the same extent in the Indian personnel. He was interested in the British personnel and these guarantees were intended for the British personnel. I am certain no Indian is so unpatriotic as to demand a constitutional guarantee nor so ignorant is to how our government may behave in such a matter that he will have much faith in a guarantee of this kind, especially when we take away the whole effect of the article by putting in the words "as changed circumstances may permit". Actually, what is the history of this Civil Service and the sanctity of contracts entered into with them? The history reveals that although the Civil Services were regarded as the steel frame and the contractual relationship between the Government of India and the Civil Service were always to be considered sacrosanct, there was at least one occasion when this sanctity of contract was completely violated.

In 1931 the same British Government itself had to come down and impose a cut of 10 per cent and this was done on the ground of a change in the circumstances. Some tried to give this the colour of a voluntary cut. Actually the sanctity of contract had to give way to the exigencies of the situation is early as 1931. So that, having regard to all this that has gone in the past. this contractual relationship is liable to be altered from time to time and I do not think therefore that it is wise or necessary to put in this article. If the guarantee is necessary, then whatever guarantee it is said we have already given are already there. They have not been taken away. Nobody has suggested that they should be withdrawn or abrogated and that I believe should be quite sufficient for the Civil Service.

Sir, there is also another reason and that is that the inclusion of this article especially with these words--"as changed circumstances may permit"--would really lead to a fresh grievance which does not exist. We are at the present moment passing through a financial crisis. It may be very necessary within about three months time hence to cut down the salaries of all people who are getting Rs. 1,500 or more. Actually we have set at nought our own solemn decision of the Pay Commission proposals. We accepted their recommendations not to pay any person a salary of more than Rs. 2,200 or so, and yet we have got the spectacle of having to pay 50 to 75 per

cent. more than the maximum which we have accepted on the recommendations of the Pay Commission. So, in view of the present financial crisis and in view of the recommendations which we have accepted, it may be necessary for us within the next few months to come before Parliament and say that no one in India shall get more than such and such salary. We shall then have to have recourse to changed circumstances as the ground to justify our action. We will have to say that we cannot pay you anything more than Rs. 2,000 as the circumstances have now altered. What is the use giving a bombastic promise and then going back on it? It is no use.

Anyone can see that the present circumstances of India are such that you cannot afford to pay salaries at this rate to the civil servants at which we are paying today. When we are in the throes of these difficulties what is the use of contaminating our Constitution with a promise which we cannot fulfil? So I submit that this article should be reconsidered and as far as possible held back. If the civil servants insist on the guarantee, by all means give it to them. But it is not necessary to include it in the Constitution for that purpose.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): I also thought that I should be is vehement in this matter as my Friend, Dr. Deshmukh, and others. I do agree that though a contented Civil Service is the very backbone of the administration in any country, this particular service for whom we are making provision here was the heaven-born service of the previous regime and will continue to be the heaven-born service for some time to come. We have not been able to give a guarantee for food and clothing to the ordinary masses of this country. We have not given a guarantee to the Under-dogs in the administration. The other day was passed certain articles whereby we have stated in this Constitution that all servants of the State will 'hold office only during the pleasure of the Government. This is an extraordinary guarantee that we are giving under this article. This guarantee means that they were the rulers under the old regime and that they will continue to be so in this regime. This guarantee asks us to forget that these persons who are still in the service-400 of them- committed excesses thinking that this was not their country.

This guarantee gives a guarantee to those persons who have played into the hands of others. My Friend, Mr. Kamath, and a few persons like him, who had the courage of their convictions, resigned in the cause of this country. All those people are honourable men, who at that time tried to muster courage and throw in their lot with the rest of the community in this country who was struggling hard for freedom. This is not to the credit of this service. They cared more for their money and the salaries they got. The European Government that ruled over us sometime ago could not rely upon the loyalty of any citizen in this country, because their loyalty and our loyalties were different. They belonged to a different country from ours and therefore that prejudiced their loyalty. It was the money that could attract loyalty of any citizen of this country to the King of England and therefore the salaries they gave and the scales they fixed knew no bounds. The Governor-General got Rs. 21,000 a month : a Governor got Rs. 10,000 a month a Secretary got Rs.4,000 a month,-out of all proportion to our national income.

Our national income is not more than Rs. 100 per annum, whereas the national income of Great Britain is Rs. 1200 per annum. America is diffent. So far as salaries ire concerned, they ire on a much higher scale in this country than in part of the world with respect to the Civil Service. So far as national income is concerned, ours is the lowest. These persons had to be purchased to serve by the previous British

Government. The best of our intellects had to be drawn away and they were made to do whatever things the previous Government asked them to do, irrespective of the place in which they were born and irrespective of any patriotic instinct.

But I am asking honourable Members of this House to have regard for certain things which our people had to do. The persons, who are our leaders and the winners of freedom of this country say that they have given a guarantee collectively and individually to every one of these people that this was a condition of the transfer of power by the British Government into our hands. They wanted these conditions, particularly in the interests of the Europeans, not so much in the interests of the Indians. Possibly they wanted the interests of the Indian bureaucrat to be safeguarded because they were loyal to them and they did not want to let them down when our own Government came in. I am not in favour of any provision in this Constitution. We could as well incorporate it in an Act of Parliament later on. But we must have the power to regulate,. are. becoming super-sovereigns of this country.

I am aware of all that but it serves no useful purpose to enter into recriminations against ourselves when our own responsible leaders, who have spent their lives in the cause of winning freedom, have given this assurance. Let it not be said that we intervened in this matter, and went back on this assurance. If I support this clause it is in that spirit that I am supporting it. It is not in the spirit that all these people served our country for freedom in our time. I might say that those members who are still opposing, and quite legitimately too, may have this consolation-they may feel that they have legitimate objection to the wording of the clause as originally drafted. But the amendment made later is not so wide. I would request the attention of, the honourable Members to amendment No. 11 in List II of the Second Week'. This has since been replaced by amendment. No. 1 in List I and we have changed it out of recognition. This amendment follows section 247 of the Government of India Act as adapted by the Indian Independence Act. It was not the intention even of our leaders who gave the guarantee that the Civil Servants under the new Constitution should have greater privileges than they had during the previous regime. Therefore, not to give them any further privileges, this amendment has been moved. As I read it, this amendment says, that as in the previous regime the Governor-General had the power to frame rules and regulations so as to modify the conditions of their service from time to time, as circumstances may permit, the Government may have similar power now. Therefore, under the amended clause, I do not think as we suffer much. There may be extraordinary cases where we may have to interfere; there is ample provision for that here. We need not therefore be touchy about this. No doubt, we can do without this. But, in regard to the guarantees and assurances given not merely to these services, but to the other persons who have left us, I wow earnestly appeal to all the Members of the House who have either tabled amendments or have spoken, not to press the amendments or to oppose this article.

Sir, I know that in the previous Government there were only eight Secretaries getting a salary of Rs. 4,000. Now, that number has been increased to 19 or 21. Honourable Member might remember that my honourable Friend Mr. N. Gopalaswami Ayyangar was appointed to go into the reorganisation of the Secretariat. The matter is still pending with him. I am sure that though, under the guarantee that has been given, the salary of 4,000 Rupees ought not to be reduced, it is not incumbent upon us to a point every one of these people as Secretary or increase the number of secretaries from 8 to 21. It is still open to Mr. N. Gopalaswami Ayyangar to suggest that in the interests of our country there ought to be only eight posts of Secretary, the

others being made joint secretaries. That could be done. The people who insist upon the guarantees must themselves hesitate to ask for a guarantee. What does this guarantee mean? that he must get Rs. 4,000 instead of Rs. 3,000. Is he working for bread or is he hungering otherwise? Till now, they have not shown a gesture, they have not shown that they are members of the Independent Sovereign Republic. They must also contribute their mite to its growth. We assume that they are still sticking to their pound of flesh. Even then it is open to us to reduce our number and we are not helpless. Mr. Gopalaswami Ayyangar may consider this matter of the reduction of the number of secretaries posts from 21 or 19 to 8.This does not form part of the guarantee.

I have also got some other figures to show how much this Civil Service have got bloated. In the very bad times, the critical times that we are passing through,' it is absolutely necessary that we must take the axe in our hand and Cut off some of the unnecessary officer that have been created. Under the previous regime, there were only five Joint Secretaries. Today, we have got 30 Joint Secretaries. Each Joint Secretary is entitled to a salary of Rs. 3,000. 1 am not speaking to you alone here, but I am speaking to those people who think that they must have the guarantees and benefit by it. After all, the good-will of the Government and the good-will of the people at large are the suggest guarantees any man can have. Without that good- will, if they merely insist upon their salaries only, they cannot long count upon that. Now, Sir, five Joint Secretaries have been increased to thirty.

There is a further point. Under the previous regime, the Europeans became Secretaries after 25 years of service, became Joint Secretaries after 20 years of service. Now, on account of the Europeans having gone away, persons who were in the lower rungs of the ladder, Deputy Secretaries, with ten and twelve years of service, have immediately become Joint Secretaries, because the place has fallen vacant. This is wrong in principle. We ought not to have appointed them Joint Secretaries straightaway. Even now, it is not too late. In spite of this guarantee we can tell them, "you must have put in so many years of service to be entitled to a salary of Rs. 3,000." Therefore, even if we pass this article, we are not helpless. The rigors of this article and the exactitude with which they may claim these moneys can be mitigated by suitable action taken in the Committee that has been appointed under Mr. Gopalaswami Ayyangar's chairmanship.

I have one more word with regard to the services. We are making an exception in their favour. We are pampering them. But, even today, I am sorry to say that some of them have not changed their manners. They have not reconciled themselves to the new situation. They do not feel that they are part and parcel of this country. We hear so much about corruption. If there is corruption in any department, who is responsible for this? If the head of the department makes up his mind that he will root out corruption, cannot he do so? Can I or any of the Ministers who have no knowledge of the working of the administration, look into this? The Civil Service has got a claim to continue because it has got experience. The best talents have been drawn to this service. If today' in a department of which a Secretary drawing Rs. 14,000 is the head, there is corruption, he must be ashamed of himself. Am I to be going about asking for legislation that corruption should be put an end to? Who is corrupt? If in my household there is anything going wrong, the manager of the family must be held legitimately responsible for that. Like that, we do not grudge paying them a thousand Rupees more, for some time more, until this old band is exhausted. But.' we in return expect that they should root out corruption. Otherwise, they are not entitled to this

salary.

If we have put in the Constitution that we have to have a greater majority for amending the Constitution, in Parliament we need have only a simple majority. Under the rules and regulations we have to have a greater majority to change the Constitution. If in spite of all we have done, in spite of these assurances given in spite of their having their salaries at an enormous level which we cannot afford, there is corruption in any department, we know how to deal with them. Even if the Constitution were written on stone, hard stone, indelibly, we may alter it.

With these remarks, I appeal to the members and I also appeal to the Home and request that all the amendments may be withdrawn and this article may be passed though not without hesitation.

**Shri Brajeshwar Prasad:** Mr. President, Sir, I rise to support this article. I have not been able to follow the speech of my honourable Freind Mr. Ananthasayanam Ayyangar. He began by opposing this article; but, somehow, in the middle, he changed his course and began to support it. If I am opposed to any article, I will oppose it. If I am in favour of it, I will support it. I cannot sail in two boats.

Sir, there is one important reason in my mind why I am in favour of this article. The objection of some of the Members in this House that this article should not be incorporated in the Constitution gives rise to a suspicion in my mind. What is it at the back of their minds? Why is it that they are opposing this article? Do they want to honour their pledged word or not? A nation that sacrifices vital principles, that does not stand by its pledged word, has no future in politics. We have given our pledged word to certain authorities that existence before the transference of power. I know fully well that if we do not abide by that word, nothing will happen to us. But, it will create a very bad impression. Therefore, I am in favour of this article. What we have pledged, we must stand by.

There is another reason why I am in favour of this article. If there would have been a gaurantee that those who have pledged their word of honour to the British Government would remain in power so long as these services are in employment of the Government of India, I would not be in favour of this article. But we have made a democratic Constitution. We do not know whether we will remain in power tomorrow or not. There is another reason why I am in favour of incorporating this article in the Constitution itself. I have no faith in adult franchise. I do not know what kind of people will come in the future Parliament of India. In the heat of extremism or at the altar of some radical ideology, they may like to do away with the provision that we have made in the articles of the Constitution in favour of the services. Therefore I want that this thing should be made a part of the Constitution so that the amendment being not easy it will be difficult for them to undo what we are doing today.

A point was raised by Mr. Tyagi that this Constituent Assembly has made certain commitments and we should not bind the discretion of the future Parliament of India I say that we have not made any commitments. Our leaders have made certain commitments. We stand by them and there is no question of binding the discretion of the Parliament because the future Parliament will not be a sovereign body. What we are doing today is in the nature of either expanding or restricting the power of Parliament and other different authorities in the Constitution. We are Sovereign and not the future Parliament. We tan fetter the discretion of the Executive, Judiciary or

Parliament. It is for this purpose that we are drawing up the Constitution.

Having these in my mind I am of opinion that this House should unanimously support this article so that the impression may got abroad that we stand by our words. This is only the first step-we do not know how many commitments we will have to make in the course of our international relations. One false step will lead to disaster. This step is not of a very important nature. We must learn how to practice the part of conducting ourselves in our relations with the foreign nations of the world. Therefore I take a very strong view of this question and attach the greatest importance to it. I am entirely in favour of this article.

**Prof. Shibban Lal Saksena** (United Provinces: General): Mr. President Sir, I had given my amendment No. 12 for deletion of this clause. The more I study it the more I am surprised that it should have found a place for being made a part of the Constitution. I can understand the future Parliament giving to the incumbents of the old Civil Service their old conditions of service but that the Constitution should provide all guarantees which they enjoyed before is something which I cannot understand. Since the very beginning of its movements the Congress regarded the Civil Service as the Steel frame which enslaved us and criticised its conditions of service and the way in which it was pampered. It was regarded as the "heven-born" service. I think now when we have come into our own we should not perpetuate what we have criticized so far an plainly say that there is no reason whatsoever for perpetuating the same conditions. I am told that some guarantees and assurances have been given to them. I do not know of any, but if there are would suggest that Parliament should try to fulfil those conditions, but to bind the future Parliament and to say they shall not have the right to determine the conditions of service of its servants is something that will be derogatory to the, sovereignty of Parliament.

Then I am not happy even with the work of the old Civil Servants. I know there are many amongst them who have done wonderful work, who as Sardar said once, are worth their weight in gold but the same cannot be said about all and my own complaint is that many of the ills of our country at present are due to the way in which they are still behaving. I do not think that the Civil Services should be treated differently from the Services whom we are creating now--the Administrative Services--otherwise it will result in bad blood. They must all be placed on an equal footing. In fact their record is not what one would like it to be. Mr. Ananthasayanam Ayyangar said how they have been guilty of stabbing the Nation during our freedom struggle. Therefore I think this article is an anachronism. It must not find a place in our Constitution and it should be removed.

**Shri Kuladhar Chaliha** (Assam: General :) Mr. President, I think the clause as it stands is rather difficult to support; but all the same our words have been pledged by distinguished leaders who have sacrificed their lives and leisure for the attainment of liberty an independence and their words must be respected. Then there is the other side that we are in a sort of Scylla and Charybdis. We want to support the clause because our distinguished leaders have pledged their words, but at the same time we have been speaking to our Constituents that when we attained liberty we will reduce the salaries of the different services to such an extent as to be consistent with their power to pay. As Mr. Brajeshwar Prasad said we are bound to support the words which have been given and we are bound to carry it out in a way that will give confidence to the Services. We feel for the Services because they have done something without which it would not be possible for the Government to carry on. They are one of the

best services in the world and in the international situations they have given a good account of themselves. Yet, they for themselves have to consider that the condition of the country is such that it is necessary for them to sacrifice and to forego the conditions which have been given to them and also the terms under which they wanted to work. That heven-born service has been pampered to such an extent by the Lee Commission and even then we cried hoarse. So if we have made any commitments we should honour them. As Mr. Ayyangar said, in the matter of food we have not been able to commit ourselves, and yet we are committing ourselves in this matter Are we justified in doing it? Are we not bound to carry out the recommendations of the Economy Committee? Mr. Ayyangar said the other day, the Committee has recommended many things but we have not carried them out. Are we not bound by those guarantees which have been given to the people.

If we look into the whole circumstances, I think we ought to put a step to the increment of the salaries and we should rather try to follow in this matter the Pakistan ideal that they have given only 30 per cent, increment, which they are entitled to. When a man becomes Joint Secretary he gets Rs. 3,000. Why should so much be given? If he is given 30 per cent, of his salary as addition, that should suffice. I do not know the exact words in which this guarantee or pledge was given, but I agree with Prof. Shibban Lal Saksena that it would be better not to tie down the hands of future generations by having a provision of this sort in the Constitution. I agree in a many matters that Mr. Ananthasayanam Ayyangar said, and I hope the Drafting Committee will consider this and see it if it could be modified in such a manner that future generations may not be tied down to it.

**Babu Ramnarayan Singh** (Bihar: General): *[Mr. President, sometimes such questions come up for consideration before the House, to which is very difficult to lend our support. I do not, however, intend to oppose the provision under consideration, since a guarantee has been given on behalf of the Nation to the members of Civil Services hat their interests will be secure, and that the emoluments and privileges, they were so far entitled to, will remain unchanged. In fact every sort of assurance is being given to them. But I, for one, fail to understand the need for such guarantees at a the present juncture. Such assurances might have been needed at the time the British left this land, for them the civil servants were apprehensive about their future; they were afraid that they might be removed from the services. But no such apprehension exists now. The position is quite changed. Now they feel that the administration of the country cannot be run without them. There is no need, therefore, for any such guarantee at this time.

If, however, you want to give them guarantees I have no objection to that course being adopted. But we must know and I may add, every Member of the House should note it in his heart that the English regime was some time ago maintained by these very services; we were maltreated, oppressed and jailed by them. What I mean to convey is this, that the civil servants in our country were for the British rule here. But now they must know that we do not want any one's rule. We have achieved and established *Swarajya.* (Self Government.) Under *Swarajya,* Civil Servants must offer to the community the assurance that they would serve the country sincerely. On our part we are today giving them assurance that their future will be safeguarded, but no reciprocal assurances are coming from them to the effect that they would serve the country sincerely, honestly and incorruptibly. It is common knowledge now that not even an iota of change has come in their behaviour and that still they are what they

had been.

In the past--I am speaking of the recent past of two years ago--they thought that they were masters of the country, they would remain masters and that they would continue to rule the people. This mentality is still lingering in them. Now that the Britishers have gone and popular government has been established here, the Civil Servants should change their behaviour and outlook, so that the people may feel that they are not out to oppress and rule them but to serve an protect them. But I am sorry to no such assurances are being given by them. I may submit that the observations made by Shri Ananthasayanam Ayyangar are quite correct. We will also have to consider as to what extent these people can serve and protect the people properly. The Civil Servants must know that they have not so far changed themselves and unless they do so, the guarantees that are sought to protect them in the Constitution will have no value. They have to give their sincere services to the nation and to achieve this end they have to follow the wishes of the people. They must take note that unless they change their age-long policy and their behaviour the guarantees provided for them in the Constitution will do them no good.

I have nothing more to add but that I hope they would properly serve the country through their actions and behaviour and would always consider themselves as servants and never as masters. The idea of mastership must go now.]

**The Honourable Sardar Vallabhbhai J. Patel** (Bombay: General): Sir, I am distressed that a senior Member like Mr. Ananthasayanam Ayyangar, a responsible Member of this House, who is the Deputy Speaker of the Assembly considers and expresses the opinion that the members of the service were carrying on a very difficult administration for the last two or three years, and at the same time harbours the feeling that they are enemies of our country. If that is so, it was his business and the business of those people who think on those lines to move first a resolution to dispense-with them and run the administrations in vaccum--for there is no substitute of which he has thought of except the Congressmen or the Congress workers. I feet very said that the very instruments from whom we have to take work, we have been continuously quarrelling with. If that is so, we are not doing a service to the country. We are doing great disservice.

Now, he made a point that this guarantee should not have been given. What was he doing all this while? To those people who think on those lines, I say, this was not done in secret. No arrangement that was made with the British Government was done in secrecy, not done by an individual, but by the representives, by all the duly recognised representatives of the Nation. When Mr. Henderson came here to settle this question of the Services, he had long discussions with me. He said that before the transference of power arrangements should be made to the satisfaction of the Parliament, that transference of power will take place only when guarantees are given to the members of the Secretary of States' services, each individual member of which has a Covenant with the Secretary of State for permanency and for certain other guarantees. More than fifty per cent of the Secretary of State's services were Europeans. Britishers, and the rest were Indians. It was then suggested by him that there should be a treaty between England and India on this question. The suggestion was also made that they should be given due compensation if they have to leave the Services because they would not like to serve in the Indian administration, and that they should be given proportionate pension. Their status, their time-scale of pay, everything was to be settled before any question of transfer of power could be

considered. Now, I had long negotiations and it was then a joint Government of the Muslims and the Non-Muslims. It was an all-India Government at that time and these negotiations resulted in certain conclusions which were placed before the Cabinet--it was a joint Cabinet at the time--and they were accepted by them. Then those conclusions were sent to Parliament and it was accepted there. Many of the Europeans who were in the services here have left now, but when the negotiations were going on, I told them to leave the case of Indians to us, that we shall deal with them as we deemed just, that they will trust us and we will trust them; and finally they agreed on certain conditions.

Now, I wish to point out that hardly anybody raised any objection to the arrangements that we were making at that time, but if they had suspected us, then there was plenty of scope at that time for them to come out and get better terms from outside agencies. Even now, if you are not willing to keep them, find out your substitute and many of them will go; the best of them will go. I wish to assure you that I have worked with them during this difficult period--I am speaking with a sense of heavy responsibility--and I must confess that in point of patriotism, in point of loyalty, in point of sincerity and in point of ability, you cannot have a substitute. They are as good as ourselves, and to speak of them in disparaging terms in this House, in public, and to criticise them in the this manner, is doing disservice to yourselves and to the country. This is my considered opinion.

Now, I will give you another series of facts which will convince you why guarantees were given. You had seen what was happening in the Punjab. In the five districts where havoc was being wrought, five British officers were in power and nothing could be done. I tried to get the District Magistrate of Gurgaon transferred. I could not succeed, and the British officer there arrested leading Congressmen when they were not at fault and put them in jail as hostages; he had the cheek to write on the application presented to him by the President of the Bar Association there to the effect that those were innocent and they should not be arrested and that they should be released immediately, that those people were being kept as hostages. This is the way he was doing this business. I was shocked and I went to Gurgaon. I saw him coming on the way and I asked him, "Have you arrested people as hostages?" He said, "No, who told you?" Fortunately, I had the document with me on which he had made that endorsement, and I showed him the endorsement. He asked, "How did you get this?" I said," That is not the question. Is this your endorsement or not?" After that, I tried hard, I wrote to the then Governor of the Punjab, I pleaded with the Viceroy, but I found it difficult to remove him, and you know the havoc that was played in Gurgaon an these other districts. It was not in the Punjab alone; in other places also many such things were done. It was a time of touch and go and we could have lost India. Then we insisted that we had come to a stage when power must be transferred immediately, whatever happens, and then we decided to resign. It was at that time that Lord Mountbatten came.

I give you this inner history which nobody knows. I agreed to Partition as a last resort, when we had reached a stage when we could have lost all. We had five or six members in the Government, the Muslim League members. They had already established themselves as members who had come to partitions the country. At that stage we agreed to Partition; we decided that Partition could be agreed upon on the terms that the Punjab should be partitioned--they wanted the whole of it--that Bengal should be partitioned--they wanted Calcutta and the whole of it. Mr. Jinnah did not want a turncated Pakistan, but he had to swallow it. We said that these two provinces

should be partitioned. I made a further condition that in two months' time power should be transferred and an Act should be passed by Parliament in that time, if it was guaranteed that the British Government would not interfere with the question of the Indian States. We said, "we will deal with that question; leave it to us; you take no sides. Let paramountcy be dead; you do not directly or indirectly try to revive it in any manner. You do not interfere. We shall settle our problem. The Princes are ours and we shall deal with them." On those conditions we agreed to Partition and on those conditions the Bill in Parliament was passed in two months, agreed to by all the three parties. Show me any instance in the history of the British Parliament when such a Bill was passed in two months. But this was done. It gave birth to this Parliament.

You now say, why did the leaders give these guarantees? In order to allow you to have an opportunity to attack the leaders on this very point. What else? You are responsible Members of the Parliament of a huge country. The Leader of this Parliament has been invited to America, the highest honour that could be done to him. He is treated with great respect. They are giving him all honours. You here say, "Why did the leaders give these assurances?" Think of the past. Why do you forget it? Have you read your own recent history ?

What is the use of talking that the service people were serving while we were in jail? I myself was arrested, I have been arrested several times. But that has never made any difference in my feeling towards people in the services. I do not defend the black sheep; they may be there. But are there not many honest people among them? But what is the language that you are using? I wish to place it on record in this House that if, during the last two or three years, most of the members of the services had not behaved patriotically and with loyalty, the Union would have collapsed. Ask Dr. John Matthai. He is working for the last fortnight with them on the economic question. You may ask his opinion. You will find what he says about the Services. You ask the Premiers of all provinces. Is there any Premier in any province who is prepared to work without the Services? He will immediately resign. He cannot manage. We had a small nucleus of a broken Service. With that bit of Service we have carried on a very difficult task. And if a responsible man speaks in this ton about these Services, he has to decide whether he has a substitute to propose, and let him take the responsibility. This is not a Congress platform. It is said that we promised Rs. 500 for the Ministers in the Karachi resolution. There is a long distance between Karachi and Delhi today. It is a different thing. You want Rs. 45 a day free of income-tax. What is the use of taking about Rs. 500 today? It is very wrong.

But I am prepared to admit that if the Indian Government is to be run today on the basis of Gandhian philosophy without army, I am prepared to change the whole thing. You are today spending 160 to 170 crores of rupees per year on the army. Are you going to change that set-up? Tomorrow the whole of India will be run over from one end to the other, if you have not got a strong army.

The Police which was broken has been brought to its proper level and is functioning fairly efficiently. The Heads of the Departments of the Police in every province are covered under this guarantee. Are you going to change that? Are you going-to put your Congress volunteers as captains? What is it that you propose to do?

I am grieved to find that in a Parliament of this kind, Members, senior Members, speak in this strain. I would refer to you to the Indian Independence Act which gave birth to this Parliament and you find that the guarantees have been included there.

When the Indian Independence Act was to be passed in Parliament the draft was sent here. The leaders of the nation were called for; the Cabinet was there, the Congress President was there, your President was there and your Leader today was there. Mahatma Gandhi was also present. Every section was scrutinised and the draft was approved. After that it was passed in Parliament. Now, these guarantees were circulated before that to the provinces. All provinces agreed. It was also agreed to incorporate these into the Constituent Assembly's New Constitution. That is one part of the guarantee. Have you read that history? Or, you do not care for the recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand upon your pledged word, and, also; as a man of experience I tell you, do not quarrel with the instruments with which you want to work. It is a bad workman who quarrels with his instruments. Take work from them'. Every man wants some sort of encouragement. Nobody wants to put in work when every day he is criticised and ridiculed in public. Nobody will give you work like that. So, once and for all decide whether you want this service or not. If you have done with it and decide not to have this service at all, even in spite of my pledged word, I will take the Services with me and go. The nation has changed its mind.

The Services will earn their living. They are capable people. They were trained in a different setting. I know a senior Member of the Service with about twenty-five years service who went to England for higher education and training in the Civil Service, spent about fifty thousand rupees. He took a loan; he had not the money. But there is a glamour for the Civil Service on the part of the Indian youth. He went there, he passed with distinction and came here. He served very ably, very loyally the then Government and later the present Government. His business is to serve the Government-that he is serving. He had a sense of patriotism. Often he came into difficulties with the then Government when he had to carry out orders against the Congress people, putting them in jail and otherwise. But he could not go beyond a certain limit. Now all his balance today at the end of twenty-five years' service is ten thousand rupee, and his wife and children, when he dies, will get some provident fund.

These were the circumstances in which many of the service people took their training, came here and served. Now we can say "Very well, they did it with open eyes, let them suffer." Then you make up your mind to prepare for a substitute. We have already a substitute. We have started a training school here in India: we have fixed the cadre, proposals for which have been approved by Provinces--your know all that.

If you want an efficient all-India service, I advise you to allow the services to open their mouth freely. If If you are a Premier it would be your duty to allow your Secretary, or Chief Secretary, or other services working under you, to express their opinion without fear or favour. But I see a tendency today that in several provinces the services are set upon and told. "No, you are servicemen, you must carry out our orders." The Union will go-you will not have a united India, if you have not. a good all-India service which has the independence to speak out its mind, which has a sense of security that you will stand by your word and, that after all there is the Parliament, of which we can be proud, where their rights and privileges are secure. If you do not adopt this course, then do not follow the present Constitution. Substitute something else. Put in a Congress Constitution or some other Constitution or put in R. S. S. Constitution--whatever you like--but not this Constitution. This Constitution is meant to be worked by a ring of Service which will keep the country intact. There are many impediments in this Constitution which will hamper us, but in spite of that, we have in

our collective wisdom come to a decision that we shall have this model wherein the ring of Service will be such that will keep the country under control.

As I told you, this agreement and these guarantees were circulated to the provinces and to individual members of the Service. Their agreement has been taken and signed by the provinces. They have agreed--both of them. Can you go behind these things? Have morals no place in the new Parliament? Is that how we are going to begin our new freedom? I have seen people who express their opinion about this Service as they used to talk in old fashion when 50 or 60 per cent were British element who dominated the Service and our members of the Service bad hardly any freedom to express their opinion and they were not independent. Today my Secretary can write a note opposed to my views. I have given that freedom, to all my Secretaries. I have told them, "If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary," I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself. Those who think that the leaders were mistaken in giving these guarantees, they do not know their mind. They do not know what would have happened. They do not even now know. Yet we have difficult times ahead. We are talking here under security kept in very difficult circumstances. These people are the instruments. Remove them and I see nothing but a picture of chaos all over the country. I have difficulty because we have paucity of men. Provinces also suffer and they ask for more men. We have appointed a Special Commission to recruit about three hundred to four hundred men. They have just been selected. They are not selected from the, I. C. S. cadre. They have no experience. But yet we want instruments. They will learn from these people.

Now, what is it that you want to do? You decide. My advice to you is all Members of the Parliament should support the Services, except where any individual member of the Service may be misbehaving or erring in his duty or committing a dereliction of his duties. Then bring it to my notice. I will spare nobody, whoever he is. But if these service people are giving you full value of their Services and more, then try to learn to appreciate them. Forget the past We fought the Britishers for so many years. I was their bitterest enemy and they regarded me as such but I am very frank and they consider me to be their sincere friend. What did Gandhiji teach us? You are talking of Gandhian ideology and Gandhian philosophy and Gandhian way of administration. Very good. But you come out of the jail and then say, "These men put me in jail. Let me take revenge.", That is not the Gandhian way. It is going far away from that.

Therefore for God's sake, let us under stand where we are. Today, if you want to take anything from the Service, you touch their heart but do not take a lathi and say, "Who is to give you guarantee? We are a Supreme Parliament." You have supremacy for this kind of thing? To go behind your words? That supremacy will go down in a few days if you do that. That is my appeal to you and sincere appeal to you. You remember that and carry that to the provinces also and to the Congressmen also who are working outside. That is the way of administration. Otherwise, it will go gown. And when the country is stabilised and when it is strong enough, then if you want to make any change, it would not be difficult for the service people to be persuaded. If the Princes could be persuaded to give up their kingdoms, how could it be otherwise with the services who are our own people, whose children will be also serving with us, and

who have laboured all day and night for the country? They are men who prefer honour, dignity, prestige and deserve the affection of the people. Very few people would like to serve only to be considered as enemies of the country. So, do not speak in those terms and I appeal to you to consider my word and give your judgment,

**Shri Mahavir Tyagi:** I want to know whether the question which I posed while speaking will be answered by Mr. Munshi or by the Honourable Sardar Patel ? May I repeat the question ?

**Mr. President:** It is not necessary. Your question has been put and if the Member in charge of the article wishes to reply, he will reply.

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

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

"That the question be now put."

The motion was adopted.

**Mr. President:** Mr. Munshi.

**Shri K. M. Munshi:** I do not think I should say anything after Sardars' speech.

**Mr. President:** I have now to put the amendments to vote.

**Shri H. V. Kamath:** I do not wish amendments Nos. 124, 125 and 128 to be put to the vote. I would rather leave them for the consideration of the Drafting Committee.

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

"That in amendment No. 1 of List I (Second Week), in the proposed now article 283A for the words 'which he is from time of time serving' the words as the case may be' be substituted.

The amendment was negatived.

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

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, 'or the words 'the same conditions' the word 'conditions' be substituted."

The amendment was negatived.

**President:** The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed now article 283A, for the words 'and the same rights' the words 'and rules' be substituted."

The amendment was negatived.

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

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words as respects disciplinary matters or rights' the words of conduct and discipline be substituted."

The amendment was negatived.

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

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement', the words 'as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement' be substituted."

The amendment was negatived.

**Shri H. V. Kamath:** I think you will agree that this article is badly drafted Do you not, Sir?

**Mr. President:** It is no use my agreeing or disagreeing. We have the vote of' the House.

The next are the amendments of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad:** I am not pressing them. I leave them for consideration of the Drafting Committee.

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

"That the proposed article 283A stand part of the Constitution."

The motion was adopted.

Article 283A was added to the Constitution.

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**Article 307**

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

"That for clause (2) of article 307, the following clauses be substituted:-

> '(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such, adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed--

(a) to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution; or

(b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause."

"That in Explanation I to article 307, the words 'but shall not include an Ordinance promulgated under section 88 of the Government of India Act, 1935' be added at the end."

"That in Explanation 11 to article 307, for the word 'has' the word 'had' be substituted and after the words 'continue to have' the word 'such' be inserted."

"That for Explanation III to article 307, the following be substituted.-

*Explanation III.*-- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.'"

Sir, the intention of the Drafting Committee is that clause (1) of article 307 is kept intact. Clause (2) has been varied for one particular purpose. There was some doubt whether the President may make adaptations, modifications, amendments or repeals of existing laws and in so doing whether his action could be questioned in a court of law and how for his action would attract judicial interference. Actually, the original clause (2) says that such adaptations could not be questioned in a court of law. But the idea of the Drafting Committee was that it should be made clear that what should not be questioned should merely be the form and adaptation or modification and an examination of the purpose underlying such action should be left open. For that purpose we have begun this article in clause (2) with these words:

"For the purpose of bringing the provisions of any law in force in the territory of India into :accord with the provisions of this Constitution.....

That is the basic purpose and if the adaptation or modification has been for any other purpose, undoubtedly that will be a matter which will come within the purview of the courts. So far as that purpose has been granted if any question of wording or minor variations are questioned, they cannot be taken to a Court, of law.

The second modification that has been admitted in this amendment is to limit the power of the President, in this behalf to a period of two years after the commencement of this Constitution by clause (3) (a). The other sub-clause (b) is taken out from the body of the original clause (2) and it has been made clear that nothing that the President might do shall prevent the appropriate authority from changing any law in force as it wishes to even if it had been adapted by the President. This will not act as a bar to any legislation being brought up before Parliament or before the legislature of a State.

So far as the modifications of the Explanations are concerned, the modification with respect to Explanation I is to restrict its meaning. This shall not apply in regard to ordinances promulgated under section 88 of the Government of India Act a provision,

which should have been there. It is a lacuna which we are now seeking to rectify.

So far as the new Explanation (iii) is concerned, it is an amplification of the present Explanation.

Before I resume my seat, I would like to mention that this article should not be confused with article 313, which was passed the other day, where the President has been given power to modify the provision of this Constitution in case of any difficulty. The article under consideration gives the President a very restricted power and it is only in regard to those laws about which the President is advised that they come into conflict with the purpose of the Constitution that a modification will become necessary. It is very necessary because we have provided in article 307(1) that all the laws in force in the territory of India shall continue to remain in force subject only to the fact that they do not offend the provisions of this Constitution. This is a very necessary article and the modifications I have suggested are necessary in view of the fact that a certain lacuna in the original draft of the article has been brought to our notice and I do hope that the House will understand that the purpose we have in mind in suggesting these amendments is limited. The President's Powers are such that they can be overruled by Parliament or the appropriate legislature and it is only intended to serve during a period of time when neither Parliament nor probably the Legislatures of the States would have enough time to devote the detailed attention that is necessary to amend ,certain laws in force in our country. Some such action was taken in regard to certain laws when the Government of India Act, 1935, was adapted following the Indian Independence Act and this would follow the same lines.

By and large, the main modifications will be of it formal nature. Possibly, in many cases the words "Governor- General" will hive to go, and the word "President" will have to be put in and other similar changes will have to be made Substantial changes are not likely to happen except so far as we have provided in this Constitution. It is possible certain changes have to be made arising out of the fundamental rights, embodied in the Constitution.

There is one argument I would like to anticipate in view of the fact that certain amendments have been tabled. It has been suggested in these amendments that Parliament should do these adaptations. Well, if Parliament should do it, or Parliament should ratify the action taken by the President in their behalf then Parliament can undertake this question of modification by passing amending legislation. It is because we feel that Parliament will not have the time during the initial period for this purpose that we have provided this article.

Certain suggestions have been made that a tribunal or a committee may be appointed to go into the matter. That is to be left to the proper authorities who undertake this adaptation at the proper time. Whether they would think that the machinery in the hands of Government is suitable for this purpose, or that the machinery can carry out minor modifications, and if there are to be modifications of a major character that public opinion should be consulted or judges should be consulted, it will be for the appropriate executive authority to do what it feels is necessary. There is nothing to bar a tribunal being appointed, or an examination of the existing laws being made by either the Government of India or by the provincial Governments in the future. I hope these arguments will satisfy those people who have tabled amendments and this article will be passed as amended by the amendments that have been moved

by me. Sir. I move.

**Shri Brajeshwar Prasad:** Mr. President, Sir, I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal, be inserted.'

Sir, there is a provision in article 307, I refer to the last line of clause (2), which says that any such modification or adaptation shall not be questioned in a court of law. I am not opposed to this provision; I am in favour of this. But, if we are going to pass such a drastic provision, it is necessary that an such adaptations or modifications which the President may make should be at least in consultation with the highest judicial authorities of the land. We are debarring the courts of law from going into the question. Here, the word President means the Minister for Law. It is he and he alone who will be in charge of modifications and adaptations. The President will have neither the time nor the inclination to go into these questions at all. I want that the Minister for Law should have the assistance of these Chief Justices. It is in no way a criticism or lack of confidence in the merit of the Law Minister, but it is only with a view to strengthen his hands, so that nothing should be left to chance. It is with that end in view that I have suggested this amendment.

**Shri H. V. Kamath:** Mr. President, Sir, I am one of the people, to use the language of my honourable Friend Mr. T. T. Krishnamachari,--Who have tabled amendments. I wish he had used a better term in conformity with parliamentary practice and decorum and referred to those who have tabled amendments as Members if not honourable Members. I think it is not proper to use the word 'people' in reference to my honourable colleagues who have tabled amendments. That is, however, by the way.

I move amendments 134 and 137 together by your leave:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

"That in amendment No. 2 of List I (Second Week), in sub-clause (b) of the proposed clause (3)of article 3O7, forth on words repeal or amend the words 'alter or repeal or amend' be substituted."

They are more or less formal amendments and they are on the lines of the original draft article 307. Article 307 as it stood in the Draft Constitution reads as follows: "(1). Subject etc., etc., all the laws in force in the territory of India 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." I think this is a very comprehensive statement of any changes that may be made. I feel, therefore, that the commission of the word 'altered' is a lacuna which this House would do well to remove. I have therefore moved amendments 134 and 137 so as to bring this new draft in conformity with the original draft article 307. I feel they are a more comprehensive and much happier expression of the meaning that we seek to convey.

**Shri V. I. Muniswamy Pillay** (Madras: General): Mr. President, Sir, I move the amendments that stands in my name, No. 135:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the following words be added at the end:-

'but placed before the Parliament for ratification."

Sir, I feel that some principle is involved in the amendment that I have given notice of. While speaking on this article, my honourable Friend Mr. T. T. Krishnamachari told us that such a provision has been made in the Constitution to empower the president at times of emergency and also when the legislatures are not in session. I feel, Sir, taking into account what is happening in the provinces where the Governors who promulgate Ordinances feel in their duty to place before the concerned legislature when it meets in session what they have done in the matter of Ordinances or laws which are necessary in the interest ; of the country. The President as envisaged in the Constitution can look to Parliament as the body which has to ratify whatever action he has taken when the Parliament was not in session. We are only asking the President to place what adaptations or changes he has made in conformity with the constitution so that not only the country, but also the representatives in Parliament should know what the President has done during the absence of the legislature or Parliament. I feel, Sir, that this is as a matter of right due to the legislature or Parliament of the country because every Member is expected to know what the President has as an emergency measure done during the absence of the Parliament. I am sure that the Drafting Committee will consider this matter and accept my amendment. Moreover, it is made clear in clause (3)(b) that "nothing in this clause (2) shall be deemed to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause." Therefore, I feel, Sir, that this amendment can be accepted by the Drafting Committee.

**Mr. Naziruddin Ahmad:** Mr. President I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (3) of article 307:-

(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution' the words 'after the constitution of the ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution' be substituted; and

(ii) in sub-clause (b), the words 'or other Competent authority' be deleted."

Sir, in moving these two amendments, I must say that I am in full agreement with the principle of the two clauses which have been moved. In the interim period when we pass through a very rapid transition, numerous anomalies and difficulties will arise and it is therefore necessary to authorise the President to make adaptations and modifications as may be required. The existing laws must be adapted and modified so as to conform to the standard laid down in the new Constitution. That was done when the Government of India Act, 1935, was passed. While agreeing with this principle, my amendment would try to limit the period during which the President may exercise these powers of adaptation and modification. In clause (3), sub-clause (a) it is proposed that the power of the President to make these adaptations and modifications shall be limited to two years. By my amendment instead of this period of two years I want to limit it to a period during which the general elections will be held and ministries will be constituted at the Centre and in the States. After that the Legislatures at the Centre and in the States will be in full operation. We may have general election under the Constitution within a period of two years. If so, there would

be anomaly that the legislatures both at the Centre and in the States, will be in full operation and yet the President will be given power to make amendments and changes and modifications in the Constitution. When these legislatures will come into operation, the President's power should cease. The Legislatures alone should thereafter be entitled to make modifications. Therefore the power to make these modifications should last till the next general elections are held and ministries ,constituted. There is no occasion to extend it beyond that. It may be that elections may be delayed and in that case there would be a gap after two years and the time when the new Legislatures would come into force when there will be no authority to make these adaptations. In these circumstances, I should like to place the period till the period when elections are held and ministries. constituted.

My second amendment relates to the proposed clause (3) which runs thus;

"Nothing in clause (2) of this article shall be deemed to prevent any competent legislature, or other competent authority to repeal or amend any law adopted or modified by the President under the said clause."

I would like to delete the words 'or other competent authority'. I call well appreciate that the adaptation made by President may be changed by any competent legislature, but I fail to see what other competent authority there would be to make necessary changes. Therefore, we should leave this power to make changes in the decisions of the President to the competent legislatures and not to any other authority. I would ask for a clarification as to what competent authority beyond the legislatures may be empowered or should be empowered to make the necessary changes.

**Prof. Shibban Lal Saksena :** Mr. President, I move

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the words 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

This is a very important article by which we want to bring all the present existing law in consonance with the provisions of the Constitution and we are, only providing the machinery for the adaptation. The President is hereby authorised to do it. I have no objection to that. I think it is merely bringing the law which in existence today in consonance with the Constitution and I, therefore entirely agree that the President is the proper authority. But what I object to is this, that the adaptation which he may make should not be questionable in any Court of Law. Suppose by mistake or any other reason the modification made is not really in consonance with the purport of this clause and goes beyond this, then where is the authority which will pronounce that the adaptation is not in consonance with the intention of this article, which read& thus--

"For the purpose of bringing the provisions of any law in force in the territory of India into with the provisions of this Constitution, etc."

But what is the machinery provided for seeing that the purpose of this clause at the beginning is given effect to. If the intention is that every such case has to go, to the Supreme Court, it will be very troublesome and costly, because the law 'to be' amended will be very wide. I therefore think that the courts which administer that law should be empowered to judge whether the adaptation is, proper or not. The President will not have the time to go through all the law and see it adapted in accordance with the Constitution. The Law Department will do it and even the Law Minister will not have the time to go through it all. This will be done by the clerks of the Department.

We do not want that Acts of Parliament passed by former legislatures to be amended and adapted by ordinary clerks and they should not be liable to be challenged in a court of law even on the ground that they are not in consonance with the provisions of the Constitution.

I, therefore, wish that the normal machinery of law should be trusted to see that if any mistake is made in adaptation then courts should be empowered to correct it. If this is not done, many mistakes will be committed which could not be corrected by anybody in the country. If you want the Supreme Court to be approached, then I do not think every litigant will have the power to do it. I do not know whether the Supreme Court will also have the power. But I think the Supreme Court has inherent powers to go into anything. But still in this Constitution we should provide definitely that the the adaptation shall be with the purpose mentioned in the first clause and the Court shall be empowered to judge the correctness of the adaptation. The other amendments I do not object to, but I do think that the Drafting Committee will explain what machinery they are providing to see that adaptation made will be only in consonance with the provisions of this Constitution.

**Pandit Thakur Das Bhargava** (East Punjab: General): Sir, I beg to move:

"That in amendment No. 2 of List I (Second Week), for the proposed clause (2) of article 307 the following be substituted:-

"The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.'"

I also beg to move:

"That in amendment No 2 of List I (Second Week), for the proposed clause (3) of article 307 the following be substituted:-

"(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this Constitution into accord with the provisions of this constitution, the President shall, after the commencement of this Constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions rotating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provisions of this Constitution. The Government shall, on the receipt of the report, forthwith take steps to avoid, repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after an year of the commencement of this Constitution if they are not avoided, repealed or amended earlier."'

I also beg to move:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, for the words 'made, and any such adaptation or modification shall not be questioned in any court of law' the word made be substituted."

Also--

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'and any such adaptations or modifications shall not be questioned in any court of law' the words 'except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

I also move:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words 'except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

And-

"That in amendment No. 2 of List I (Second Week), the proposed clauses (2) and (3) of article 307, be deleted."

Sir, my purpose in moving these amendments is to give full effect to the provisions that we have already passed, *vide* article 8. Now, these existing laws can easily be divided into two kinds of laws--laws relating to fundamental, guaranteed rights, and the laws with regard to other matters. I want to make a distinction between these two, and as would appear from the amendments I have proposed, some of them relate only to the guaranteed rights and the other relate to the other laws in force. Now, I take very serious exception to the words--"any such adaptation or modification shall not be questioned in any court of law." And that is why I have proposed these amendments, so that such words may be taken away and such other words substituted as would make the meaning absolutely clear. I am almost despaired of getting the objectionable provision of this section cleared out and I have therefore even proposed that the entire cause (2) be deleted. Sir, I feel full thought has not been given to this matter, I mean as much thought as should have been given to it. If the proposition is accepted as it is, if the proposal of Shri Krishnamachari is carried, the result will be this. Not the legislature, but the Government through its department of law, not the law Member, but the Secretary or clerks will make these adaptations and, modifications and all these adaptations and modifications will never come before any Assembly or Legislature. The substantive law of the land will, *ipso facto,* by the Executive fiat, be adapted or modified and become the law of the land. The law shall stand modified or adapted and after that, that law becomes so immutable that the courts will not be able to question them. My submission is, we have passed article 8 already which says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency be void."

Now, all those laws which the Courts are today empowered to declare void are sought to be sanctified and made "pucca" by these adaptations. And it is not in accordance with clause (2) of article 8, which says:

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

What would happen it a modification or adaptation is made which is really in contravention of the clause? That law cannot be questioned, no court will be able to question it, which means in plain English, that what we give by virtue of article 8(2) and 8(1) is being taken away by this back-door method. I do not say that is the desire of those who have framed this proposal, but my humble submission is, that that is the

result, that it will result in a situation like that.

Let me just illustrate this point. Take article 13. We have practically changed the definition of sedition, by the provisions made under this article. Under article 13(3) we have put in "reasonable" before "restrictions on the exercise of the right..... and thereby we have given the courts of the country the opportunity to find if the particular laws which are harsh and onerous should be void or not. They come within the purview of the courts' jurisdiction and any court can declare that such and such law is against the letter and the spirit of article 13 and therefore, void. But as soon as the adaptation is made and it will not be something enacted by the legislature, but something done by the Executive--and if the adaptation fails to carry out the purpose, if it is not in consonance with article 8, no court will have the power or the authority to declare such adaptation to be wrong, which means that we give such power to the Executive as we have not entrusted to the legislature even. If this Parliament, after 26th January, 1950, passes any law in respect of these fundamental rights which abridges the liberty of the people, that can be questioned in a court of law, and any court of law can say that Parliament was wrong in so far as it contravened the provisions relating to the fundamental rights. If the adaptation is made in such a manner that it does not carry out the full purpose, then we are absolutely helpless. It is said that there is provision that any legislature can take such action as it deems necessary and repeal the law. Quite right. This is so. May I ask if this right is not completely illusory? Where is the Provincial Legislature which will come to the conclusion that the adaptation or modification made by the President is wrong and sit as a court of appeal on the decision of the President, and go ahead to frame the laws afresh? Where is the individual Member who will be given the facilities to bring in the necessary new provisions? We all know how many obstacles there are in the way of those who want to enact a law. My submission is that when once these adaptations or modifications are made, it will be very difficult to change them. Government will not change them. The local legislatures will not change them, and no private member will have the chance of changing them. It means in plain English that these adaptations or modifications will be there for all time, whether they are in accord with the Constitution or not. Who makes the law of the land? The legislature and not the executive or Secretary or Clerk in the office of the law Member. Even if the President were to pass any Ordinance, that Ordinance Will again be placed before the legislature within two months, but so far as these adaptations or modifications are concerned, they will never be placed before the Legislature. Therefore, my submission is that these adaptations will be defective in more ways than one. They will not receive the seal of the Legislature and the courts will not be competent to question those modifications.

Now, Sir, it is said that the first sentence "For the purpose of bringing the provision of any law in force in the territory of India into accord with the provisions of this Constitution" is sufficient guarantee. My submission is that this is no guarantee. My point is that the purpose is there, but what if the purpose is not carried out, if the adaptations or modifications are not good or do not go to the same extent that the Fundamental Rights do? The courts have no power to interfere. If you say, "necessary or expedient" are there, and the courts can go into the question of whether the adaptations are necessary or expedient, my submission is, what is the sense in having these words "shall not be questioned in any court of law"? I understood Mr. Krishnamachari to say that minor things should not be questioned but that only the purpose should be seen. The adaptations can say that for such and such purpose the adaptations are made, but that is not sufficient. The courts will not be able to go into the question of the purpose also. The purpose is there, but there is no guarantee that

the adaptations will carry out the purpose. It may be said that such a provision in the shape of section 293 existed in the old Government of India Act of 1935. No doubt that section was there in the Government of India Act; but then the purpose is absolutely different. Here in this Constitution the main change that we have made is that we have given certain Fundamental Rights. In the Act of 1935 there were no Fundamental Rights. I would not care if you make adaptations to the ordinary laws of this country provided you do not touch the rights of the people. You may bring all the laws of the land in accord with the Constitution, but when you go and touch the very delicate rights of the people in general and touch their fundamental rights, then my submission is that the matter becomes of very great importance. In section 293 even these words 'shall not be questioned by any court do not appear. In the old section 293 you will find that the powers of the courts were not taken away. There the laws were subject to the jurisdiction of the court as before. Now these words have been specifically added that the adaptations or modifications shall not be called in question in any court of law. My main objection is to these words.

It is a secondary objection, though of equal import, that the executive should not be given the right to adapt these laws. I propose that in regard to these Fundamental Rights, a Committee of Experts should be appointed to go into the question. This will be an important Committee and the best heads of the country should be on it. They will go into all the laws and make a report to the President that he may be pleased to see that such and such Acts are enacted, because the law-making power is that of the Legislature and we cannot delegate this power to any President or any other set of people. After the Committee has reported, the Government will take steps to see that such inconsistent laws are repealed. In this I beg to submit that the authority of the court will not be taken away. It is the essence of these Fundamental Rights that the courts are the ultimate authority and possess ultimate sanctions and jurisdiction. After all, if the courts will not safeguard these rights, what chances are there that the executive will do it ? Really, you are putting the cart before the horse. In section 293 of the Government of India Act such rights were not touched at all. Only the existing laws were taken into consideration; there was no reference to Fundamental Rights and therefore also no taking away of the jurisdiction of the courts. It is possible that the rights guaranteed by article 13 may be so tampered with in the way of adaptations that we will not be able to change them for years to come.

Therefore it seems to me, Sir, that you have only trumpeted to the whole world that you have given these Fundamental Rights. I do not say that the, Law Minister will behave in this manner. I think he will not behave in this manner but he might ask someone in his chamber to go into this matter. I cannot possibly agree to delegate this power to any authority, even including the President or the Law Minister. Let the legislature go into these laws and find out whether adaptations are necessary or not. The executive should not change the law of the land in this manner. Mr. Krishnamachari said that these words are not important. All right, take them away, and my main objection would go away. Sir, in 1947 we had a Bill before the Assembly in which many old laws were sought to be repealed by the legislature. Why cannot you bring in a Repealing Bill before the Assembly again? In regard to these Fundamental Rights, people will go to court and the court will be able to hold that such and such law is not in accordance with the provisions of the Constitution. Why not give this power to the Courts? If you want to benefit the people, benefit them in a direct manner. As it is, you may abuse your position and bring disaster to the people.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. President, Sir, a great

deal of the criticism of the amendment moved by my Friend, Mr. Krishnamachari, proceeds on an entire misapprehension. It is necessary to have in view what exactly is the object of this clause. Our Constitution has made certain fundamental changes in the structure of the Constitution, in the distribution of powers, in the powers vested in particular authorities, in the relation between the Unit Legislatures and the Central Legislature. At the same time, it is not our object to start afresh our career in legislation, but to take over all the enactments under the previous Constitution subject only to the prohibitions and to any special provisions in the present Constitution. It is necessary to have an idea of the number of Statutes, Ordinances, Acts, subordinate Acts, and rules there have been made in all these twenty years after the first adaptation in the year 1935. If every Act, every rule, and every order, is to be subject to the scrutiny of courts and this adaptation is to be canvassed from court to court, it will no doubt afford plenty of opportunities for lawyers and litigants, but it will not be in the larger interests of the country. Therefore, in taking over the whole body of legislation to the new Constitution you first provide that that legislation shall continue to operate unless it is repugnant to the principles of the Constitution.

That is the first principle and having laid that down, it becomes necessary to provide for adaptation. If that adaptation is to be made within the two years when Parliament is overloaded with work in regard to various matters consequent upon the new Constitution, to trouble Parliament with the work of adaptation will be an unwise task. Under those circumstances, what is provided is there will be adaptation by the Government. You need not proceed on the footing that the Governor-General or the President sitting at Delhi is going to make all the adaptations. The Government will be assisted by an expert body. The advisory bodies which my friend suggested may, be utilised for the purpose of making the adaptation, provided they do not become unwieldy and hamper the work of adaptation. The adaptation will have to be done quickly in addition to other work which the Constituent Assembly may have to take upon itself soon after the passing of the Constitution in order to bring the Constitution into effect.

Before I make my comment upon the article as put forward before the House, it is necessary to have in mind what exactly section 293 of the Government of India Act which has been adapted in this article 283 provides. Under the section 293, His Majesty was given the power of adaptation. No limit of time was imposed. The President of the Drafting Committee who was responsible for putting the limitation of these two years thought that a power for an indefinite length of time should not be vested in the President. It must be expedited and the adaptation must be finished within two years. Therefore the limit of two years was placed. Under section 293, the question came up before the Federal Court in the very first case after the new Constitution of 1935 whether an adaptation can be questioned in a court of law. Sir Maurice Gwyer, the then Chief Justice, delivering the judgment in the U. P. Cantonment Case stated that adaptation could not be questioned at all. We put a limitation in the present article in the opening words, "for the purpose of bringing the provisions of any law enforced in the territory of India in accord with the provisions of this Constitution." It is only for that purpose that this power is to be exercised by the President. This is a very necessary, wholesome, and salutary provision. With my experience in courts in regard to other provisions and bye-laws, I am bold enough to state that there is a general tendency to attack every rule and every Act, and I can say that this provision is most wholesome and salutary. Instead of leaving it to the Supreme Court or Federal Court again to deal with the point whether Sir Maurice Gwyer's decision is to be followed or not or whether some dissenting opinion expressed in the Lahore High Court is to be followed, the position is made clear that

the adaptation shall not be questioned in a court of law. It was advisedly, deliberately put in in order to prevent frivolous, immaterial objections being taken. But if the adaptation is so alien to the main provisions of the Constitution to the very purpose of the Constitution, then the court will have the necessary jurisdiction to hold the adaptation invalid. It does not mean that every bye-law, every clause, every sub-clause, every expression, has to be canvassed in the court of law. If the main purpose is kept in view and if the adaptation is not alien to the purpose, it shall not be questioned in a court.

After all, the adaptation is not immutable. It is subject to the intervention of the legislature. If the legislature is vigilant, and sensitive to public opinion as to scrutinise every adaptation, I think there is nothing to prevent it from passing a law when an adaptation is not in accordance with the spirit of the Constitution. We are proceeding on the assumption that the legislature is quite alive to its duty, it is very vigilant, very capable, hard-working, and with the host of lawyers in the country who will surely canvass every bye-law and with a large public who are likely to be affected by it, there is no danger of its not being noticed by the vigilant public or equally vigilant lawyers or equally vigilant legislators. The legislators will be on the watch. The lawyers will be on the watch and the courts are sure to find any lacuna in legislation. Under these circumstances, I submit this is the most salutary provision. Already there is great criticism that the Constitution itself is intended for the benefit of lawyers. The provision in the Constitution that adaptation of the Constitution shall not be questioned in court is a most wholesome one.

Regarding the power of the legislature to intervene, it can do so at any moment. The provision does not stand in the way of the President constituting a body of able advisers like my Friend, Pandit Thakur Das Bhargava who certainly will have the public spirit to assist the President in making the necessary modification and at the same time, as a temporary phase it enables the President to make the necessary adaptation. Unless the President is mad or his Cabinet is mad, they will not violate Fundamental Rights. Of course, here and. there in respect of a particular clause, it is possible that the legislature may take a different view, but if there is a tenable ground, the legislature can look after it and it will be competent for the Government or the parties concerned to, alter that provision. Under these circumstances, I am sorry that this provision should be taken exception to,

**Mr. President:** It is suggested that we should meet in the afternoon, so that we might make more progress. So we shall sit again at 4 o'clock.

The Assembly then adjourned for lunch till 4 P.M.

The Assembly re-assembled after lunch at 4 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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**Shri Biswanath Das** (Orissa: General). Sir, the proposed amendment follows very closely the Government of India Act of 1935. If at all there is any difference, it is on the side of stringency. In the Act of 1935, as adapted, this section--I mean section 293--was omitted. We have naturally a right to expect an explanation why this omission was made and why a departure has now been felt necessary in this regard.

Sir, my honourable Friend, Pandit Thakur Das Bhargava, has clearly stated his objections. Most of those are our objections. My honourable Friend, Shri Alladi Krishnaswami Ayyar, representing the Drafting Committee, treated us to some homilies. He stated that the power of the Legislature has not been taken away by this amendment. I want to ask him whether it is necessary that an eminent lawyer like him to explain these elementary principles to us, as it the Members of the Assembly do not know that tinder a system of responsible Government the 'President' means the Cabinet or the Prime Minister himself. Then again he stated that it is in consonance with the spirit of section 293 that the Orders in Council were being issued by the British Cabinet. When you were trusting the British Government, why cannot you trust your own Government? If at all there is any element of distrust, I say that the boot is on tile other leg. So, it is unfair and unfortunate to state that we want a change in the section merely because we do not trust the Ministry. It is not a question of our trusting the Ministry. What has been proposed in this article is that the Honourable Dr. Ambedkar, the Chairman of the Drafting Committee, will transfer all the powers of the Legislature to the Honourable Dr. Ambedkar, the Law Minister of India. Here again we would not probably have so much bother, it lie or his Cabinet handled the whole question themselves. Sir, it is a well known fact that Cabinet Ministers are busy-bodies. It is not possible for them to go closely through all the Acts that have to be adapted in this regard.

While discussing this question we have to keep two or three things in view. The first thing is that you have in the Constitution the Fundamental Rights which, were never contemplated; nor were they conceived in the Act of 1935 and much less thought of by the British Government or the British Cabinet. Secondly you have barred the Jurisdiction of the courts by a specific provision in the Constitution. A point has been made out by our Friend, Shri Alladi Krishnaswami Ayyar, that it is the judicial pronouncement of the highest court. I must tell him again--as I have already suited--that my confidence in the pronouncements of the British judiciary under a system of imperial administration is not as it would be under the pronouncement of a free judiciary in a free India. Until that is done I must plead with him and with the honourable Members of this House that my confidence in the judiciary will be within its limitations.

Sir, a period of limitation of two years has been laid down--I do not known, for what reason. The enormous powers that are vested in the Executive are not at all desirable. When my honourable Friend Shri Alladi Krishnaswami Ayyar was thrusting his homilies on us to trust the executive, it took my breath away. I hardly expected that an eminent jurist and lawyer as he would teach me about our confidence in our Executive. I would plead with him to carry his logic further. By all means have all confidence. Why then have any law? Leave everything to the administration. Have no laws at all. Have no constitution; no Fundamental Rights are called for because we have it responsible Government and a popular Ministry. This is hardly expected of a very wise and sound jurist of his eminence.

Sir, I must complain in this connection that the Government have not placed all their cards before us. I do realise the fact that the Government is not represented here and the Members of Government are here in their capacity as Members of the House. But it is no doubt a fact that Dr. Ambedkar is also the Law Minister of India, and it is his responsibility and duty to explain to us what steps he has taken tip till now in this regard. This is, a very big order that he wants to be given to him. There ire thousands of laws, Central and Provincial in operation, including the Regulations

passed by the British Government. All these have to continue in operation. Is it possible for ordinary Members, I ask, to undertake the private legislation to modify all these? What has been done by the Ministry of Law? I plead again with the Drafting Committee that the position they have taken so far, as also the action taken by the Law Ministry so far in this regard has not been helpful. My Honourable Friends have made various suggestions.

**Mr. President:** What is the kind of action which you expect from the Law Ministry on this subject?

**Shri Biswanath Das:** I am coming to it. In fact I will be failing in my duty if I do not state it and I will iterate. The British Government, before any adaptations were undertaken asked the Government of India and the Law Department of the Government of India to examine all the necessary Statutes. The Government of India were suggesting adaptations and the adaptations suggested by the Law Ministry, then, the Law Department of the Government of India, were being approved and published as the adaptations of the British Government in an Order-in-Council. My complaint in this regard is that neither the Law Department nor the office of tile Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

**Mr. President:** Without knowing what the Constitution is going to be.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): My Friend is thoroughly misinformed. He does not know what is being done.

**Shri Biswanath Das:** I will be glad if I am misinformed and I will be glad If all this has been done. In which case, my Honourable Friend ought to have placed the whole thing at least by this time--as I said and I repeat--all the cards on the table, and said "I have got them ready, give me the order and I will publish." I do not agree with those who think that consultations with Chief Justice will improve the matter nor do I agree with those honourable friends who feel that reactions are to be placed before Parliament. The adaptations under the Indian Independence Act were placed before Parliament. But to what effect? Where has the legislature time for private Members to undertake this stupendous task? Under these circumstances, placing of adaptations for the reactions of Parliament will not help.

Another proposal has been placed before honourable Members and that is an Expert Committee. That would be certainly useful and helpful. But I would suggest that we are giving a big order and placing very responsible power and authority with the Executive. Therefore, I think it will be fair to the Legislature also if some of the eminent jurists, who happen to be Members of the Legislature, are constituted into a Committee to place recommendations before the Law Ministry so that the Ministry gives them merely legal shape. It should be the responsibility of the Law Ministry to put them into legal form. I am not inclined to place all other powers, importance and responsibility as they are, in the hands of the Executive. In this view of the question, for myself[ will be fully satisfied if the Honourable the Law Minister or the Drafting Committee say that they are willing and anxious to have an Expert Committee of the Constituent Assembly and the Legislature examines all the laws, and if necessary, asks the Provincial Governments to undertake examination of all the laws and all the adaptations to be put together. It would be unthinkable after responsible Government in a free India to have laws irresponsible in themselves and most of which are out of

date and at antediluvian and which do not suit the present-day needs of the people to co-exist and operate. In these circumstances, I plead with the Drafting Committee and also with the honourable Members of the Constituent Assembly to consider this important question.

**An Honourable Member:** The question may now be put.

**Shri Rohini Kumar Chaudhuri:** Sir, after listening to this debate carefully, I am inclined to support the view expressed by my honourable Friend, Pandit Thakur Das Bhargava. It seems rather preposterous that if a Legislature passes any provision which is inconsistent with the Constitution then any one aggrieved by that would be entitled to bring that fact to the notice of the Court and the Court will not be precluded from considering that question. Supposing any legislation was passed which was inconsistent with any of the Fundamental Rights of the Constitution, then it was up to anybody to move the Court to have that legislation declared illegal and void. It seems rather strange when a similar order or provision was made by the President by virtue of the power of his adaptation and modification--which was inconsistent with the Constitution, we could have no remedy in a court of law. I thought, Sir, there it was not necessary to abrogate this new provision because so long as the adaptation order was inconsistent with any provision of the Constitution, the lower court would have full jurisdiction. But my honourable Friend, Shri Alladi says that in a recent ruling the Federal Court has held that any suit brought to set aside or to declare an adaptation invalid would be out of court. Therefore, Sir, I consider it would be safe and in the interests of all concerned that an amendment of the nature which has been proposed by Pandit Thakur Das Bhargava should be accepted.

I would also like to say that the period of two years prescribed by this article is rather too long. If such a period is there, in some instances the President or his advisers may not taken steps as early as they should. In my opinion, immediate action would be necessary after the passing of the Constitution so far as administration of justice in the tribal areas is concerned. It will be within the recollection of the House that in paragraph 5 of Schedule VI, certain provisions have been laid down on the strength of which the Code of Civil Procedure and the Code of Criminal Procedure could be made enforceable in the tribal areas.

But honourable Members will be surprised to learn that even though there may be a litigation between persons who do not belong to the tribal community, in areas which are not inhabited by tribal people at all, but are within the jurisdiction of the hill area, the Code of Civil Procedure and the Code of Criminal Procedure are not in force. For instance, there any Assistant to Deputy Commissioner who may not have any legal academical qualifications is competent to punish an accused with any sentence up to seven years; and under the present rules if the sentence is more than three years then only an appeal can be field. Otherwise, there is no right of appeal. I regard to other matters also, the Civil Procedure Code or the Criminal Procedure Code is not in force. It has been laid down that the courts will be guided by the spirit of the Code of Civil Procedure or the spirit of the Code of Criminal Procedure. This spirit, Sir, it has been very difficult to find at all. Sometimes, the spirit of the Criminal Procedure Code is interpreted in not following the Criminal Procedure at all; sometimes it is interpreted in following the Criminal Procedure Code strictly. Even if my honourable Friend. Dr. Ambedkar or Alladi Krishnaswami Ayyar had been practising in these bills, they would have found it difficult to see where the spirit of the Civil Procedure Code or the spirit of the Criminal Procedure Code lay. Under this paragraph, it is within the competence of

the Governor to declare that the Criminal Procedure Code will be enforced in respect of the trial of offences which involve a sentence of imprisonment of five years or more, or transportation or capital sentence. But, unless the law is adapted immediately, this provision of the Constitution will remain merely as a dead letter. This is a very small mercy. Just for a moment, fancy that anybody living in Delhi or Ajmer Merwara being tried, convicted and sentenced to death also without the Criminal Procedure Code being followed. I could have quite this law was applicable in those cases where the indigenous or the tribal people were the parties. But it is not so. Even if it is a case purely between non-tribals or between a tribal and a non-tribal the Criminal procedure Code is not applicable and in that case no legal procedure is followed; at any rate the right of appeal will not be allowed.

I submit that in order to bring the present law in line with those provisions which have given a small mercy in that the Governor may declare certain provisions of the Criminal Procedure Code to be enforced in a particular area in respect of certain cases, steps should be taken by an amendment or modification of that law so that that law may come into force at an early date. Therefore, I welcome this article which allows an alteration or modification of the existing law so as to bring it in line with the provisions of the Constitution. At the same time, we must be safeguarded against the application of these provisions for adaptation or modification in such a way as may interfere with the fundamental rights given by this Constitution. In such cases of interference, it should be made clear that we should have the right to go to the court, in order to have that adaptation declared invalid. Otherwise, if you leave it at that, in view of the ruling that has been cited, we shall be absolutely powerless to take any step when the President would be pleased to make such an adaptation as would be inconsistent with the provisions of the Constitution.

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

"That the question be now put."

The motion was adopted.

**Shri T. T. Krishnamachari:** Mr. President, let me, at the outset apologise to my honourable Friend, Mr. Kamath, who is not here I see, who took objection to a slip of the tongue on my part when I referred to those honourable Members who moved amendments as people who moved amendments.

The House may recollect that I had tried to anticipate the amendments that were being moved and answer those amendments in advance. The bulk of them, at any rate so far as the amendments moved by my honourable Friends, Mr. Kamath, Mr. Muniswami Pillai, and Prof. Shibban Lal Saksena, I have attempted to answer in advance. I think that so far as the wording of clause (2) as it now stands is concerned, It is so clear that no mischief can possibly arise out of the wording appearing at the end of that clause, namely, that such modifications and adaptations shall not be questioned in a court of law. Ample pro vision has been made by the opening words which specifically state that the that the adaptation should be made only for the purpose of bringing the provisions of the law in force in the territory of India into accord with the provisions of this Constitution.

It is only this group of amendments which were tabled by my honourable Friend, Pandit Thakur Das Bhargava which probably require some reply. In his amendment

No. 188, in which he seeks to substitute clause (2) by another clause, he has failed to understand the purport of clause (2). The purport of clause (2) is that in so far as it is possible, the machinery at the disposal of the Government would prepare the necessary amount of material for adaptations to be made which will, in all probability, be published as an Order by the Pressident immediately after the Constitution is promulgated. That would be necessary because there will be a number of details, minor in some cases, of a different character in certain other cases which will have to be dealt with in order to bring the laws in force in tune with the provisions of the Constitution.

In the amendment proposed by my honourable Friend, he suggests that a committee should be appointed and that that committee should report within a period of eight months, and that action should be taken later on. What is to happen in the period between the time of the promulgation of the Constitution and the eight months that will naturally elapse until the committee reports? It is obviously impossible that any such thing could possibly be done, if actually the laws that are in force are to be brought in tune with the provisions of this Constitution. As I said in my remarks at the time of moving these amendments, there is nothing to prevent the Government, to prevent the Parliament, from passing a resolution, or prevent the Government from taking the initiative in this matter and appointing a Committee to review the law structure in this country and modernise it and bring it in tune with the principles that are adumbrated in this Constitution. I think my honourable Friend, Pandit Thakur Das Bhargava must wait until the new Constitution is promulgated and either by means of a Bill or by means of a Resolution get the Government to move in the matter, on the lines that he has suggested.

So far as his amendment to clause (3) is concerned, the amendment is such that it takes away the guarantee that is provided in clause (3) of the amendment moved by me. What he has done is merely he has sought to incorporate in his suggested amendment to clause (3) what he had originally thought of moving as a separate article 307-A. The idea that he had when he framed the amendment that he wanted to move as a new article 307-A has been incorporated in clause (3), namely, that something must be done in regard to the fundamental rights, and the question of relating the laws of this country in tune with the fundamental rights.

I therefore feel that my honourable Friend, Pandit Thakur Das Bhargava who is known to this House as a lawyer of considerable eminence and who puts in a lot of hard work in helping this Constitution to be framed has, in this particular instance, allowed his enthusiasm to outrun his usual discretion and tabled an amendment which does not fit in with the particular amendment before the House. It may fit into something else; it may go in as an independent proposition, but it does not fit in this particular amendment. Because, his amendment No. 188, does not fulfil the purpose of clause (2) of the amendment that I have proposed and his amendment No. 189 does not fulfil the purpose of clause (3), that.....

**Pandit Thakur Das Bhargava:** So far as the amendment relating to the proposed clause (3) is concerned, it is a separate thing altogether. It is not an amendment to clause (2).

**Shri T. T. Krishnamachari:** Actually, his amendment No. 189 says---

"That in amendment No.2 for the proposed clause (3) the following be substituted."

I feel that it is not a substitution because it bears no relation whatever to the provisions of clause (3) as I have moved it, and I think there is no mystery about it because the wording of clause (3) is very clear. The wording seeks to empower the President to make adaptations only for a period of two years.

**Pandit Thakur Das Bhargaya:** It is an amendment to the original article.

**Shri T. T. Krishnamachari:** Then I stand corrected. If my honourable Friend has brought an amendment at 9-35 A.M. today which is something apart from the amendment, which is on the Order Paper, I am afraid that I must withdraw all the remarks that I have made and merely plead that since the thing bears no relation to the amendment that I have moved, I am unable to furnish a reply and the proper authority probably to give a reply will have to be the Honourable Minister for Law of the Government of India or the Law Minister of the Government of India as it is to be after the 26th January. I feel that the article 307 as amended by the amendments proposed by me fulfils a definite purpose which has been amply justified by the learned arguments furnished by my honourable Friend and colleague, Mr. Alladi Krishnaswami Ayyar, and the House would therefore do well to accept his argument in support of this proposal and I would therefore request the House to accept my amendment and pass article 307 as amended by my amendment.

**Shri Amiyo Kumar Ghosh** (Bihar: General): I want a clarification of what is really intended to be meant by the words--

" and any such adaptation or modification shall not be questioned in any court of law."

Because if the President amends or modifies any existing law in accordance with what we have passed in the Constitution then his actions ire *intra vires* and no question of raising the matter in any court of law arises. But if the President does anything which is against the spirit of clause (2), *i.e.*, if he amends, modifies or repeals any existing law which is it variance with or repugnant to the provisions laid down in the Constitution then his action is *ultra vires* and certainly it can be questioned in a court of law. What class of cases are really contemplated to come within the limitation provided in the last two lines. Clearly, the cases in which the President acts precisely within his power conferred by this article do not come under those two lines mentioned above so there is only one class of cases that are likely to be governed by the said lines are in Which the President acts in contravention to what is laid down in this article because you have not laid down any procedure or rules for the President to act in matters of amending or modifying the existing laws and so no question of' irregular exercise of Power arises.

**Shri T. T. Krishnamachari:** My honourable friend his not followed perhaps my imperfect explanation of the provisions. I wanted him to consider the opening words. The opening words justify the interference by a court to see whether the adaptation has been made in accordance with the opening words *i.e.*, for the purpose of bringing the provisions of any law in force. If it is felt by a Court that it is not for that purpose, undoubtedly the adaptation will be *ultra vires.* If on the other hand it is a matter of merely a question of a different point of view in regard to wording of the adaptation, *etc.,* then it certainly is a matter which we feel ought not to be questioned in any court of law. In any event nothing would prevent any court from going into the question

whether the adaptation was for the purpose intended by this clause *viz.*, for the purpose of bringing the provisions of any law in force. We cannot really state in a Constitution what particular matter is to be *ultra Vires or intra vires*. The purpose has been clearly indicated and I do not think we can go beyond the words contained in this clause.

**Shri Amiyo Kumar Ghosh:** If the cases of irregular exercise of jurisdiction and the cases in which the President's action is in accordance with this provision do not come under these two last lines, then certainly there is always a danger of interpreting it so as to include the cases in which the President acts without jurisdiction.

**Mr. President:** I will now put the amendments to vote.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal' be inserted. "

The amendment was negatived.

**Mr. President:** No. 134.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

The amendment was negatived.

**Mr. President:** No. 135.

**Shri V. 1. Muniswamy Pillay:** Sir, I would ask for leave to withdraw my amendment.

The Amendment was by leave of the Assembly withdrawn.

**Mr. President:** 136. 1 will put the two parts separately.

The question is:

"That in amendment No. 2 of List I in the proposed clause (3) of article 307-

"(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution the words 'after the constitution of the Ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution' be substituted.' "

The amendment was negatived.

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

"That in sub-clause (b), the words 'or other competent authority' be deleted."

The amendment was negatived.

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

"That in amendment No. 2 of List I in sub-clause (b) of the proposed clause (3) of article 307 for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted.

The amendment was negatived.

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

"That in amendment No. 2 of List I in the proposed clause (2) of article 307, the word 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

The amendment was negatived.

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

"That in amendment No.2 of List I (Second Week), the proposed clause (2) and (3) of article 307 be deleted."

The amendment was negatived.

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

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:--

> "The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts."

The amendment was negatived.

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

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:--

> (3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this constitution into accord with the provisions of this Constitution, the President

shall, after the commencement of this constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provision of this Constitution. The Government shall, on the receipt of the report forthwith take steps to avoid repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental right shall cease to be in force after one year of the commencement of this Constitution if they are not avoided, repealed or amended earlier."

The amendment was negatived

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

"That in amendment No.2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `made and any such adaptation or modification shall not be questioned in any court of law' the word `made' be substituted."

The amendment was negatived.

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

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `and any such adaptation or modification shall not be questioned in any court of law' the words `except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

The amendment was negatived.

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

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words `except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

The amendment was negatived.

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

"That for clause (2) of article 307, the following clauses be substituted:--

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed-

(a) to empower the President to make any adaption or modification of any law after the expiration of two years from the commencement of this Constitution; or

(b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said

clause."

3. That in Explanation I to article 307, the words ` but shall not include an Ordnance promulgated under Section 88 of the Government of India Act, 1935' be added at the end.

4. That in Explanation 11 to article 307, for the word `has' the word `had' be substituted and after the words `continue to have' the word `such' be inserted.

5. That for Explanation III to article 307, the following be substituted:--

*Explanation III.*-- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force."

The amendment was adopted.

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

"That article 307, as amended, stand part of the Constitution."

The motion was adopted.

Article 307, as amended, was added to the Constitution.

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## Article 308

**Mr. President:** We go to article 308. Dr. Ambedkar.

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

"That for clause (3) of article 308 the following clause be substituted:--

'(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions for, or in respect of, any judgment, decree or order of any court within the territory of India in so afar as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect us if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this constitution.'"

Also:

"That after clause(3) of article 308, the following new clause be inserted:-

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.' "

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed- section 4--in case they are

not finally disposed of before the 26th January, assuming that to be the date on which this Constitution comes into existence. The important words are--"to dispose of the appeal". There is no power to entertain an appeal. And the other important words are--"such jurisdiction authorised by law", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction no more jurisdiction than what we have conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed or part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the India States there are Privy Councils which supervise the judgments of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Courts in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having a definition of Privy Council in our article 306 so as to cover the different nomenclature and variations of these institutions.

**Mr. President:** Amendments Nos. 138 and 139- Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad:** Mr. President, Sir, I need not move No. 138 because that means opposition to this clause. With regard to No. 139, it is an amendment of a verbal nature and I shall leave it to the discretion of the Drafting committee.

With regard to clause (3), empowering His Majesty in Council to dispose of appeals and petitions, even after the 26th January, 1950--the date when the Constitution comes into operation--it seem to be some to be somewhat startling. Only the other day we passed an Act in this House transferring all appeals and petitions pending before the Judicial Committee to the Federal Court. There were, however, however certain exceptions. One exception was petition for leave. It was provided that if there was any petition for leave, fixed for hearing during the Michaelmas term which begins form today, in the Privy Council, they may merely grant or refuse leave. So the effect of this was that if the Privy Council did not give any leave, the matter was absolutely concluded and final. But if any leave was given, the Privy Council would not be entitled to hear it further. The further hearing will be held in the Federal Court and later on in the Supreme Court when the Federal Court is converted into the Supreme Court. Then there are certain other matters which may also be taken into consideration by the

Privy Council, namely, appeals which have been heard, in which the Judicial Committee has pronounced its judgment, but its final] acceptance by His Majesty has not yet been communicated. In those cases His Majesty would be entitled to accept the recommendations of the Privy Council even after that date.

At the time when the Act was being considered in the House, we were given to understand that there was no appeal which would be pending before the Privy Council from India. The only pending matters would be applications for leave, and if the applications are granted, then of course, the matter will be further heard in India. The only petition pending relates to Godse appeals. No other petition is pending. With regard to appeals, there would be nothing pending, except the acceptance of the recommendations of the Judicial Committee by His Majesty himself. But this acceptance by His Majesty is automatic and is never delayed. So there is no need, for clause (C) which is expressed in a needlessly wide form. This House has repeatedly asserted that all appeals must henceforth be heard by the Federal Court, but still this old idea seems to linger on in one shape or other, and clause (3) perpetuates that old idea which has been definitely given up by the House. During the arguments Dr. Ambedkar has referred to Section 4 of the recently passed Act. Section 4 of the recently passed Act runs thus:

> "Nothing contained in Section 2 shall affect the jurisdiction of His Majesty in Council to dispose of--
>
> (a) any Indian appeal or petition on which the Judicial Committee of the Privy Council has before the appointed date delivered judgement, or as the case may be, reported to His Majesty, but which has not been determined by an order in Council of His Majesty;

The appointed day is today, *i.e.*, the 10th October. If any Judgement has been passed before today, *i.e.*, up to yesterday, but His Majesty has not signified his assent thereto the assent may be given. Then we come to clause (b):

> "any Indian appeal or petition on which the Judicial Committee has, after hearing he parties, reserved judgment or order,"

and (c).

> "any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee."

So, if any appeal is pending for the present term in the Privy Council today this will be disposed of unless it is directed to be heard in India, but by virtue of the Act we have passed, the Privy Council will be bound to direct the transfer of these appeals to India. But it is well known that no Indian matters, other than the Godse matter, has been entered in the list. Then we come to clause (d).

> "any Indian petition which has been lodged before the appointed day in the Registry of the Privy Council."

That is, petition for leave and other things, will also be merely heard, and special leave may be given or refused. If it is refused, there is an end of the matter. If it is allowed, then also there is an end of the matter, because the matter returns to India.

I submit, therefore, that clause (3) is absolutely too wide and embraces imaginary cases which do not exist. We should have a precise knowledge of what cases are pending before their Lordships of the Privy Council, flow many there are, how many would be automatically transferred after the appointed day, the 10 October, that is, today and if any case would remain. We should have a clear picture of what matters there may possibly be which may be pending before them and which may be disposed of under clause (3) even after the 26th January, 1950, the provisional date on which this Constitution will come into operation. We should really have a clear picture of the existing state of affairs instead of enacting a broad section dealing with all sorts of imaginary and hypothetical cases. I think after the final Independence of India on the 26th January, for these powers to linger in the Judicial Committee would be somewhat extraordinary in view of the Constitution that we have so far adopted and in view of our shedding our Dominion status, and acquiring an Independent status. In these circumstances, Sir, I submit that clause (3) should be deleted and not accepted. The matter should be clearly analysed and the House should be informed as to what are the matters which really might fall within the purview of clause (3). I therefore oppose clause (3) until the matter is clarified.

**Mr. President:** Dr. Deshmukh:

**Dr. P. S. Deshmukh:** I am not moving my amendment, Sir.

**Mr. President:** Mr. Shibban Lal Saksena's amendment is for deleting it. You can speak on it after the other amendments have been moved.

Mr. Mahavir Tyagi.

**Shri Mahavir Tyagi :** I am not moving my amendment, Sir.

**Mr. President:** Mr. Shibban Lal Saksena, you can speak on it.

**Prof. Sibban Lal Saksena:** Sir, I beg to move:

"That in amendments, Nos. 6 and 7 of List I (Second Week), the proposed clause (3) be deleted, and the proposed new clause 3(a) be re-numbered as (3)."

**Mr. President:** It is not necessary to move it. You can speak on it.

**Prof. Shibban Lal Saksena:** This amendment is for the deletion of a clause only, not of an article. Sir, my objection to this clause (3) is that after the 26th January, I do not want that His Majesty in Council should have anything to do with this country. We shall become a completely free Republic on that day and the provision of this article which contemplates that His Majesty in Council shall be authorised to hear appeals pending on that day is, I think, derogatory to our independence. Objection may be raised that some appeals may be pending and that the litigants concerned will be put to great difficulty, but I want to draw the attention of this House to the footnote on page 153 of the Draft Constitution. In fact, the Drafting Committee themselves had originally under clause (3) of article 308 contemplated that the jurisdiction of the Privy Council shall cease on that date.

> "On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions

> from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court."

So in the original article they had themselves contemplated that the jurisdiction of the Privy Council shall cease on the date on which this Constitution will come into force. The footnote says--

> "The Committee thinks that all appeals and other proceedings pending before His Majesty in Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty in Council at the time of the commencement of the Constitution and any difficulty is experienced with regard to their transfer to, or disposal by the Supreme Court, the President may pass necessary orders under the 'removal of difficulties' (article 313)."

This is what the Drafting Committee have said in the footnote to the original article 308. I do not see that in view of the fact that we have passed article 313, there is any need for this new clause (3) which contemplates that the jurisdiction of the Privy Council may continue even after the 26th January when we will be a free and independent country. I think that we should not disfigure the Constitution by providing for the intervention of the Privy Council even after we have attained full independence. I think there has been some mistake here, because, article 313 is quite sufficient and there is no need for this clause (3) in article 308. Our Constitution should not be disfigured by this clause.

**Mr. President:** Dr. Ambedkar, would you like to say anything ?

**The Honourable Dr. B. R. Ambedkar:** Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is a more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments do seem to have forgotten the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the footnote to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constitution itself.

**Mr. President:** Then I will put the amendments to vote. There is only one moved by Prof. Shibban Lal Saksena No. 177. The question is :

"That in amendment Nos. 6 and 7 of List I (Second Week), the proposed clause (3) deleted and the proposed new clause (3a) be renumbered as (3)."

The amendment was negatived.

**Mr. President :** Then I put the amendment moved by Dr. Ambedkar. The question is:

"That for clause (3) of article 308, the following clause be substituted:-

'(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of; any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made oil any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.'"

The amendment was adopted.

**Mr. President:** Then I put amendment No. 7. The question is:

"That after clause (3) of article 308, the following new clause be inserted:-

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court."

The amendment was adopted.

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

"That article 308, as amended stand part of the Constitution.'

The motion was adopted.

Article 308, as amended, was added to the Constitution.

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## Article 310

**Honourable Dr. B. R. Ambedkar :** Sir, I move:--

"That for article 310, the following be substituted:--

310.(1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall. unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression 'judge' does not include an acting judge or an additional judge."

this article is merely what we used to call a "carry over article" merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

**Mr. President :** Amendment No. 88.

**Mr. Naziruddin Ahmad:** I am not moving 88. I shall move 141.

**Shri R. K. Sidhva:** Mr. President, I move :

"That in amendment No. 87 above, in clause (1) of the proposed article 310, after the word and figure 'article 197' the words 'and Second Schedule' be inserted."

My amendment is a merely verbal one. My object in moving it is this. Reference has been made to article 197 in connection with the salary of the High Court Judges. The salary of the High Court Judges features in Second Schedule and I thought it advisable to mention it along with the article 197. Schedule is an important part of the Constitution, particularly in reference to this article wherein the salaries, allowances and other subjects relating to pensions will be mentioned. Therefore, in order to make it quite clear I have moved that the words "and Second Schedule" may be added to the words "article 197".

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

"That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article, 310, for the words 'as are provided for under article 197 of this Constitution in respect of the judges of such High Court' the words as they were entitled to immediately before the said commencement' be substituted."

Clause (1) of this article provides that the Judges of a High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

**The Honourable Dr. B. R. Ambedkar :** May I draw attention to the fact that this Amendment anticipates Schedule II ? This matter is to be dealt with under Schedule II and the proper time would be when Schedule II is before the House.

**Mr. Naziruddin Ahmad:** I have carefully considered that also, but the matter would not be fully covered. There the scale of salary of the Judges after the commencement of the Constitution will be provided, but here the matter is entirely different. My amendment says that the pay which they were receiving immediately before the commencement of this Constitution, *i.e.* on the 25th of January 1950,--they will receive the same pay and enjoy the same conditions from 26th January also. The Schedule deals with the new scale of pay. That is an entirely different matter.

I submit there is no need for clause (1). The only need for this clause so far as I can see, is to justify the reduction of the pay of the existing Judges in an indirect manner. In fact, on the 26th of January, it is clear that even apart from this clause (1) of article 310, those Judges will continue to be the Judges of the High Court because the same High Court continues. We have not provided for similar continuance in the case of other public servants. Every one who is a public servant on the 25th of January will certainly continue to be the same servant on the 26th of January unless he is meanwhile dismissed or has resigned or is discharged or is dead. The continuance of his service as a Judge of a High Court from the 25th to the 26th January is automatic and no authority was needed as it is attempted to be given under clause (1). I submit that clause (1) from that point of view is absolutely unnecessary. But it introduces another idea, namely, it is an indirect attempt to reduce the pay of the existing Judges. In fact, so far as the existing Judges are concerned, they have a fixed scale of pay under existing conditions. Even if there was not this clause, they would have been receiving the same pay on and from the 26th January. The real purpose of the clause is to reduce the pay of the existing Judges. I submit that their pay should not be reduced, because they are receiving a particular pay on a contract on which they were appointed. Judges of the High Court are appointed from very good lawyers who must be supposed to have been earning a very decent incomes. There were only two conditions attached to the appointment of the High Court Judges, namely, they were to continue in the usual course till they attained the age of sixty, and secondly, they would not be allowed thereafter to practise in the High Court in which they were Judges and courts subordinate thereto. But today we are enacting conditions that their pay would be reduced and, further, on the attainment of the sixtieth year every High Court Judge would be precluded from practising not only in the High Court to which he is attached, or the subordinate Courts thereto, but in all other Courts, even outside the purview of that High Court, namely in the High Courts of other States and also in the Supreme Court. This would be breach of contract with them in two respects.

**Dr. Bakhshi Tek Chand** (East Punjab: General): May I make a suggestion ? Will it not be proper to consider this matter when the Second Schedule is being considered ? Amendment No. 11 to the Second Schedule (which stands in the name of Dr. Ambedkar) covers the case of salaries of the Judges who were appointed on or before the 31st day of October 1948. Instead of dealing with this matter piecemeal, will it not be more convenient to deal with this, amendment when the Second Schedule is taken up? As will be seen from amendment No. 11, it does not deal merely with the salaries of Judges who will be appointed under the New Constitution but also has reference to the salary of judges who had been appointed before that date and will be working in the High Courts on the date of the commencement of this Constitution. If this amendment of Mr. Naziruddin Ahmad is lost, this might affect the amendments to the Schedule.

**Mr. Naziruddin Ahmad:** If it is proposed to consider this amendment along with amendments to Schedule IV I have no objection. But this is the proper time to raise the point. As to the contention that if this amendment is lost, the other amendment will also be considered as lost. I do not agree. This is an amendment to save the pay of existing Judges, irrespective of the fact that they were appointed before a certain date. But the loss of this amendment will not mean the loss of the other amendment. As to the suggestion of Dr. Bakhshi Tek Chand that I should move this as an amendment to amendment No. 11, I await your instructions in this matter.

**Mr. President:** I do not think that the passing of this clause as it is win in any way

affect the Schedule. It will not come in the way of the Schedule. In any case, I shall not rule that out on that ground.

**Mr. Naziruddin Ahmad:** That amendment is that the pay of the Judges who were appointed before a certain date would be saved. But my point was that the pay of Judges as they were on the 25th of January 1950 should be saved. There is a slight difference between this and that amendment of Dr. Ambedkar. I submit that the amendment of Dr. Ambedkar has been sent in after my amendment was circulated. It is really an attempt to remedy the situation to a certain extent, but it does not go far enough, to the extent I wish it to go. Sir, I shall certainly abide by your ruling.

**Mr. President :** If you like you may table another amendment to cover the point which you have now raised. Does anyone wish to say anything about this ?

**The Honourable Dr. B. R. Ambedkar :** There is no question of principle here.

**Mr. President :** There is one amendment moved by Mr. Sidhva; that also is of a verbal character. Shall I put it to vote ?

**Shri R. K. Sidhva:** I leave it to the Drafting Committee.

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

"That for article 310. the following be substituted;-

| | |
|---|---|
| Provisions as to Judges of High Courts. | '310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judgesof a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become ,on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to Such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court. |

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, 'unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the .proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression 'judge' does not include an acting judge or an additional Judge."'

The motion was adopted.

Article 310 was added to the Constitution.

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**Article 311**

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

"That for article 31 1, the following article be substituted:-

| | |
|---|---|
| Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof. | 311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the firstsession under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament. |

*Explanation.*--For the purposes of this clause, the Constituent Assembly of the Dominion India includes-

(i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and

(ii) the members chosen to fill casual vacancies in the said Assembly.

(2)The President may by rules provide for--

(a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,

(b) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and

(c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a member of a House of the Legislature of a Governor's Province or an Indian State, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article.

Sir, I move:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 31 1, the following be substituted:--

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a minister for any such State, then as from the date of commencement of this Constitution the scat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy'."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 31 1, the following new clause be inserted:-

'(3a) Not withstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy

has so occurred'."

The object of this clause is that when constituting a provisional Parliament, It is proposed to dispense with what is called double membership.

The other provisions arc merely ancillary.

**Shri H. V. Kamath:** Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, after the word 'Until' the words 'such time' be inserted. '

Sir, I move:

"That in amendment No. 9 of List I (Second Week). in clause (1) of the proposed article 311, the words 'the body functioning as' be deleted."

Sir, I move :

"That in amendment No. 9 of List I (Second Week). in the proposed article 311, for the words 'Constituent Assembly of the Dominion of India' wherever they occur, the words Constituent Assembly of India' be substituted,"

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words 'immediately before the commencement of this Constitution shall' the words 'shall itself' be substituted."

I shall not move amendment No. 147.

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words which shall as far as practicable, conform to those ,adopted by the Constituent Assembly' be inserted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States' be inserted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words 'or Deputy Speaker' be deleted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words 'or, as the case may be the Deputy Speaker' be deleted."

If the amendments to clause (1), which appear in List 3, Second Week, are

acceptable to the House, then this clause would read as follows:

"Until such time as both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution', the Constituent Assembly of India shall itself exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

The first amendment is a purely verbal one, in that it introduces a change in the phraseology so as to be more in conformity with constitutional language. I feel it is better to say *"until such time* as both Houses are summoned" instead of saying "until". However, I leave that to the collective wisdom of the Drafting Committee to deal with at the proper stage.

With regard to amendment No. 143, this is partly substantial and partly verbal. I fail to see why this Assembly should be described in this cumbrous fashion--"the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution....." The draft of this article as it originally stood was much simpler. In regard to the words "the Constituent Assembly of the Dominion of India", I feel that even here the word "Dominion" could be usefully and rightly omitted. If my honourable Colleagues in this House would turn for a moment to the cover of this book--The Draft Constitution--they will see that the Assembly is described as the "Constituent Assembly *of India"* and not of the "Dominion of India". I do not know why some honourable Members are fond of using this word 'Dominion' in season and out of season. Where it is of course necessary in legislation it may be used. I have no quarrel with that. Where it can be omitted without detriment to the meaning of a clause or article, I fail to see why we should go on harping on this word Dominion, Dominion, Dominion. The Constituent Assembly, really speaking is that of a free country. Unfortunately or accidentally, circumstances have so conspired in our country that we had to convene a Constituent Assembly before India became completely free. Historically speaking it is only when a country his shaken itself free of foreign yoke that a Constituent Assembly is convened. We have ourselves in the rules made in this House--rules of procedure and standing orders-referred to the Constituent Assembly of India, and the very first rule says: "In these rules, unless the context otherwise requires, the Assembly means the Constituent Assembly *of India"*. So there is no justification or necessity for using the word "dominion" in this context and it may be very reasonably and wisely dropped entirely without detriment to the meaning that the clause is intended to convey.

Then, Sir, the next objection is to the cumbrous verbiage that appears in this clause : "body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution". I do not know why this has been introduced, changing the draft as it stood originally. If my honourable Colleagues turn to article 311, clause (1) as it stood originally, they will see that its description is "the Constituent Assembly of the Dominion of India". I have already stated that the word 'Dominion' should be dropped. Now, I say that this could be more simply described as the Constituent Assembly of India. If the Drafting Committee feels that just because a little more than a hundred seats are going to be declared vacant, this change in the description of the body is necessary, I feel that they are labouring under a misapprehension. So long as the body is not dissolved, it continues to be the Constituent Assembly of India. Even if a very large majority of the members resign from the Assembly and whether their places are filled up or not, it is the same old Assembly which has always been called the Constituent Assembly of India. So long as it is not dissolved, it continues to be called in constitutional parlance the Constituent Assembly of India. Therefore, if there is any misapprehension that on the score of the

resignation of more than one hundred members, this body must be described in this fashion and not simply as the Constituent Assembly of India, that misapprehension is not at all justified, and we will not be describing the body wrongly if we refer to it merely as the Constituent Assembly of India. Whether a hundred members resign or even more do so, until the commencement of the Constitution, the body continues to be called the Constituent Assembly of India. Therefore by means of amendments 143, 144, and 145 which go together, I seek to simplify the wording and the expression employed in this article in clause (1), so that we will provide for the Constituent Assembly of India itself exercising all the powers and performing all the duties conferred by the provisions of this Constitution on Parliament. Once the Constitution comes into force, then, of course, under tile Constitution, this Assembly will be called the provisional Parliament. Till then, it is not necessary to say "the body functioning as such and such". It is enough for our purposes to say "the Constituent Assembly of India". I hope those members of the Drafting Committee who are fond of using the word "dominion". and of using more words than are necessary for our purpose, will see the force of these amendments of mine and simplify the wording of this clause.

Now, I come to clause (2). I do not propose to move amendment No. 147. 1 shall move only amendment 148:

'That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words 'which shall, as far as practicable, conform to those adopted by the Constituent Assembly' be inserted."

Clause (2) refers to certain rules which the President may make for representation in this provisional Parliament, that is to say, when this Assembly is converted into or reconstituted into our provisional Parliament. This clause provides for the representation in the provisional Parliament, of those States or other territories of India so far not represented. The House is aware that the representative from Bhopal has not yet taken his seat in this Assembly though the firman has gone forth that he should come here as soon as possible. We hope that he or she will be with us during the Third Reading of the Constitution. Hyderabad is still not represented. We do not know whether the steps that have far been taken will fructify so as to enable us to welcome our friends from Hyderabad in this Assembly during the Third Reading. Of course, when this Assembly resolves itself or converts itself into the provisional Parliament, I am sure, the President by Rules will provide for the representation of Hyderabad also in this Assembly. So also, there is the Union of States called Vindhya Pradesh; still unrepresented in this Assembly. During the last session, you, Sir, were good enough to tell us that the Rajpramukh of Vindhya Pradesh and his Chief Minister or Regional Commissioner have been asked by the Secretariat of the Constituent Assembly to take necessary steps for the proper representation of Vindhya Pradesh in this Assembly. I do not know what progress that course of action has made so far as Vindhya Pradesh is concerned. We hope that they will be with us during the next session, the final session of this Assembly. At any rate, I am sure that they will take their places here when the provisional Parliament meets next year. So far, Sir, as regards the States not represented.

Now, this clause (2) provides for rule-making by the President. The House is very well aware that this Assembly has adopted certain rules with regard to the representation of States and other Units in this Assembly. refer to rule 51 of the Rules of this Assembly which we have adopted, I believe, some time last year. Under Rule 51, we have also adopted a Schedule. That Schedule provides or lays down certain rules in regard to representation of States in this Assembly. My amendment No. 148

refers to the rules made by us and incorporated in this little booklet which has been supplied to all Members by the Secretariat,--the Rules of Procedure and Standing Orders. There are certain rules which have been made, as I said, for the representation of States in this Assembly. My amendment seeks to lay down that as far as possible, as far as practicable, the President's rules shall conform to the rules that this Assembly has already adopted during the last year. It may be, certain circumstances may arise in certain States which may stand in the way of the President conforming to the rules already adopted. That is why I have introduced the phrase 'as far as practicable!' I hope the Dr. Ambedkar the Drafting Committee and my honourable Colleagues in this House will see their way to accept this amendment because, after all, it pertains to a matter which has already been decided by the House, and I see no reason why, where it is practicable, the President should depart from the Rules which this Assembly has already adopted.

I now come to No. 155 which is more or less a verbal amendment. I think the Drafting Committee has slightly overlooked this part of the subject. In clause (3) reference is made to a Governor's province or in Indian State. The House is aware that we have not merely Indian States but also what are called Union of States. I seek by this amendment of mine to introduce this phrase also so that it would read as follows:-

"Legislature of a Governor's province or Indian State or Union of States."

Madhyabharat and Rajasthan are Unions of States, not merely Indian States. I feel that to be quite correct we must have in addition to 'Indian State' this phrase also 'the Union of States' as well.

Then as regards the draft which reached us this morning of this clause (3) I had no time to send in amendments, but I would like to draw attention of the Drafting Committee and the House to the point I raised the day before yesterday in connection with the description of Ministers. In an article which we adopted two days ago Ministers were referred to as Ministers for the Dominion of India. I thought it was an inaccurate and incorrect expression and following that very argument I feel it would be more correct to describe the Minister here as 'Minister of any Indian State' not 'for Indian State.'

Lastly, in the same clause I would suggest a very minor verbal amendment in the last but one line. The draft reads thus--

"Unless he has ceased to be a member of that Assembly."

I think it would be sufficient to say 'the Assembly' instead of 'that Assembly'. That is purely verbal, and I leave it to the good sense of the Drafting Committee.

Then I come to the last amendments 161 and 162. If these were to be accepted by the House, clause (4) will read as follows:--

"Any person holding office immediately before the commencement of this Constitution as Speaker of the Constituent Assembly when functioning as Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of the Provisional Parliament functioning under clause(1) of this article."

I seek to delete the reference to Deputy Speaker. I hope, Sir, that it will not be taken in a personal light or as a personal reflection upon any member of this House.

The other day when Dr. Ambedkar introduced new articles with regard to the State Legislatures, one of the clauses of those articles referred to only the Speaker of the Legislature. In that connection I had occasion to point out the omission of the Deputy Speaker. That article referred to merely the Speaker of the Assembly and the Chairman of the Upper House. I then pointed out the absence of any reference to Deputy Speaker of the Lower House and the Deputy Chairman of the Upper House though they are definitely mentioned in the Constitution in the Chapter relating to the State Legislature. Apart from that, even today in several provinces we have got a Deputy Speaker. That is why I sought to insert a reference to Deputy Speaker as well, but Dr. Ambedkar, perched on his high pedestal or in his ivory tower or perhaps because he had a closed mind on the subject--I do not know why--Dr. Ambedkar did not care even to reply to the point raised. But today I find that he has accepted the point raised by me and on the principle of better late than never, I would have gladly agreed to that but the difficulty today is that you have already passed an article two days ago where so far as the interim State Legislatures are concerned only the Speaker is mentioned but not the Deputy Speaker, and to-day an article regarding Parliament comes up and we have reference there in to both the Speaker and Deputy Speaker. If Dr. Ambedkar and the Drafting Committee undertake to revise the article regarding the transitional State Legislatures so as to mention the Deputy Speaker as well and for the continuance of the Deputy Speaker and the Deputy Chairman for the transitional period, then of course consistency demands that this article also should be passed as it is. But, Dr. Ambedkar is not always very particular about consistency, and he may say that so far as Parliament is concerned he would like to have the Deputy Speaker mentioned because perhaps lie is one of us. But so far as the State Legislature is concerned, 'out of sight out of mind' on that basis he may not be very particular about mentioning the Deputy Speaker of the State Legislature. Any how let us, as far as possible be consistent in whatever we do. If we have Deputy Speaker mentioned here let us mention him in the State Legislature as well and if we do not do so then delete him from this article also. Let us for God's sake, or at least for this House's sake-let us be consistent in these little things. We may not be, so in the bigger things of life. There is no difficulty in being consistent so far as little things are concerned, and therefore I hope that these amendments of mine will commend themselves to the House including Dr. Ambedkar.

The Assembly then adjourned till Ten of the clock on Tuesday, the 11th October 1949.

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* [Translation of Hindustani speech.]*

** "124. That 'in amendment No. 1 of List I (Second Week), in the proposed new article 283A, the word 'expressly' be deleted.

125. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, in line 9, for the word 'and' the word 'or' be substituted.

126. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'which he is from time to time serving' the words 'as the case may be' be substituted.

127. That in amendment No. 1 of List I (Second week), in the proposed new article 283A, for the words 'the same conditions' the word 'conditions' be substituted.

128. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the word 'remuneration' the word 'salary' be substituted.

129. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'and the same rights' the words 'and rules' be substituted.

130. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as respects disciplinary matters of rights' the words 'or conduct and discipline' be substituted.

131. That in amendment No. 1 of List I (Second Week), in the proposed now article 283A, for the words 'as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement' the words 'as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement' be substituted."

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

***Tuesday, the 11th October 1949***

**----------**

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.

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## CONDOLENCE ON THE DEATH OF MR. AZIZ AHMAD KHAN

**Mr. President:** It is with great regret that I have to mention to the House the death of one of our Members--Mr. Aziz Ahmad Khan, of Bareilly. He was a Member of the U. P. Legislative Assembly for a long time, and then he came to this House. He had been ailing for some time and he expired a few days ago. Honourable Members will show their respect to his memory by rising in their places and permit me to convey to his family our deep sympathy.

(The Members stood up in silence.)

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## DRAFT CONSTITUTION- (Contd.)

### Article 311-*(Contd.)*

**Mr. President:** We shall now proceed with the consideration of the article which we were considering yesterday--article 311. Mr. Naziruddin Ahmad can move his amendment No. 146.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. President, Sir, I wish to move my amendment No. 146 .

"That in amendment No. 9 of List I (Second Week), in the Explanation to clause (1) of the proposed article 311,--

> (i) for the words 'the Constituent Assembly' the words 'membership of the Constituent Assembly' be substituted;
>
> (ii) for the word 'includes' the words 'shall include' be substituted."

With regard to my first amendment, it seems to be necessary on a Consideration of the context. The expression occurs in the Explanation. The Explanation says that "For the purpose of this clause, the Constituent Assembly of the Dominion of India includes the members from the States" and other things. The objection to which the context is open to is this. It is said that the "Constituent Assembly" includes certain "Members". I think that a Constituent Assembly is an abstract term. It is a mere legal conception.

The Constituent Assembly cannot include Members, but rather the "membership to the Constituent Assembly" shall consist of members. I will leave the matter to the Drafting Committee for consideration.

With regard to the second part of the amendment, it is also of a drafting nature, and consequential upon the first.

Speaking generally on the article, I agree with Mr. Kamath that the simple term "Constituent Assembly" has been expressed in a very verbose and round about manner, namely, "the body functioning as the Constituent Assembly of the Dominion of India immediately preceding before the commencement of this Constitution". For this long, expression, the mere term "Constituent Assembly" would have been enough. That is a well-defined and well understated expression and was brought into being by the Independence of India Act, and did not require further amplifications. But I do not quite agree with Mr. Kamath when he says that this provision is totally unnecessary. There is a provision in the Independence of India Act which says that the powers laid down under the Government of India Act as modified, shall be exercised by the Constituent Assembly, apart from its duty of framing the Constitution. That power is confined to carrying on all the duties under the Government of India Act as adapted by the Governor-General. But this article 311 empowers the Constituent Assembly. to carry on the powers "under this Constitution" as distinguished from being under the Government of India Act as so adapted. The Government of India Act and this Constitution are essentially different Acts, and an article like this is absolutely necessary in order to enable the present Constituent Assembly to function and do the work under "this Constitution" until the new Houses of Parliament are duly constituted after a general election.

There is the other amendment of mine, the one relating to clause (3). That is No. 158.

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words 'within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly' be added at the end."

This also seems to be necessary under the altered circumstances in which we would be placed after the Constitution is passed. Clause (3) says that those who were members of the Provincial Assemblies as well as of the Constituent Assembly shall cease to be members of the Constituent Assembly. And what is important, every such vacancy shall be deemed to be a casual vacancy. This expression--casual vacancy--has not been defined anywhere in this Constitution. The only reference to casual vacancy appears in the Rules of Procedure and Standing Orders of the Constituent Assembly--Rule 5, sub-rule (1). So far as the Rules of Business and Procedure and Conduct of Business in the Legislative side of the Constituent Assembly is concerned, so far as I can see, there is nothing like casual vacancy mentioned in those rules. They are mentioned, I believe, exclusively in our rules of the Constitution, section. If we say that they should be regarded as casual vacancies, we should really explain the expression 'Casual vacancy' with reference to the rules. Otherwise it will be difficult to find out what the casual vacancy means. We have nothing like it in the Constitution which we have passed so far, and immediately after the Constitution is passed, on the 26th January at any rate, this House sitting as the Constituent Assembly in the "Constitution" section will cease to exist. I fear that the Rules of Procedure and Standing Orders of the "Constitution" section would then inoperative and will not be applicable at all. So, the expression 'casual vacancy' will remain absolutely unrelated

to any enactment or rule. With regard to casual vacancies which may occur after the general election it seems to me that they will be covered by rules framed under the Constitution; but at present there is nothing like this expression anywhere exempt in our present Rules. I should think that it should be made clear that it is a 'casual vacancy within the meaning of our present rules'. That would save from natural death. Our Rule 5 which alone would seem to be applicable in the circumstances of the case,

With regard to the Rules under the Constituent section and the Legislation section, there will be a clash as to which rule will apply. It would be far better to clear specify the enactment or the rule within the of which the words 'casual vacancies' will come. This amendment is of a drafting nature and may be considered by the Drafting Committee.

**Shri V. I. Muniswamy Pillay** (Madras: General) : Mr. President, Sir, I move :

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'of any State or other territory' the words 'of a Governor's Province or Indian State' be substituted."

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'not represented' the words not adequately represented be substituted."

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words 'commencement of this Constitution' the words 'having due regard to the proper representation of the Scheduled Castes' be inserted."

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:--

'(d) the election of a Speaker or Deputy Speaker for the Parliament'."

Sir, when this article was introduced in this House by my honourable Friend, Dr. Ambedkar, he told the House that it dealt with double membership. Sir, on a perusal of the article I find that there are many other things therein which required the attention of this House and also of the President who will be the ultimate authority in deciding who ought to be the members that are to be chosen from the States or other territories to take part in the provisional Parliament. Also, in the explanation it is clearly stated in clause (2) that with regard to filling casual vacancies in the said Assembly, the President shall have power to make rules for the representation in the provincial Parliament functioning under clause (1).

Here I would bring to the notice of the House the grave injustice that has been done to a section of the community in India, *viz.*, the Scheduled Castes. Sir, according to the Statistics of Population that has been prepared and furnished to us, out of a population of 330 millions, the Scheduled Castes number about 50 millions in India. The total membership of the provisional Parliament his been accepted is 320. Out of this, the quota for the Scheduled Castes must be about 55 to 60. If this is so, the provisional Parliament must have at least 55 members of the Scheduled Castes. I do not find that it has been made clear in this explanation No. 2, whether the Scheduled Castes would have that much representation. It is with that object I have suggested in one of these amendments that the future authorities or President who will make rules for the representation of the various communities in the provisional Parliament should give due representation to the Scheduled Castes.

Sir, after the Constituent Assembly started functioning, several Indian, States and other territories have been brought under the purview of the Constituent Assembly for the purpose of representation. But, from a casual observation whether Scheduled Caste members had been chosen from those States we find that not a single member of the Scheduled Castes has been returned to the Constituent Assembly, except one from the State of Mysore. This I think is a very vital point in this article that requires the attention of the President and also the Members of this Constituent Assembly.

As far as the future Central Assembly and the provincial assemblies are concerned, we have already passed certain articles providing for the representation of the Scheduled Castes on the population basis. But I do not find any such formula for the representation of the Scheduled Castes in the provisional Parliament that will be set up after 26th January 1950 when this body ceases to function.

The other amendment of mine, No. 152 seeks to provide that the matters concerning the selection of the Speaker or the Deputy Speaker may be left to be decided by rules to be made by the President who will be functioning after 26th January 1950. The reason why I have moved this amendment is that in an earlier article we have provided for the Speakers of the Assemblies and the Presidents of the Legislative Councils, wherever there will be double chambers, to come into office just after the commencement of the Constitution. We have not said anything there about the Deputy Speakers or Deputy Presidents where they continue in office after 26th January 1950. So I feet that even the matter of election of the Speaker or Deputy Speaker for the provisional Parliament must be left in the hands of the President so that those elections may be regularised.

The other amendment that I have moved, No. 156, I find will not fit in with the new amendment No. 195 introduced by the Honourable Dr. B. R Ambedkar yesterday. But I would like to move my amendment to amendment No. 195, paragraph (3) as follows:

"A member in two assemblies shall resign his membership in the legislature of a Governor's Province or an Indian State thirty days prior to this Constitution coming into effect."

Dr. Ambedkar argued yesterday that this article deals with double membership. Due to circumstances, though the Constituent Assembly came into existence for constitution-making, it has been decided that the Constituent Assembly can function as a legislative body also, but due to a convention, Sir, It was possible for members who are also members of provincial legislatures to stay back and take part in their own legislatures; thereby these members as a matter of fact were not functioning as members of the Central Legislature. It may be that at present both these functions are done by this body, but my view is that when this Constituent Assembly changes itself into the provisional Parliament, all members of the provincial legislatures who have been returned to this House also should be told that they cannot take part.

Further, Sir, if you accept this article, it does not give to members discretion either to choose functioning in the provisional Parliament or in their own Legislatures. We have already passed an article whereby this Constitution states in unequivocal terms that a member cannot be a member in the Central as well as the provincial legislature. So, I feel strongly that this matter must be left to the choice of the Members themselves, and I know that members having a sense of responsibility, will not choose to sit in both Houses. There are Members who have been chosen for this Constituent

Assembly who are able jurists and who have special knowledge of matters connected with the administration of this country. There may be many Members who may find it necessary to be in the provisional Parliament. We do not know how long this provisional Parliament will function.

Secondly, Sir, as far as the, matter of reservation for the Harijans was concerned, it was said that it would continue for ten years from the commencement of the Constitution. We do not know for how long this provisional Parliament will function. It has not been made clear in this article whether the reservation would start from the 26th January 1950 or from the commencement of this Constitution in right earnest after two or three years. Now, nobody knows whether the life of this provisional Parliament will be two years or ten years according to circumstances. So I feel honestly that this matter of deciding whether a Member likes to function in the Central Assembly or in the Provincial Assembly should be left to the Member concerned. With these few words, Sir, I am hopeful that the Drafting Committee will consider what I have said about these Amendments and do the necessary things so that Members may have discretion in deciding where they should work.

**Mr. President :** You are not moving amendment No. 150 ?

**Shri V. 1. Muniswamy Pillay :** I have already moved it, Sir.

**Shri H. V. Pataskar** ( Bombay: General): Mr. President, Sir, I rise to move amendments Nos. 153 and 157 which stand in my name. I move:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words and figure 'sixth day of October 1949' the words 'date of commencement of this Constitution' be substituted. "

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words beginning with 'as from the date of commencement' and ending 'casual vacancy', the following be substituted:

> 'at the expiration of one month from the date of the commencement of this Constitution, that member's seat in the legislature of a former Governor's Province or an Indian State shall become vacant unless he has previously resigned his seat in the Constituent Assembly'."

Now, so far as my amendment No. 157 is concerned, I have carefully looked into the matter and it can fit in also with the improved clause (3) as it is now moved by the Honourable Dr. Ambedkar. Sir, there is a vague impression that some how or other this double membership which have been a feature of this Constituent Assembly is a thing which ought to be dispensed with at the earliest possible moment, and I have no doubt that in no constitution of the world will you find double membership of this type. There is a usual provision in all Constitutions that if a person happens to be elected to both the legislatures, the higher and the lower one, or the Central and the provincial one, then he option is left to the member whether he will sit in the Central or the provincial legislature; and if he does not exercise his option, then that individual loses his seat in the Lower House and not in the Upper House. On that principle was based the present clause (2) of Section 68 of the Government of India Act of 1935.

Sir, there is a history to this double membership and I shall only take a short time of this House in telling them as to how it occurred. When our Constituent Assembly was first elected, there was a Central Legislature functioning under the old Act in this country. Naturally at that time the only purpose that Members of the Constituent

Assembly were expected to fulfill was that of framing the Constitution, but they were elected on a definite basis, *viz.*, that there was to be one representative for every ten lakhs of people. Compared with that, the Central Assembly that existed then was a less representative body, as it was elected under the old Act and even consisted of nominated members. Therefore, Sir, naturally the two bodies were expected to work in the beginning separately, but things moved very fast in the political field in the country and the British decided to partition the country and quit. Power had to be transferred to some authority. Naturally the old Central Assembly was found as compared with this Constituent Assembly, to be not as representative as this body was. At that time, the most representative body in the country was this Constituent Assembly. Therefore it was decided that power should be transferred to this Constituent Assembly, and then the Independence Act was passed. The Indian Independence Act made provision that while continuing their work of framing a Constitution for the country, this body should also function as a legislative body, and provision for this was made in Section 8 of the Independence Act. Section 8, clause (1) says:

"In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly."

Then we have a further provision in sub-clause (e) of clause (2). Sub-clause (e) of clause 2 of Section 8 of the Indian Independence Act says:

"The powers of the Federal Legislature or Indian Legislature under that Act (that is the Government of India Act, 1935) as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers, exercisable by that Assembly under sub-section (1) of this section."

It was under these circumstances that the Constituent Assembly came to be a body, not only for framing the Constitution but also to serve the purpose, of the Federal or Central Legislature. Our own Government thought that it was necessary, and therefore they passed the Provisional Constitution Order by which sub-clause (2) of section 68 of the Government of India Act was deleted, because if it existed, then naturally double membership could not have continued we would have been required to exercise any option and if we had not exercised that option we would have continued to be members of the Central legislature and we would have lost our seats in the provincial legislature. It was thought then that in the interest of the administration both at the Centre and in the provinces it was not desirable that members of the provincial legislature should take part here in the work of the Central Assembly at the cost of their work which they had primarily to do as members of the provincial Assembly. Hence our leader issued a sort of letter of convention by which members of the provincial legislatures were asked not to take part ordinarily in the working of the Central legislature and I must say, so far as I know (I do not hold any office in the Constituent Assembly) that letter of convention has been to a very large extent adhered to by members of the provincial legislatures, because they were all expected to be responsible people and I think they have acted in that manner.

While framing the constitution we passed article 82 and clause 1 (a) of that article reads:

"(1a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule and if a person is chosen a member both of Parliament and of the

Legislature of such a State then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State."

It is important to, note here that clause (1a) of article 82 closely follows clause (2) of the original section 68 in the Government of India Act, 1935 with this difference that while in the case of the provision contained in clause (2) of Section 68 if a person who happened to be elected to both Houses of Parliament did not exercise his option within the time decided by the Governor-General, as it was intended under, that Act, then he would automatically lose his seat in the lower House, whereas in article 82 (1a) somehow or other, for reasons best known to the Drafting Committee, they have chosen to follow a course different from the one which is usually followed, namely, that the member would automatically lose his seat in the Lower House and not in the Upper House. To me this is an abnormality: however we have already passed that article and I would not take up the time of the House over it and it is not proper to do it at this stage.

After having passed this article I fail to understand why there is any necessity for introducing an article of this nature, because under article 82(1a) already passed as soon as the Constitution comes into force the Members who are members of the provincial legislature would automatically cease to be Members of this House. Of course lie is given the option but if he does not exercise the option he loses his seat in the Constituent Assembly..... *(Interruption by the Honourable Shri K. Santhanam)* Shri Santhanam interrupting says that article 82 would not come into force with the commencement of the Constitution. If the Constitution comes into force on the 26th January, I do not understand why this provision should not come into force then. If it is thought that it would not come into force I would submit that in any case it is not desirable that there should have been a provision like this made in the Constitution itself for the interim period. On account of circumstances which I have already described this House came to be a body which had some members who were members of the provincial legislatures also and if it was once thought that the best interests of the country and the provinces would be served by issuing a letter of convention I do not understand why it is necessary at this stage, for the sake of one year (which is what is left before the next elections), to make an abnormal provision of this nature in the Constitution. If it is thought that instead of having such a letter of convention it is desirable once for all to solve this question even for this short period the best course would have been to treat these gentlemen in a manner better than what is being done now and to give them the option, which would not have made much difference. Because I want to make it clear that most of the Member of this House were elected on the Congress ticket and if option is given to them it means not an individual decision of an individual Member but it means an exercise of option by the Congress Party itself. All the same the very same result could have been achieved. Such an option would have literally and virtually meant an option given to the Congress Party and tip to this time they have acted according to the party decision.

Under the circumstances I fail to see why when we have been carrying on well all this time, during the transitory period they should have thought it fit to bring forward a special provision for a short period of one year. The provision has a sting in it, for a Member shall have no option to resign from either body after the 6th October. It shows that there is a suspicion regarding many of the Members of this House. We have been carrying on our work for a long time on account of circumstances beyond our control and there is an impression in the press and outside the House that we have been carrying on so long because we want to earn Rs. 45 per day. There have

been so many newspaper cartoons and other references. In the circumstances this provision would give the impression that those who are also members of the provincial legislature would prefer rather to be here and earn Rs. 45 per day than observe the rules of the party or serve the best interests of the country, which is very very uncharitable.

So, I fail to understand why this should have been mentioned here at all. This provision should be deleted. There are many ways by which the same result could be achieved and they should be charitable to the members of the provincial legislatures, to say the least. I therefore oppose the provision, as there is no necessity for a provision of this nature. My amendment No. 157 means that the option should be given to the members to resign. I know the manner of exercising this option is inconsistent with article 82(1a) which we have already passed. But it is consistent with the Government of India Act. 1935, and with the principles which are followed all over the world. You take any constitution in the world. You Will find a provision that wherever a person happens to be an elected member of a higher and a Lower House if he does not exercise his option, then he automatically loses his seat in the Lower House and not the Upper House. It is on that principle that I have based this amendment of mine. There are ways and ways of achieving object we have in view.

My first submission is that the present arrangements should be carried on for one year more. In 1950-51 the elections are coming. It is therefore only a matter of one year. We have pulled on for so long and there is no reason why we cannot continue to do so for a year more. Even if it is not so, I think an option should be given to the Member. And an Option to a Member in this case means in a large measure option to the Congress Party, though there might be some who do not belong to this party. I do not think heavens are going to fall if this is not done. I regard this provision as a slur on the members of the provincial Assembly who happen to be returned here and to be double members, not because of their choice but because of circumstances beyond their control. That is why I resent this provision, particularly that we should be treated in this manner when we are reaching the end of our deliberations and that a provision should be made in the Constitution which suggests as if these people are likely for some ulterior reasons to persist in continuing here to the detriment of the administrations to which they primarily belong. It is for this reason I move my amendment. I hope honourable Members of the House will seriously take into consideration what I have said.

**Shri Brajeshwar Prasad** (Bihar: General) : Mr. President, Sir, I beg to move:

"That in amendment 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words 'a House' the words 'the lower House' be substituted".

I also move:

"That in amendment 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:-

'(3a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor's Province, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member there of earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.' "

Sir, the whole idea is to obviate the necessity of by-elections for more than

hundred seats in the Constituent Assembly. If the Members are given the option to continue in the Constituent Assembly the result will be that many seats will fall vacant and a general by-election for more than a hundred seats will have to be conducted. I have got my own opinion as to how far that course is desirable. But at present in amendment No. 160 I am only suggesting that members of the Legislative Council should have the option: they should choose whether they want to sit here or in the Provincial Legislative Council. If they choose to remain here there will be no by-elections because they are nominated members. In the Provincial Legislative Councils the Congress Party has a majority everywhere and it will not be difficult for the Government to nominate any member whom they like. I cannot see any reason why this House and especially members of the Drafting Committee will not find it possible to accept this amendment of mine.

I have got nothing more to say as far as this amendment is concerned. But with your permission I would like to say a few general words on the articles that have been moved. I hold the opinion that Members of the House should have the option to remain here or to remain in the Provincial Assemblies. If there is no difficulty in having a general election in West Bengal. I do not see any reason why there should not be general by-elections for hundred seats more. I hold the opinion that events as they are shaping themselves will compel us to postpone the general elections under this Constitution for an indefinite period. Our relations with the Government of Pakistan, especially with reference to Kashmir, are deteriorating fast, and I hold the opinion that this transitional Parliament will continue for more than five or six years. After that period, whether it will be possible to implement the provisions of this Constitution, whether this Constitution will ever come into operation or not I am not clear in my own mind. Personally I am inclined to hold the view that the provisions of this Constitution, barring the transitional provisions, will never come into operation. With that background I feel that it will be beneficial if we hold general by-elections for these hundred seats, because to continue a House without going to the electorate for more than six or seven years is not desirable. There is already a growing discontent in this country that we want to continue. We want to take a snap-vote; we want to know whether we have the confidence of the electorate or not. Therefore it is desirable that a general by-election should be conducted in this country.

If my belief is correct that there is not going to be a general election under the Constitution it will be a violation of the letter and the spirit of the Constitution to provide reservation of seats for any community in this country except Harijans and the Adibasis. Therefore I oppose draft article 312F. It provides reservation of seats for all kinds of communities. In the Constitution we have made provision for reservation of seats for the Harijans and the Adibasis. With that provision I heartily concur, but for other communities there should not be any reservation because other communities must assimilate with the rest of the people of this country. If I had the slightest doubt in my mind that there will be general elections in the year 1950 or 1951, I would not have suggested the course which I am suggesting. But I am quite convinced in my own mind that there cannot be any general election during 1950 or 1951. Therefore why should we continue the legacy of the past? Why should we give reservation of seats to other communities ?

**Prof. Shibban Lal Saksena** (United Provinces: General) : Mr. President, Sir, I beg to move:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words

'President may by rules' the words 'Parliament may by law' be substituted; and clause (4) of that article be deleted."

In this article we are providing for the Provisional Parliament and it is contemplated that this very Assembly should become the Parliament minus the Members who are also members of the various Provincial and State Assemblies. In this article in clause (2) provision is made for representation in the Federal Parliament, of States which are not at present represented in it. The only State that is not represented now is Hyderabad, so what is intended by clause (2) is that the President is given power to provide by rules representation for Hyderabad. Personally, I think that we will have the representatives of Hyderabad present here before this, Assembly dissolves. I have no objection whatsoever to representation being granted under rules but this Parliament should have the opportunity to discuss the representation which is given to Hyderabad. What is attempted by this clause is that whosoever is chosen to represent that State according to the rules made by the President, this Parliament will not have the power to discuss those rules. This I think is not proper. As a sovereign Parliament it should have the power to discuss who is being allowed to become its Member, who represents a particular territory and whether the rules made are what Parliament could approve of. I therefore think that it is not very happy that the President should be permitted by rules to provide for this representation and that this House should have no say whatsoever in the manner the rules are framed.

Then, who is this President ? It is said in article 312F which has not yet come up before the House but which is there before us that until 26th January, for you Sir, shall be the President and you are given the right to frame rules for securing the representation. After that the President of the Republic shall be empowered to do it, which means the Cabinet. I think that this House should have the power in both the cases of discussing the rules. When we framed rules for representation of Kashmir, this House had an opportunity of discussing those rules. The House has the right to have its say. But by this clause, by saying that the President shall do it by rules, you are depriving the Parliament of that right which is not proper and is wholly. undemocratic. I do demand that whatever is decided about Hyderabad and in whatever way it is given representation, this Parliament should be the final authority as regards the rules under which they come to this House.

The second part of my amendment is that clause (4) be deleted. In article 311A we have said that this Constituent Assembly shall elect a President. Why, then, should it not elect a Speaker also? I see no reason for making a difference. I am sure the same President and the same Speaker will be re-elected by this House, but still it would have been far more democratic if we had said that this House shall re-elect them. If we have agreed to elect the President. Why should we not elect the Speaker? There should be no difference between the Speaker and the President; although the Personalities chosen may be the same as heretofore--as we ourselves will elect them there is no reason why they should be different--still I do feel that any differentiation as between the President and the Speaker in this matter is not proper. It is a sort of a discrimination that the House shall re-elect the President and not the Speaker. The House shall re-elect the President as well as the Speaker. The Constitution must have the same provision for both of them. That is logically necessary.

Some friends have spoken about the provisions of clause (3). That clause has been objected to, saying, that choice should be given to Members who are also members of provincial legislatures to choose whether they would prefer to be members of Parliament or the Provincial Assembly. I agree with that point of view. This Parliament

should become the Parliament of the future as it is and the vacancies should Dot be created in this House but the seats of such Members should have been declared vacant in the Provincial Assemblies and the people should have been required to re-elect Members in their places. One hundred seats in the whole country is not a large number and those re-elections would also have shown whether the country was with the Congress or not. Also it would have been a more democratic way of doing things. It would have given some indication of how the public feels. Though I have not tabled an amendment, I am in sympathy with those friends who think that this House should have remained as it is and the vacancies caused by those Members who have membership in the Provinces should have been filled by direct election.

Sir, I also support some of the amendments made by My Friend Mr. Kamath to clause (1). The wording chosen by him is better. I think these amendments should be considered by the Drafting Committee and incorporated to make the draft more concise and better.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, have I your permission to discuss generally the whole article ?

**Mr. President :** You may first move your amendments

**Shri Mahavir Tyagi :** I beg to move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:--

'and shall be known as the Parliament of the Union of India.'

I have other amendments, but now since Dr. Ambedkar has come out with his fresh amendments which cover many of my amendments, I do not intend to move the rest of my amendments.

In moving this amendment I have just one remark to make. Article 311 as proposed starts with the heading, "Provisions as to Provisional Parliament of the Union and the Speaker and the Deputy Speaker thereof." The words "Provisional Parliament" have been used for the first time in the heading alone. There is nothing in the body of the article to say as to what would be the provisional Parliament. Somewhere in the body of the article we should say that there shall be a provisional Parliament but this has not been stated. Only in the latest amendment of Dr. Ambedkar it is mentioned that after these casual vacancies are filled there will be a provisional Parliament. He has named it "Provisional Parliament" only casually. Therefore, in order to clarify this I wish to add in the very first clause the words--

"and it shall be known as the Parliament of the Union of India."

In this first clause he says-

"Until both Houses of Parliament have been duly constituted, and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

From this I construe the meaning that the Constituent Assembly of the Dominion of India will continue and that that body will carry out all the functions of the provisional Parliament. What a provisional Parliament is, has not been defined anywhere. I therefore submit that we may add, "and shall be known as the Parliament of the Union of India." I do not agree with the use of the word 'Provisional' either in the case of the Parliament or in the case of its officers or President or others. It must be "Parliament". With these remarks, I hope this amendment will be accepted.

Sir, speaking generally on the article, I am really sorry that. Dr. Ambedkar and the Drafting Committee had to come out with this proposal. I should have preferred a general election. The proposal to continue this Constituent Assembly and also to suggest that this Assembly shall function as the first Parliament is, to my mind, not very democratic. It would have been much better if we could have a direct election immediately before the commencement of the Constitution. We should have commenced with a new Parliament freshly elected through the general election. That would have been the proper course.

**Shri L. Krishnaswami Bharathi** (Madras: General): Under what franchise?

**Shri Mahavir Tyagi :** That would have been the proper course, because then, the Parliament would be in a position to know the trend of public thought and the people in power would be vested with the fullest confidence of the people when they would represent. Now, Sir, as it happens, we have come here through an indirect electorate, the legislative Assemblies of the Provinces, which were elected long ago in 1946 or so. It is long since we approached the electorate. From that point of view, this article, in my opinion, is the most reactionary type of an article that we are passing.

It seems there are difficulties in getting the electoral rolls ready as the franchise has become adult franchise and it would take time to get ready the electoral registers and therefore just to fill up the gap this article is being proposed. I also agree with my honourable Friend Mr. Santhanam when he suggests that a final date should be fixed by which time elections should be held. After all, there must be some limit within which these electoral rolls and all these formalities should be complete and the people, may really take over. If elections on adult franchise of general electorates were held, then alone, the Parliament could claim to be the representatives of the people. Since it is just to fill up the gap that this article has been proposed, I hope much time will not be lost in getting things ready for fresh general elections

Then, there is another amendment which Dr. Ambedkar has been pleased to move that such members of this Assembly who are also members of the provincial Assemblies or provincial legislatures would be deemed to have vacated their seats here on the date immediately before the commencement of the new Constitution. But, those seats, though they will not be vacated till the commencement of the new Constitution, will be re-filled by election before the Constitution comes into force. Although those seats would not be physically vacated until before the commencement of the Constitution, the filling up of these unvacated seats, according to this amendment, will be done by elections much earlier that the seats will be really vacated. This is something which I really do not understand. It would have been better if he had said that those seats of the local M. L. A.'s will be deemed to be vacated a fortnight before the commencement of the Constitution. Within that fortnight, through indirect election, we should get those seats filled up so that at the commencement of the Constitution, this Assembly could be fully complete. That would have been the

proper course. I would still suggest that the Drafting Committee might just consider the possibility of adding a few words which will change the meaning so as to enable the Government to have an election, say fifteen days before the commencement of the Constitution and also get these seats vacated before they are re-filled. That would have been more consistent.

The draft of clause(3) as now proposed is complete to a greater extent. In the previous draft only such members were debarred from continuing as members as were members of the local legislatures on the 6th October 1949. All such persons who became members of the local legislatures after the 6th October 1949 were not disqualified. Now, this new proposal is complete from that point of view as it lays down that if a member of the Constitutent Assembly of the Dominion of India was on the: 6th October or thereafter becomes at any time before the commencement of the Constitution a member of a House of legislature of a Governor's province or an India State Corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then, as from the date of the commencement of this Constitution, the seats of such Members in the Constitutent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. Now, Sir, although there will not be many cases, or there may be no case at all, this draft, however, covers the cases of only such Members as become members of the provincial legislatures during this period. What about those who are members of the provincial Assemblies and become members of this Assembly, in this period ? Strictly interpreted, under this latest draft of Dr. Ambedkar, those members who are Members of this House and who become members, either on the 6th of October or thereafter, of the House, of legislature of a province, meaning thereby, members of the local legislatures, then, those member's seats will be deemed to be. vacated-such Members only who are members of this House already and are also members, on the 6th of October or thereafter, of the provincial Assemblies. What about those who are not members of this House, but are members of the provincial Assemblies and become members of this house during this period? They will also get a double membership and their seats will not be deemed to be vacated.

Therefore, this article is still slightly incomplete. I would suggest that the cases of such Members should be also covered : persons who are not members of the Constituent Assembly today or who were not members of the Constitutent Assembly on the 6th or thereafter, but were on the 6th October members of, say, the U. P. provincial legislature, one or many of them--the number does not matter--being elected during this period as members of the Constitutent Assembly: their cases will not be controlled even by the latest proposed draft.

**Shri L. Krishnaswami Bharathi :** The word is intended to cover only such, cases as the honourable Member has in view.

**Shri Mahavir Tyagi:** He was already a member of the Provincial Assembly and he becomes a member here thereafter. The case of a gentleman who becomes a member here during this period is not, strictly speaking, legally covered but perhaps such cases may not arise.

Another point I would like to bring to your notice is that the Drafting Committee has also provided for the continuance of the Speaker and the Deputy Speaker of the Assembly. This again is bad in spirit. After all when about one hundred or so of

Members in the Assembly who enjoy the membership of the Provincial Assembly when their seats are declared vacant, their substitutes will be elected. Now, when one-third or so of the House is being changed, then why force the old Speaker and the Deputy Speaker on the House? We should have said only this much that till the first day of the meeting of the Parliament the Speaker or Deputy Speaker will continue. Thereafter, the Parliament must have the liberty to elect its Speaker or Deputy Speaker afresh. This has always been the custom whenever one Session of Parliament is over and the next comes after re-election. It is their first business to elect the Speaker and Deputy Speaker. Generally the old ones are re-elected, but then the formality is undergone afresh. I suggest this is bad, on principle that the present Speaker and the Deputy Speaker--without casting any aspersion on any persons; I hope they will be re-elected should be forced on the Parliament. The fact that we put it in the Constitution that they will continue does not speak well of that high office. Theirs is an office endowed with a complete command of confidence of the House. It is not fair that this House should come between the Parliament and its free choice of officers. We should not interfere with the working of the House of Parliament. It will in itself be competent to elect its own Speaker, and the Deputy Speaker when it meets for the first time after the general elections.

**Mr. President :** You have taken more time.

**Shri Mahavir Tyagi :** I have nothing more to say except putting a question. What will happen in the case of such Members of the Constituent Assembly from a province where the Provincial Assembly is dissolved and re-election takes place? Suppose in Bengal or U. P. general election takes place and their representatives are there in this Assembly. We have already provided for their continuance here, but will they continue even after the general elections are over, or will they be required to seek the confidence of the newly elected Legislative Assembly in their respective provinces ? This may also be clarified.

**Shri Sita Ram S. Jajoo** (Madhya Bharat): Sir, I beg to move:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government' be inserted."

My amendment is a very simple and short one. As a matter of fact the principles underlying this amendment have been already accepted by the Constituent Assembly in the Constitution in article 83 and I feel that this provision should be inserted in these transitional provisions to avoid any misunderstanding and ambiguity which may arise, matter these transitional provisions are accepted and passed. Although we have already adopted that double membership is to be abolished by the provisions of article 82 in the Constitution but to avoid ambiguity we are doing it here as well. So I hope, to avoid ambiguity regarding the other part as well, the Honourale Dr. Ambedkar will accept this amendment.

**Mr. President:** Mr. Karimuddin-absent.

Mr. Guruv Reddy-absent.

Mr. Sidhva-you had given notice of an amendment which I had promised might be

taken along with this. I think it does not arise now.

**Shri R. K. Sidhva** (C. P. & Berar: General): Yes.

**Mr. President :** There is no other amendment. The amendments and the article are now open for discussion.

**The Honourable Shri Satyanarayan Sinha** (Bihar: General): I request that question may be now put.

**Mr. President :** Some of the Members may like to speak. I will only allow one or two speakers who have not spoken. Does any Member wish to say any thing who has not moved any amendment ?

**Mr. Mohd. Tahir** (Bihar : Muslim): Mr. President, I find some difficulty in this article which I wish to place before the House. Clause (1) in this article is admittedly a substantive portion of this article. It says that--

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

This substantive portion of this article means that the body which is now functioning, which means that the body consisting of the Members now present in the Assembly, will be the body which will form the Parliament after the commencement of this Constitution.

Now, the substantive portion of the law means that it governs the following provisions of the article. That means that clause (1) which is the substantive portion of this article should govern the other provisions of this article, *i.e.* clauses (2) and (3). But here we find that the position is quite otherwise. It is topsy-turvy. Actually clause (3) governs the substantive portion of this article which in my opinion, is not legal, because clause (1) says that this body will function as the Dominion Parliament, whereas clause(3) dissolves this Constituent Assembly, not wholly but partly. In fact, clause(3) means the dissolution of this body in parts. Therefore I think clause(3) is redundant and should not be included or inserted in this article,

Now, the question will arise that after this House is converted into the Dominion Parliament, Members will find themselves in this position that some of them may be Members of this Dominion Parliament as well as of the Provincial Assemblies. For that, Sir, we have already adopted an article, and I refer the House to article 82 which, as has already been explained by one of my friends there, is the remedy for that, when Members are Members of this House as well as of the Provincial Legislatures. But to insert such a clause as has been done in the form of clause (3), It would say, really pollutes the whole Constitution. The insertion of such a clause as clause(3) is polluting the constitution and I hope this will be considered by my Friend Dr. Ambedkar, that the substantive portion of the law should not be governed by the sub-clauses which are being entered in the article.

With these words, Sir, I close my remarks.

**Mr. President :** Dr. Ambedkar, have you anything to say ?

**The Honourable Dr. B. R. Ambedkar** (Bombay : (General): Sir, before I begin, I would like your permission to omit the word "becomes" in clause (3) of amendment No. 195, occurring between "thereafter" and "at any time before..." The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adapt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is, that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference. It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. There as on why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any

particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.....

**Shri H. V. Pataskar :** My amendment gives the option to the Member.

**The Honourable Dr. B. R. Ambedkar:** That, I think, will create a lot of complication. If the Member is given the option, that will create complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

**Shri Ram Sabai** (Madhya Bharat): What about the amendment moved by Mr. Sita Ram Jajoo ?

**The Honourable Dr. B. R. Ambedkar :** We had anticipated the point raised by him, and we have modified my amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

**Mr. President:** I shall now put the amendments to vote one by one. The first ad of amendments to clause (1) are Nos. 142 to 145 of Mr. Kamath.

The question is:

"That in amendment No. 9 of List I (Second Week). in clause (1) of the proposed article 311, after the word 'Until' the words 'such time as' be inserted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in the proposed article 311, the words the body functioning as be deleted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in the proposed article 311, for the words 'Constituent Assembly of the Dominion of India' wherever they occur, the words 'Constituent Assembly of India' be substituted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words 'immediately before the commencement of this Constitution shall the words shall itself be substituted."

The amendment was negatived.

**Mr. Naziruddin Ahamd:** I would leave my amendment No. 146 to the Drafting Committee, Sir.

**Mr. President:** Now I will put amendment No. 194 of Mr. Tyagi to vote. The question is:

"That is amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:-

'and shall be known as the Parliament of the Union of India'."

The amendment was negatived.

**Mr. President:** These are all the amendments to clause (1). Now I will put the amendments to clause(2) one by one to vote. The question is:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words 'which shall as far as practicable, conform to those adopted by the constituent Assembly' be inserted."

The amendment was negatived.

**Mr. President:** Then we have a series of amendments moved by Mr. Muniswamy Pillay.

**Shri V. I. Muniswamy Pillay:** In view of the assurance given by the Honourable Dr. Ambedkar I do not press any of my amendments.

**Shri H. J. Khandekar** (C. P. & Berar: General) : I do not want that these amendments of which I have also given notice should be withdrawn.

**Mr. President:** They were moved by Mr. Muniswamy Pillay. I shall put them to vote.

The question is:

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'of any State or other territory' the words 'of a Governor's Province or Indian State' be substituted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in sub clause (a) of clause (2) of the proposed article 311, for the words 'not represented' the words not adequately represented' be substituted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words 'commencement of this Constitution' the words 'having due regard to the proper representation of the Scheduled Castes' be inserted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:-

'(d) the election of a Speaker or a Deputy Speaker for the Parliament."

The amendment was negatived.

**Mr. President:** Now I will put to vote the first part of the amendment (No. 178) of Prof. Shibban Lal Saksena to clause (2). The question is:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words 'President may by rules' the words 'Parliament may by law' be substituted."

The amendment was negatived.

**Mr. President :** Now we come to the amendments to clause 3. Amendment No 155 of Mr. Kamath.

The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'An Indian State' the words 'or Union of States' be inserted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words 'within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly' be added at the end."

The amendment was negatived.

**Mr. President:** The next amendment to be put to vote is that of Mr. Muniswamy Pillay (No. 156) to amendment No. 195 moved by him in a slightly modified form.

The question is:

"That in amendment No. 195 delete all the words beginning with 'and' in the last tin& and add the following:

'A member in two assemblies shall resign his membership in the legislature of a Governor's province or an

Indian State thirty days prior to this Constitution coming into effect.,"

The amendment was negatived.

**Shri H. V. Pataskar:** Sir, I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

**Mr. President:** I shall now put the amendments of Shri Brajeshwar Prasad and Shri Sita Ram Jajoo to clause (3) to vote.

The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words 'a House', the words 'the lower House' be substituted."

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following now clause be inserted:--

> '3(a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor's province, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.'"

The amendment was negatived.

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

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government' be inserted."

The amendment was negatived.

**Mr.-President:** Now I shall put the amendments to clause (4) to vote.

**Shri H. V. Kamath** (C. P. & Berar: General): Sir, in view of the assurance given by the Honourable Dr. Ambedkar that this discrepancy will be rectified I do not press my amendments Nos. 161 and 162.

The amendments were, by leave of the Assembly, withdrawn.

**Mr. President:** Now I will put to vote the second part of the amendment moved by Prof. Shibban Lal Saksena No. 178.

The question is:

"That in amendment No. 9 of List I (Second Week), clause (4) of the proposed article 311 be deleted."

The amendment was negatived.

**Mr. President:** All the amendments to article 311 have been disposed of. I will now put the clauses of the article to vote first.

**Shri Mahavir Tyagi:** My amendment has not been put to vote.

**Mr. President:** I put it; nobody voted for it.

The question is:

"That clause (1) of article 311 stand part of the Constitution."

The motion was adopted.

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

"That clause (2) of article 311 stand part of the Constitution."

The motion was adopted.

**Mr. President :** Amendment No. 195 has taken the place of clause (3) of amendment No. 9. In the second line of amendment No. 195 the word 'becomes' is deleted and the rest remains as it is.

The question is:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :- '

> '3(a) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such Stale, then as from the date of commencement of this Constitution the seat. of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. "

The amendment was adopted.

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

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:- '

> '3(a) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat

in the said Assembly until after the vacancy has so occurred'

The amendment was adopted.

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

"That clause (4) of article 311 stand part of the Constitution."

The motion was adopted.

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

"That article 311, as amended, stand part of the Constitution."

The motion was adopted.

Article 311, as amended, was added to the Constitution.

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## Article 312 F

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

"That after article 312E, the following new article be inserted:--

Provisions as to this filing of casual vacancies in the provisional parliament and provisional legislatures of the State.

'312F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 311 of this Constitution [including vacancies referred to in clauses (3) and (3a) of that article] shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with elections such vacancies shall) be regulated--

(a) in accordance with such rules as may be made in this behalf by the President, and

(b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union:

Provided that where any such seat as is mentioned in this article is, immediately before, it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a State for the time being specified in Part I of the First Schedule, the Person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of. the same, community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote. "

Then I am moving my amendment No. 205 to substitute a different explanation.

"That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312F, the following Explanation be substituted:--

*'Explanation.*--For the purposes of this clause--

(a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936. to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300A specifying the Scheduled Castes in relation to that corresponding State;

(b) all the Scheduled" Castes in any Province or State shall be deemed to be a single community."

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional Legislature, of a State functioning under article 312 or article 312C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating Such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessary. The provisions are quite clear. If any point is raised in the course of the debate, shall be quite prepared to offer such explanation as I could give.

**Mr. President:** There are four or five amendments to this. No. 179, Mr. Shibban Lal Saksena.

**Prof. Shibban Lal Saksena:** Mr. President, Sir, there is some mistake in the printing. I will move my amendment this way-

"That in amendment No. 164 of List III (Second Week), the first proviso to clause (1) of the proposed new article 312F be deleted-"

I also move:

"That in amendment No. 164 of List III (Second Week), in clause (2) of the proposed new article 312F, for the words 'as the President may by order direct' the words as the Parliament may by law provide, be substituted."

Sir, this article makes provision for the filling of casual vacancies, and this proviso to clause (1) wants that the vacancies of members in this Assembly should be filled by members of the same community. I want the deletion of this proviso. My main reason for the deletion of the proviso is this: We have provided in our Constitution by the agreement of all the minorities themselves that all reservations shall go, except for the Scheduled Castes. Now, according to this proviso, the Scheduled Castes do not stand to gain, because I see that the Scheduled Castes according to their population should have about forty-five seats, whereas they have only about twenty-eight seats in this Assembly. If this proviso is strictly adhered to justice would not be done to

them.

Then, Sir, for the rest, we have already decided that there should be no reservation in the general elections. To imagine that members of the legislatures in the provinces will not be generous and fair to them is something which I cannot understand. If they can trust the illiterate people in the whole country to be fair enough to return the minorities in their proper proportion, they must surely trust the members of the provincial legislatures to be much more fair to them. They will be men of knowledge, much more responsible, who will weigh the issues and who will try to see that the minorities are given not only their proper quota but even more than that. As most of the members of the provincial assemblies will be Congressmen and the Congress Parliamentary Board will give the list of candidates to be elected, I am sure that they will take care to see that justice is done to all minorities. Therefore, Sir, I do not want that our Constitution should be disfigured by this proviso. The Muslims, the Sikhs and the other minorities will surely get much better treatment at the hands of the Parliamentary Board of the Congress and the provincial assemblies than they can expect by this proviso, which will only limit them to the number of seats they hold now. For the Scheduled Castes it will be a sad thing, because these members of the Scheduled Castes can be returned to this Assembly only when scheduled caste seats become vacant. This would really perpetuate the injustice done to them by the Cabinet Mission, which gave them seats according to proportional representation in the legislatures. Hence this proviso to clause (1) must go, for it will not serve the purpose for which it is intended. I do not think that the Muslims and Sikhs feel that they will not get a fair deal in regard to the Central legislature in the by elections. Even the Scheduled Castes themselves do not want the number of seats given but they want more. That can be achieved only if this provision is deleted.

By my amendment No. 180 I want to substitute "as the Parliament may by law provide" for the words "as the President may by order direct", in regard to casual vacancies. The reasons are the same as I have given regarding the previous amendment. I think in the matter of making rules for filling seats, the Parliament should be the final authority and not even the President should have absolute power in the matter. The same Parliament will continue which is making the Constitution and why should not they be permitted to approve the rules to fill casual vacancies ? I think that is fair and proper and in place of the President, Parliament should be substituted.

**Shri V. I. Muniswamy Pillay :** Sir, I beg to move:

"That in amendment No. 161 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, after the words 'the Scheduled Castes or' the words 'Schedule Tribes' be Inserted."

In the new amendment given by Dr. Ambedkar he has made it clear that he included all such castes, races, tribes or groups within castes. It would be more appropriate if Scheduled Tribes are also included after the words "Scheduled Castes" in the main article, so that what is said in the new amendment may be in consonance with the article itself. Speaking generally on this article I have made it clear, when we discussed article 311, as to the inadequacy of the representation of the Scheduled Castes in the new provisional Parliament and I am thankful to Dr. Ambedkar for making it clear that the President will consider the case of such inadequacy and allot the number of seats that is rightly due to the Scheduled Castes. I welcome the last sentence in the first proviso "unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to

provide otherwise, be of the same community." Originally it was thought that since we were selecting only for 28 seats in the Constituent Assembly only 28 members will be taken to the provisional Parliament. Later it was thought if a member of a particular community vacated the seat that community will be returned and here was a lacuna. The question was whether it would be possible to increase the number of representatives of the Scheduled Castes. With this amendment or with the provision that has been made I feel certain that the number required for the Scheduled Castes will be assured. With these observations I support the amendment moved by Dr. Ambedkar.

**Pandit Thakur Das Bhargava:** (East Punjab : General): Sir I move:

"That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, the words 'or to the Muslim or the Sikh community' be deleted, and for the words be of the same community' the words 'belong to the Scheduled Caste' be substituted."

So far as the filling of casual vacancies is concerned I wish that the basic principles which we have adopted in regard to the legislatures of the provinces and the Centre are observed. We have ruled so far that general electorates shall take the place of separate electorates and that there shall be no reservation of seats for the Muslims or the Sikhs and that there will be reservation of seats for the Scheduled Castes and they shall also have the right to contest the general seats. If this principle were given effect to, the amendment which I seek to make will be fully justified. I can understand the argument that since the old House is being continued in the coming Assembly therefore the representation of the various communities should continue as before. But this argument is certainly not valid and at the same time this principle has been departed from. In the first place, the present members from the various communities were elected on the basis of separate electorate and this is given the go-bye in the second proviso, because it clearly says that every member of the Legislative Assembly of a State shall be entitled to participate and vote, which means that for the purpose of filling casual vacancies we have adopted the principle of joint electorates in place of separate electorates. If the proviso remains as it is, it would mean that the Muslims and the Sikhs will also have the right to contest the general seats in case of casual vacancies. In this matter also this proviso departs from the original principle. When we have made departure from two basic principles--that of separate electorates as well as allowing the Sikhs and Muslims to contest general seats--it passes one's comprehension why the accepted principle of non-reservation for Sikhs and Muslims should not be given effect to. So far as reservation is concerned we know that in this House all right-minded Muslims and Sikhs themselves gave it up. It cannot be said that the Assembly coerced them to do so. There were two sets of persons among the Muslims. Such of them as preferred separate electorates moved their motions here and did not willingly give them up. There were others who came forward and said that they did not want reservation. These persons will be very much hurt with this provision. The same was the case with regard to the Sikhs. They voluntarily gave up reservation and it would not please the Sikhs to depart from this accepted principle. If this Constitution had been framed in 1947 I know that these reservations must have remained for Muslims and Sikhs also, but the experience of the last two years should not be lost upon us. It is absolutely wrong now to continue this and I for one would beg the House to accept the principle which they accepted with regard to the coming elections, that there shall be no reservation for the Sikhs and the Muslims. If our friends the Muslims and Sikhs want that the scats falling vacant should be filled by members of the respective community, namely either Sikhs or Muslims, let it be arranged by convention. I am not opposed to any scats being ,given to them but it

would be wrong to disfigure the Constitution any more by reference to the principle of reservation of seats which the Sikhs and Muslims themselves have given up.

**Shrimati Purnima Banerji** (United Provinces: General): Mr. President, I move:

"That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, for the words 'Muslim or the Sikh Community' the words 'Muslim, Christian, Sikh community or by a woman' be substituted, and at the and of the said proviso the words 'or sex as the case may be' be added."

Sir, I am conscious of a spirit of diffidence in moving this amendment and sometimes feel that in doing so I may be opening myself to a certain amount of ridicule. But, even at that cost I feet I should state my case. The proviso which we are now discussing provides that in respect of the casual vacancies which are to be filled hereafter for the provisional Parliament, those belonging to the Sikh or the Muslim community will be represented by persons of that community. My amendment seeks just to stretch that same provision for women. I wish to make it quite clear that women do not want any reserved seats for themselves, but nevertheless, I suggest to the House that in respect of the number of women who are now occupying scats in the Assembly, if any of them should vacate their scats they should be filled up by women themselves. We have had casual vacancies in this House before this. Three women have retired so far. One was our late lamented Shrimati Sarojini Naidu, the second was Mrs. Vijayalakshmi Pandit and the third was Shrimati Malati Chaudhuri. Three women Members far various reasons have had to leave this House. Mrs. Naidu who could never be replaced both from among men and women, Mrs. Vijayalakshmi Pandit who is so very highly talented and our friend Shrimati Malati Chaudhuri--all these three women have been replaced by men Members. I do not speak in disparagement of the honourable Members who may have been returned in their places and I am sure they are worthy and fit Members of this House. But I do hold that women could have also filled those Places with equal merit and they should have been invited to do so. Since the entire basis of the State has changed and it is no longer a police state, certain social functions such as education and health now feature among the major items of the State's development. I feel, that not only is the association of women in the field of politics essential but it is indispensable, and therefore I feel that this indispensable section of the people should be amply represented in this House and therefore my amendment proposes that in the casual vacancies Which will occur women should at least be returned to the seats which they hold today, if not more. With these words, I move.

**Mr. Presidet:** The article and the amendments are now open for discussion

**Shri H. V. Kamath :** Mr. President, this article provides for the fining of casual vacancies in the provisional Parliament and in the provisional Legislatures of States. The provisions of this article are good as far as they go but I feet that they could be bettered. I would invite the attention of my honourable Colleagues to certain issues and doubts that have been raised in my Mira on a careful perusal of this draft article 312F. To start with I shall refer to sub-clause (b) of clause (1) of this article. This sub-clause (b) provides that the filling up of' casual vacancies shall be regulated by the President of the Union after the commencement of the Constitution in so far as the modifications and exceptions to the rules already passed by us are concerned. I can understand the President of the Assembly not laying those modifications and exceptions before this Assembly before the enforcement or commencement of the Constitution. But I fail to understand why, once the Constitution has been inaugurated or has commenced and the provisional Parliament has started to function, any rules

made by the President of the Union after such commencement should not be laid before Parliament for consideration. This House will remember that when certain rules adopted by us a couple of years ago were sought to be amended and altered, those modifications were brought before this house and the house duly approved of them. So in this case, where the President of the Union is concerned, after the Parliament has started functioning it is necessary and advisable from the purely constitutional and also democratic point of view that the decrees or the rules made by the President of the Union should be laid before the provisional Parliament for consideration. Before the Constitution commences there may be difficulty as regards time-there may not be time enough for the President to lay the rules before the House. But once the Constitution has commenced the President of the Union must lay the modifications and exceptions that he might make with regard to the rules before the provisional Parliament for their consideration and formal approval. That is the first point.

The second point arises out of the first part of the explanation to this article. It says that "all the Scheduled Castes in any State shall be deemed to be a single community". I am rather reluctant to use the word "community" for the Scheduled Castes by themselves as a whole. I believe the House will agree with me when I say that we long ago decided that the Scheduled Castes are not a separate community by themselves but a part of the great Hindu community. This House has decided that point. This part of the explanation, I feel therefore, is a hang-over from the past. We have not been able to shake off this misconception about the Scheduled Castes as being a community. I think therefore that this explanation must be recast so as to delete the description of the Scheduled Castes as a community. Describe them as a sub-community, as a group of the Hindu community. On that I am sure all of us are agreed in this House. Therefore, I would request the Drafting Committee and also this House to amend this part of it suitably so as to describe the Scheduled Castes as a part of the Hindu community and not as a community by themselves.

Then there is the point raised by my Friend Pandit Thakur Das Bhargava. I feel there is much force in his contention that after the decisions we made recently with regard to the abolition of reservation for the Sikhs and the Muslims, it would not be in the fitness of things to retain this so far as the provisional Parliament is concerned. An adequate safeguard is there in this proviso to clause (1):

"..... unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise ....."

That safeguard is there. Of course he may provide in a particular case that the casual vacancy may be filled by a Member not belonging to that particular community, on the basis of joint electorates and non-reservation of seats for Sikhs and Muslims. But I hope this aspect of the matter will be borne in mind by the President of the Assembly and the President of the Union when occasions arise in the future for filling up of casual vacancies. We may, as a matter of fact, give more seats to deserving Muslims and deserving Sikhs than is warranted by their numbers in the population, but let us not perpetuate or let us not continue during this interim period this feature or this provision of reservation and separate electorates which we have already abolished. Therefore I would very much desire that the House would clearly express its mind today that so far as the casual vacancies in the filling of seats of Muslims and Sikhs are concerned there will not be any special consideration given with regard to the reservation on the basis of population or to separate electorate.

**Shri Brajeshwar Prasad :** There is no provision for separate electorates,,

**Shri H. V. Kamath.** Article 311 which we passed yesterday says the President may by rule provide for the representation in the Provisional Parliament of States not represented, and so on and so forth. The House will remember that this House itself was elected on the basis of separate electorates: General, Muslim and Sikh. if we do not clearly and categorically lay down in an article here that this will not be followed in the filling of casual vacancies, it may give room for doubt that even in future, so far as the filling of casual vacancies is concerned, the old system of the Cabinet Mission Plan might be followed. Therefore it is very essential that we should provide in this article or elsewhere that separate electorates will have no place and that all elections in the future as regards the filling of casual vacancies will be on the basis of joint electorates.

Then there is the point raised by my Friend Shrimati Purnima Banerji. Though she has not pleaded for her own sex on the basis of special reservation, yet I feet that that is a point which may be easily conceded by this House. She went so far as to say that the seat formerly occupied by the late Shrimati Sarojini Naidu cannot perhaps be filled from among the ranks of men. I know not what she implied but I would not pick a quarrel with her on that point. As a matter of fact I would not mind, I would be quite happy, if there are more women in this House than there are today, but I do not think she should make an issue of that so far as this article is concerned. So far as the work of Government is concerned, if I heard her aright, she said that women should be given a greater chance more scope, in affairs of administration and government than they are being given today. The most common and the strongest objection so far put forward by political philosophers in this connection, that is to say as regards the capability of women for government and administration is that woman is ruled more by the heart than by the head, and where the affairs of Government are concerned, where we have to be cold and calculating in dealing with various kinds of men, women would find it rather awkward and difficult to deal with such persons and that the head may not play the part that it must play in the affairs of government. If the heart were to rule and the head to take a secondary place then it is felt by many thinking men, and thinking women too, that the affairs of government might go somewhat awry, might not fare as well as we might want them to be. However, I do not wish to dwell on this point further. but I think the House will not quarrel with Shrimati Purnima Banerji on this point that where a seat held by a woman Member is vacated that seat should normally go to another woman.

Lastly, there is a point arising out, of explanation (2) to this article. That is with regard to the filling of casual vacancies in provisional Legislatures of the States. It is true enough that so far as the State Legislatures are concerned, the Constitution has made provisions with regard to elections to these Legislatures as well. But as far as the interim period is concerned, considering that so many changes have occurred in the States recently, in the Governor's Provinces too, what on account of integration and merger and similar other changes, I feel that so far as this matter is concerned, namely the filling of casual vacancies in the State Legislatures during the interim period, I think nothing would be lost but everything gained by the President taking the Governor of the State or the Province into consultation with him so far as this matter is concerned. The Governor being advised by this Council of Minister in the Provinces or the States would be well posted with the local developments, and being the man on the spot, he will be able to to tender advice to the President in this connection. I feel therefore, that the House will be acting wisely if we provide that the President of the Union will in this regard consult the Governor of the State in so far as the matter

referred to in explanation (2) is concerned. I hope, Sir that the point I have raised will be earnestly considered by the Drafting Committee and the House for incorporation in this article at this stage or subsequently when the Constitution comes up for Third Reading.

**Shri H. J. Khandekar:** Mr. President, Sir, the new article 312F deals with the provisions as to the filling up of casual vacancies in the provisional Parliament and provincial legislatures of the States. I support this article with certain observations.

The article that we have passed just now, that is article 311, asks the double Members to quit this House. It is an unfortunate feature of this House that the real representatives of the masses are to go away on the 26th of January 1950 As regards the Scheduled Castes, the same mistake is being represented here in this Assembly. In the beginning, we wanted our quota to be represented in this Assembly according to our population. There was a convention that for every ten lakhs of the population of harijans, one member will be returned to this Assembly. In this Assembly, now, there are 28 Harijan Members out of whom two are Ministers. According to the population of Harijans, we ought to have been here not less than sixty. But, unfortunately, according to the last ariticle, 17 Harijan Members of this House out of these 28 are to go away. These Members are the tried leaders of the Harijans and the intelligentsia of the community. According to this article, these vacancies are to be filled in after the commencement of this Constitution. What I suggest is that when powers are given under this article to the President of the Union or the President of the Constituent Assembly for the filling up of casual vacancies. I propose certain things. My suggestion is that members cannot be found among the Harijan community because they are uneducated. You will not be able to get so many members to fill in these casual vacancies from amongst the Scheduled Castes. Therefore, my request is that it is necessary that the President, while considering the filling up of those casual vacancies, should consider the cases of those Members who are going out of this House being double members of this Assembly and the provincial Assembly to be re-relected. Because, as far as my province is concerned, I know that we shall not be able to get more suitable people-of course there arc people among the Harijans, but they are already members in the provincial legislatures. I think this will be the case in the other provinces also. Therefore. I earnestly suggest that the President of the Union or the President of the Constituent, Assembly should consider this matter very seriously and while making rules or the filling up of the casual vacancies. he should give some option to, the members of the Harijan community.

The other point is that this article says that as many members of the Harijans, or Muslims or Sikhs as are here and go out, will be filled up by new members of the same community. We are 28 here; 17 are going out. According to this clause, 17 will be coming in. That means, the position will be the same. No more representation is being given to the Harijans, and as I said the last mistake is being repeated again here. What I suggest is this. The population of the Harijans in the Indian States is about one crore. I am very sorry to inform this House that when members were sent from the Indian States, not a single member was a Harijan except one from Mysore. I request you to take this fact into consideration. I do not know whether the Members from the States are resigning or not. If at all they resign, I suggest that in their places, Harijans should be elected. Moreover, I shall give you one instance. In Madras, our quota last time was eight according to the convention; but only seven members were elected. This one seat is still vacant or it was given to a Caste Hindu. That seat should be given to the Harijans. From the Central Provinces and Berar, our quota was three. Three

people were elected. Afterwards one Harijan member resigned.

**Shri S. Nagappa** (Madras: General): Was made to resign.

**Shri H. J. Khandekar:** In his place a caste Hindu was elected. Of course. Dr. Raghuvira, a friend of mine, who was elected in the place of the Harijan member from the Central Provinces served here for the purpose of language. I do not know whether he resigns or not because he is not a double Member. The seat of anybody who resigns from the Central Provinces as a double member should go to the Harijans. My request is that the President of the Union or the President of the Constituent Assembly, whichever the case may be, while making rules or making provisions for the filling up of the casual vacancies, the Harijans should be given the proper quota, that is sixty. The Constitution will come into force from 26th January 1950. We have adopted a provision in the Constitution that in the provisional Parliament the Scheduled Castes are to be given representation on their population basis. My request is that we must take into consideration this clause of the Constitution.

I support in full the explanation given in this article by my honourable Friend Dr. Ambedkar. It deals with the List of Scheduled Tribes and Scheduled Castes. As soon as this Constitution comes into force, the List of Scheduled Castes and Tribes given in the Act of 1935 goes away and for the interim period there is no list. According to the provisions of this Constitution, the President shall make the list and announce it. Of course he will do it with the consultation of the members of the Scheduled Castes or of the Parliament. That depends upon the President of the Union. But for the transitional period a list is required and as it has been covered by Dr. Ambedkar's Explanation. I fully support it.

**Shri S. Nagappa:** Mr. President, this article relates to the filling of casual vacancies that will be created when the double members vacate their seats. My honourable Friends Mr. Muniswamy Pillay and Mr. Khandekar made clear the position of Scheduled Castes. Now in this article it is said that the places vacated by the Scheduled Classes will be filled up by Scheduled Classes and the places vacated by Muslims will be filled up by Muslims and the places vacated by Sikhs will be filled up by Sikhs alone. In other words, the nonscheduled Caste Hindus will be returned intact. In that case, Scheduled classes have been done great injustice while filling up the vacancies in the beginning. That was explained by my friends, Mr. Muniswamy Pillay and Mr. Khandekar. But no doubt the President of the Union or the President of the Constituent Assembly empowered to do otherwise, *viz.* if he wants to bring, in the places of non- Sikhs and non-Muslims, any number of Scheduled Classes, he can do. But I want an assurance not only from the Chairman of the Drafting Committee but from the President of the Constituent Assembly who is here that the representation that was due to the Scheduled Classes on the population basis will be given and shall be given. No doubt what has happened has happened. Now the Provisional Parliament will be functioning from the 26th January. All these days so far as Harijans are concerned the representation was defective and I do not want that to be perpetuated in the new Republic also. It is brought to the notice of the country, the people and to the Government and I hope they will rectify it in order to justify the claims of the Scheduled Classes.

It is after all a fair demand-we are not going beyond our limits. We are asking for what is due to us. We do not want any weightage or anybody else seat, nor do we want to claim that we are non-Hindus. I agree with Mr. Kamath that the word

'community' should not be used. But I want that a class distinction must be there. You have treated us as a different class, though not as a community. Our political right should not be taken away simply because we merge with you simply because we join with you, simply because we are here with, you.

**Mr. President:** As I read this clause, it does not exclude Harijans being elected from other seats. It only assures that they will be elected surely from the seats, which they vacate. But it leaves open the question that they can be elected from. other seats also. You started by saying that seats of the other Hindus get also reserved. That is not the case.

**Shri S. Nagappa:** In other words it means that. Supposing four Scheduled Classes vacate, four will come.

**Mr. President:** Supposing you have 27, at least 27 will surely be returned, under this. But 27 may become 54 and there is nothing to prevent that.

**Shri S. Nagappa:** If you confine yourself to this, it goes without saying that non-Scheduled Class Hindus will come in the same number.

**Mr. President:** It does not say that. It assures that 27 Scheduled Caste members will be returned. It leaves open the question as to how many more may come.

**Shri S. Nagappa:** My point is that the due quota of Harijans should come-whether they are to come from Sikh seat or Muslim seat I do not care. I want my number should be intact. That should be brought about and the new Republic should not begin to function with such a defective representation.

**Mr. T. T. Krishnamachari** (Madras: Generally: Question be now put.

**Mr. President:** Closure has been moved.

The motion is:

"That the question be now put."

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar:** Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carryover on the ground that the Muslims and Sikhs hove surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My submission on this point is this, that whatever arrangements have been made, those arrangements are made in respect of the permanent structure of Parliament which is to come, into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerjee, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that certain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Muniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Muniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his amendment.

**Mr. President:** I will put the amendment to vote now.

The question is:

"That in amendment No. 164 of List III, clause (1) of the proposed new article 312F be deleted."

The amendment was negatived.

**Mr. President:** No. 202.

**Shri V. I. Muniswamy Pillay:** I leave it to the Drafting Committee. I do not press it.

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

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

"That in amendment No. 164 of List III in clause (2) of the proposed new article 312F, for the words 'as the President may by order direct' the words 'as the Parliament may by law provide' be substituted."

The amendment was negatived.

**Mr. President:** Then I put amendment No. 203-that of Pandit Thakur Das Bhargava.

The question is:

"That in amendment No. 164 of List III (second Week), in the first proviso to clause (1) of the proposed now article 312F, the words 'or to the Muslim or the Sikh community' be elected and for the words 'be of the same community' the words 'belong to the Scheduled Caste' be substituted."

The amendment was negatived.

**Mr. President:** Then I come to amendment No. 204.

**Shrimati Purnima Banerji:** Sir, I beg leave to withdraw the amendment I have moved.

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

**Mr. President:** Then I put the article as modified by the amendment No. 205. That is I put amendment No. 164, as amended by amendment No. 205 which amends the explanation.

The question is:

"That proposed article 312F, as amended stand part of the Constitution."

The motion was adopted.

Article 312F, as amended, was added to the Constitution.

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**Schedules III A and IV**

**Mr. President:** Then we have to take up Schedule III A.

**Shri T. T. Krishnamachari:** Sir, Schedule III-A is not being moved. It can be taken out of the List. That is the idea.

**Mr. President:** So there is no question of amendments arising.

**Shri Brajeshwar Prasad:** But the proper procedure is that it must be moved. What is the idea? Is it to be held over?

**Mr. President:** It is not in the Draft Constitution. It was given only as amendment and when that amendment is not moved, there is no question of amendments to that amendment arising. So Schedule III-A goes, with all its amendments.

Then we take up Schedule IV.

**Shri T. T. Krishnamachari:** Sir, I move that Schedule IV be deleted.

**Some Honourable Members:** How can it be deleted?

**Mr. President:** So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendment & to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

**The Honourable Dr. B. R. Ambedkar:** Mr. Krishnamachari will explain.

**Shri T. T. Krishnamachari:** Sir, the Fourth Schedule was necessary because certain provisions were put in the Constitution in order to describe the relations of the president and the Governors *vis-a-vis* the Ministers. It his now been felt that the matter should be left entirely to convention rather than be put into the body of the Constitution as a Schedules in the shape of Instrument of Instructions, and, there is a fairly large volume of opinion which favours that idea. Therefore, we have decided to drop Schedule III B which we proposed as an amendment and also Schedule IV which finds a place in the Draft Constitution, because it is felt to be entirely unnecessary and superfluous, to give such direction in the Constitution which really should arise out of conventions that grow up form time to time, and the President and the Governors in their respective spheres will be guided by those conventions. As these schedules were felt to be superfluous I had moved that the second Schedule should be deleted.

**Shri B. Das** (Orissa: general): Sir, I am confused. I do not wish that the Schedule IV should be withdrawn bodily so soon. Let us pass all the Schedules dealing with the powers of the Governor-General and the governor, and if the Drafting Committee think it necessary to drop any of them, them they can do so at a later stage. But now, at the fag end of the day, a sudden surprise is sprung upon us with the motion that the Schedule IV be dropped. It is difficult for us to understand the position. I would like, for instance, to know what my Friend Pandit Thakur Das has to say on it. I am not a lawyer and so I would like to know what his opinion is. I think it would be better to take up the deletion of Schedules after we have passed all the articles that are left over. That is my submission.

**Shri Rohini Kumar Chaudhuri** (Assam: General): Mr. President, Sir, I have come here only to get one point clear. I do not understand why Schedule IV has been dropped altogether. Is it because it is thought that it would not be necessary to resort to any portion of that Schedule in future in the interval between now and the next general election. If that is so, I may point out that we are going to have general elections in West Bengal shortly and after that election is over, it will be necessary for the Governor to act under para. 2 of the Fourth Schedule. Para. 2 says:

"In making appointments to his Council of Ministers. the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature..... who will best be in a position collectively to command the confidence of the Legislature....."

So, as soon as the elections are over in West Bengal the Governor there will have to exercise the powers referred to in para. 2 of this Schedule. Therefore for the temporary period, such provisions should be made. so that these powers may be exercised when the need arises. That is the point I want to get clear.

**The Honourable Dr. B. R. Ambedkar:** Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the States as to how they should exercise their discretionary powers that were vested in them. Now the Instrument of Instructions were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the instrument of Instructions

issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these instruments of Instructions is carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister are the matter of the, selection of Members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so, supposing the Prime Minister does, not propose, for any special reason or circumstances, to include in his Cabinet members of tile minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of to the fact that there is no discretion in the Governor and there is no functionary Instruction to Act in a particular manner. It is therefore felt, having regard under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such instrument of Instructions which really can be effective in a different set of circumstances which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

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

"That the Fourth Schedule be deleted."

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

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## SECOND SCHEDULE

**Mr. President:** The House will now take up Schedule 11.

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

"That for Part I of the Second Schedule, the following be substituted:--

### PART I

*Provisions as to the President and the Governors of States for the time being specified in Part I of the First Schedule.*

1.There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say :-

The President--10,000 rupees.

The Governor of a State--5,500 rupees.

There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3.The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4.While the Vice-President or any other person is discharging the functions of. or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whole functions he discharges or for whom he acts, as the case may be."

## PART II

"That in the heading in Part II, after the word and figure 'Part I' the words and figures ,or Part III' be inserted."

"That for paragraph 7, the following paragraph be substituted:--

7.There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.'"

## PART III

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before Such commencement be substituted

## PART IV

"That for Part IV of the Second Schedule, the. following be substituted:--

## "PART IV

*Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule*

10.(1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:--

The Chief Justice-5,000 rupees:

Any other judge-4.000 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a Pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor, Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official

residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as 'a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave or absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11.(1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-

The Chief Justice-4,000 rupees

Any other judge 3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty- first day of October, 1948, and has on the date of the commencement of I his Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the-provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires,

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge,

(b) "actual service" includes-

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations excluding any time during which the judge is absent on leave, and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."

## PART V

"That in the heading of Part V, for the word 'Auditor- General' the words 'Comptroller and Auditor-General' be substituted.

'That for paragraph 14, the following paragraph be substituted:-

> '14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.
>
> (2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor-General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement. "

"That in paragraph 15, for the word 'Auditor-General' in the first place where it occurs, the words 'Comptroller and Auditor-General' be substituted."

With your permission, I will explain the provisions tomorrow.

**Mr. President:** The House stands adjourned till 10 O'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

**Wednesday, the 12th October 1949**

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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.

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**DRAFT CONSTITUTION-***(Contd.)*

**Second schedule-***(Contd.)*

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month plus a free house, and the salary for a puisne judge will be Rs. 4,000 per month plus a free house. With regard to the Supreme Court, the position is this, that according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this: whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision should be made for allowing him, to continue to draw the salary which be now gets as a judge of the Federal Court. the decision of the Drafting Committee has been that while the normal salaries of the Supreme Court Judges should be as stated in the Second Schedule. provision ought to be made to enable the Federal Court judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories--those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, i.e., those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule,. so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief Justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the

Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under, the Supreme Court also arises in the case of the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories-those appointed before the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government ,of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule 11 and the scale of salary obtaining in other countries. For instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Any, one who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October 1948, if .their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the Judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such .grievance and therefore we have not introduced a countervailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the President. The President of the Union is obviously a functionary who would replace the present Governor-General and in fixing the salary which we have. fixed, namely Rs. 10,000, we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the

Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem.* This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors.

One factor is that the salary of the President should be subject to income-tax It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the President if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme Court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the President's salary carries with it certain allowances. With regard to these allowances I might mention that when the Government of India Act, 1935, was passed the Act merely fixed the salary of the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an Order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

1.Sumptuary allowance of Rs. 45,000 per annum.

2.Expenditure from contract allowance Rs. 4,65,000.

3.State conveyance: Motor cars: Rs. 73,000.

4.Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed be ,will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

**Mr. President:** I now come to the amendments. I shall take up the different parts separately and ask Members to move them as we come to them. The first amendment is to Part I, amendment No. 259, by Shri Mahavir Tyagi.

**Shri Mahavir Tyagi** (United Provinces: General): [Mr. President, Sir, I do not think that a salary of ten thousand rupees per month for the President and a salary of five thousand rupees for the Governor is to do much. After pondering over the problem for two days, I decided that I should freely express my opinion on this occasion. I feel that all the people in the civil services and Government officials should lead a good life and should command respect. India is a land of seers. Here dignity is not determined by money. *(Hear, hear)* In India sacrifice and penance have ever commanded respect. The Government officials who have taken upon themselves the burden of service permanently should have such salary as may enable them to lead a life of comfort and respect and to be free from want. But the political leaders among whom I count the President, the Governors and the Members of the Assembly also, who hold high Government offices through politics should discharge their duties in a spirit of selfless service. It has become customary in the world to provide high salaries for such functionaries and it appears that we also have no hesitation in providing high salaries. But I appeal to the Constituent Assembly that we should create a new

precedent of sacrifice so that we may be able to set an example before the world and show to it a new path. We were able to achieve success and freedom, not because we were persons of wealth but because we were rich in renunciation. At present when there is moral degradation in the world, it is all the more necessary that India should show the correct path and should place before it the ideal of serving the nation through sacrifice. By our sacrifice and penance we would create an atmosphere of sacrifice not only in our own country but in the whole world A society comes into being only through sacrifice, and for its uplift too it is necessary to awaken and encourage the feelings of sacrifice.

I think that the President of a nation is the symbol of its dignity. It is wrong to think in India that we can have dignity only through money. (Hear, hear). A dignified position can be achieved here only through sacrifice. It would be wishful thinking among us if I want that the presidential post should be honorary, The State should bear his expenses. But the person who holds the highest post in the land should lead as simple a life as that of a sanyasi. This is a land of the poor and the money that is realised from them through taxes increases their poverty. I do not think that politicians should freely use that money for their personal use. Therefore, if no other change is possible at present I place for your acceptance the amendment that "the salary of the President shall not exceed ten thousand rupees". Instead of fixing the salary at ten thousand it would be better to state that it shall not exceed ten thousand and that the salary of the Governors shall not exceed five thousand, so that if the future Parliament wants to lead the politics of the country on the path of sacrifice and penance it may be possible for it to reduce these amounts. It will be a pious hope for me if I wished that the members of the legislature also should not get anything else besides food allowance and travelling allowance. I am ,confident that if we enforce such a scheme, simplicity and honesty will surely prevail in the country and thereby we would be able to put a stop to the moral ,degradation that we find in the world today.

I have no objection in regard to the salaries of permanent government officials. Their salaries should be increased according to the conditions obtaining in the country. But those, who have followed the ideal of Mahatma Gandhi and have won the confidence of the poor people, should lead the life of the poor. Even if we meet the Presidents of other great nations we should talk to them in a humble way, because by doing so we would only enhance our prestige. At the same time we should lead the politics of the country with pride and self-confidence. I have nothing more to say on this. I only place my amendment before the House and appeal to it that because ours is a poor nation, our President should lead the life of the poor, so that he may be able to pay more of his attention towards his poor countrymen.

I have to say one thing more. Whenever money and political power are centred together at one place there occur corruption and degradation. The people begin to feel the authority of the persons who holds the reins of politics and thus a stronghold of corruption and degradation is created around him. The guards of the stronghold do not permit that political authority to awaken and nor do they allow any reform because they fear that any kind of reform might be detrimental to their pleasure-seeking. This increases the tendency to degradation. We should place high ideals before our President. If we give him money only he would command no respect in the country. Therefore, I appeal to the House that our President should work in an honorary capacity and should lead the life of the poor. This alone is in the best interest of the country, and this alone can make our President acceptable to the poor. With these

words I move my amendment which reads thus:

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, before the figure '10,000' and before the figure '5,500', the words 'not more than' be inserted." ]*

**Prof. Shibban Lal Saksena** (United Provinces: General): Mr. President, Sir. I beg to move:

"That in amendment No.-207 of List VI (Second Week), in paragraph I of the proposed Part 1, for the figure and word '10,000 rupees' the figure and word 'I rupee' be substituted."

Sir, I am glad my honourable Friend, Mr. Tyagi has already delivered his speech on my amendment rather than on his own. I am glad that the sentiments which I wanted to express by my amendment are shared by him and also by many members of the House as is evident from the cheers that the House gave him. In fact when I gave this amendment, it was after considerable hesitation. I felt that what I felt I must express in my amendment. The President of the Republic in our Constitution is a substitute for the British King because we have modelled our Constitution on the British lines. Now, in our country the ideal of Kingship is illustrated by kings like Janaka who lived like sanyasis. Even in our own times our master, our father, Mahatma Gandhi put before us the same deal. I therefore think Sir, that by providing I rupee as the salary for the President, we shall only be doing something which is in consonance with our ancient civilization and culture. So, by accepting this amendment, we shall be placing before the world and before the country, the ideals of our ancient civilization and culture. This will also ensure that the post of the President will not be aspired for by greedy men, but the honours shall be bestowed on men who are intellectually, morally and spiritually fit for the job, and who do not want to take it for the salary attached to it but who want to serve the country in the spirit of King Janaka, of Mahatma Gandhi and other great kings of ancient India.

In our Constitution we have armed the President with very wide powers. Schedules 3 (a) and 4 of the original Draft containing Instruments of Instructions have been taken away from the Constitution. So that now the Constitution does not fetter his discretion in any manner. In our Constitution the President is authorised to do as he likes. We have given him very great powers. In fact throughout these discussions, on the Constitution, I have been opposing this pilling up of all power upon him, because actually he will exercise all the powers on the advice of the Cabinet, but if the President is a *sanyasi,* then I am sure no Prime Minister shall have the courage to deflect him from the right course and he will be able to carry out his duties in an impartial manner.

Sir, when I put this figure I was also influenced by the present salaries and allowances of the Governor-General. I am told by my honourable Friends oft the Finance Committee that the present budget of allowances etc. of the Governor General comes to about Rs. 20 lakhs per annum of which about Rs. 11 lakhs is spent on the repairs to the Government House alone and the remaining Rs.9 lakhs on sumptuary and other allowances of the Governor-General. I think, Sir, in a poor country like India whose leader Mahatma Gandhi put before us the ideals which should govern us, it should not cost this huge amount. I agree with my honourable Friend Mr. Tyagi that the entire cost of living of the Governor General should be borne by the State and I would permit him the allowances which he; needs for that purpose. I am sorry today the dignity of India is supposed to consist in the huge salaries we can provide for our

President and the huge buildings in which he should live. I think our ideals were different. The present Governor General when he was Premier of Madras lived in his own house and did not shift to the official residence of the Prime Minister in Madras, but here we have forced him to live in a building whose repairs alone cost about Rs. 11 lakhs. I think, Sir, that we must change these standards. We must live according to our own ideals, and our own culture and civilization. Sir, it is in that spirit that I have put forward this figure of one rupee.

Our Congress President, Sir, is an honorary person and today the Congress President has become one of the most important functionaries in the country. He devotes almost the whole of his time to the nation's service and he does not even get any allowance and yet I do not think that the work of the Congress has suffered in any manner. In fact the amount of work which our Congress President has to do is probably greater than that which would be required by the President of the Republic. I therefore think that in putting forward this figure of one rupee, I have only said what many other members also feel and which is in consonance with our ancient ideals and culture and our new aims and aspirations. I hope this amendment will be supported by the House and that the Drafting Committee will consider this measure.

**Shri R. K. Sidhva** (C. P. & Berar: General): Mr. President, my amendment reads thus:

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

"The salaries of the President and the Governor shall be subject to income-tax."

Sir, my reason in moving this amendment and specifically mentioning in the Constitution that the President and the Governor's salaries shall be subject to income-tax is this: Although the honourable the Mover, Dr. Ambedkar has stated that their salaries are subject to income-tax it is a common rule and practice that the income-tax has to be recovered from everyone. ever if it is not mentioned. It is very clear, I have no doubt about that; but despite that I am anxious that this should be mentioned for this reason. At present our Governor-General was drawing a salary which was not subject to income-tax. You know, Sir, when he was drawing Rs. 20,000 he was subject to income-tax and yet people did not know what he was actually drawing; in as much as in the Parliament when the subject came up for discussion then most of the Members did not know that his salary was subject to income-tax. This matter was discussed from one end of the country to the other and the people thought that our Governor-General was drawing in cash Rs 20,000 and putting it into his pocket, whereas actually he drew only Rs. 8,000 or 9,000. The Legislative Assembly subsequently resolved that his salary should be Rs. 5,500 without any tax. Now, if you raise it today to Rs. 10,000 and do not let the people know-the people do not generally go by the income-tax or that so much is deducted by so many other taxes, they will state that President's salary is increased from 5,500 to 10,000. People only go by the figure. They ask what is the Governor-General drawing, and the masses say that he draws Rs. 10,000. I therefore desire that this should be made very clear to the masses. Any time you may argue with the masses that the Governor-General and the Governor are subject to the payment of Income-tax. Sometimes, they hesitate to believe. When they hesitate to believe, if this is mentioned in the Constitution, they may be refuted with a definite reply. 1, therefore, feel, Sir, that, though it may be redundant, though it may not be necessary, to avoid unnecessary criticism that the

President and Governors draw fat salaries. the insertion of the words mentioned in my amendment is very essential.

Coming to the amount of the salary, my honourable Friends. Mr. Tyagi and Professor Shibban Lal Saksena stated that the Governor-General should be a Sanyasi. Probably they have been carried away by ideas with which we have been taught to serve humanity without receiving any remuneration. Several of us have done that in the past for the attainment of freedom and to serve humanity without receiving any amount of compensation or money. We have done free service to humanity. That is one thing. But, you should not mix up two things which are quite distinct. The Governor-General is the administrative head of the Government. He has been restricted by so many limitations in this Constitution. I ask whether the Presidents of the Indian National Congress of the Provincial Congress Committee are restricted by so many restrictions as are stated in this Constitution. Is not our President of the Indian National Congress at liberty to do what he likes and earn what he likes? Has not the President of the Provincial Congress Committee been earning? I know are have scarified and we sacrificing immensely. I am also one of them.

**Shri Mahavir Tyagi:** He is not entitled to use public money on himself.

**Shri R. K. Sidhva:** Kindly listen to me. You have had your say. I know the value of public money. I am not carried away by sentiments. I am a practical man and I believe in reality. What is the use of wasting public money? How do you feed your President, I want to know, when you have put in so many restrictions in the Constitution that he shall not do this, that he shall not do that, that he shall be so and so and all that? Have you not passed so many paragraphs in the Constitution binding him down? My honourable Friend Prof. Shah even wanted that whatever wealth he had should be shown before he is made the President. That was lost; but you know what the President ought to be. He should be above board. He should be a man of sterling character. Although not within the provisions of law, but morally, he is the custodian of the wealth of the country. He has to see how that wealth is being administered. For that purpose. a paltry as salary is necessary. I use the word paltry: compare the salary of 20,000 minus Income-tax which came to about Rs. 9,000 the Viceroy drew, with the net salary of about 5,000 to be drawn by the President. Is it not a great sacrifice that our people are making-one hundred per cent cut of the previous salary of the Governor-General and fifty per cent. of the previous Governors' salaries?

I have no quarrel or argument with those members, who lack in loose words as Sanyasi President. My honourable Friend Mr. Tyagi said that the President should be a sanyasi. Mr. Tyagi may be a sanyasi as he is a tyagi. He may become the President if he has to become President at any time. I have no arguments with him. I only ask, are we here in a Congress platform? Here we are preparing a Constitution. I have sacrificed not only by going to jail, but big monetary sacrifice. Several hundreds and thousands of people have scarified similarly. We should not be actuated by what we did to achieve our freedom. We have won freedom; we have served humanity, we have served the best interests of the country by sacrificing everything as our master taught us. I must say, I am not a prophet--even if our master was alive, he would have ridiculed the idea which my two Friends have put before the House, knowing him as I do very well, although several of my Friends may know him much more than me.

I therefore contend that the salary provided in the Constitution is a very reasonable one. I must say it is a great sacrifice. Is it not a sacrifice that our workers

have made, who have become leaders, sacrificing large practice from the professional point of view, lawyers and doctors. I know of instances of people who were earning Rs. 20,000 and 30 000 serving at one time for Rs. 500 and today for Rs. 1,500. Is it fair to say that this is waste of public money ? We do not want to squander public money. We must be generous enough to appreciate the work of our leaders and ourselves and also be pround of what we have sacrificed and we are sacrificing today. Do not put in a proposition that would make us the laughing-stock of the whole world. If I do not get claps from the House I do not mind. If Mr. Tyagi got claps from the House because he proposed one Rupee of a little more as a salary, I do not mind. If I am opposed in this House, I do not mind because I feel that this is the right proposal. I feel that without salary, that would make us the laughing-stock before the whole world. We must realise the great sacrifice that has been made by the President and the Governors in accepting this salary. I will come to the allowances when the time comes. So far as salaries are concerned, I think this is reasonable. May I move the amendment regarding the allowances, Sir?

**Mr. President:** Yes; you may move that.

**Shri R. K. Sidhva:** Sir, my amendment No. 262 relates to the allowances in paragraphs 2 and 3. 1 move:

"That in amendment No. 207 of List VI (Second Week), for paragraphs 2 and 3 of the proposed Part 1, the following be substituted :-

'There shall be paid to the President and to the Governor the following allowance:

The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The President shall also draw Rs. 10,000 per annum as touring expenses.

The Governors shall draw a lump sum of Rs. 15,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and ail other allowances.

The Governors shall also draw Rs. 7.000 per annum as touring expenses.'"

So far as the allowances of the Governor-General were concerned, I was myself hunting since yesterday the Orders made by His Majesty in Council for the Governor-General and I could not find any Chapter or Schedule except for the Governors. My honourable Friend Dr. Ambedkar made it very clear that the Schedule never came into existence. I thought it may be somewhere and that I was not able to lay my finger on it, I now learn that it never came into existence and that the Secretary of State fixed the allowances for the Governor-General. What was that, I do not know. But, Dr. Ambedkar gave us an illustration which I had also culled from the last budget as to what was provided for our Governor-General. He has given a figure, Rs. 6,64,000 for the various types of allowances for the Governor-General.

With your permission, Sir, I would like to correct Rs. 35,000 into Rs. 1,35,000. My reasons are these. When I went for the first time after the attainment of independence into the Government House in Delhi, so many of my friends must have also gone-my first impression was that the Government House was built only yesterday. My friends

must have seen the tip-top way in which the building has been maintained. I can assure that the money which has been spent in the past is really well spent. The floor which has been used was shining like a mirror, the coiling, the golden colours and paintings and the various upholstery and the household requisites were as if only put in yesterday. The reason was good and open fact maintenance and up keep. Whether it was a woman housekeeper or man household I do not know; whoever it was deserves the greatest credit of the people of the country in keeping this historical place in such a condition as it is at present. It has been suggested that the building of the Government House should be turned into a hospital. I oppose that view. This is not meant for a hospital although it may be appealing to my friends Mr. Saksena or Mr. Tyagi. This should be used for a useful purpose. It is being used today for a nuseum and thousands of people are visiting it and have an opportunity to see the Government House.

**Dr. P. S. Deshmukh** (C. P. & Berar: General): What arc we discussing? is it Government House or allowances?

**Shri R. K. Sidhva:** Allowances. We must see that we are not miserly in that. I have therefore provided Rs. 1,35,000. The sum of 1,35,000 includes the Sumptuary allowance, contract allowance, and renewal of furniture. If you were to see the Order-in-Council providing allowance for Governors you Will find that even the Bombay Governor gets only 35,000 and the staff-Military Secretary etc. 1,36,000. 1 am not touching that. They may be paid far actual number of appointments. I am told that the Bombay, Madras and Bengal Governors who had bands have abolished them. The maximum given to Madras is Rs. 43,000. If he has a body guard he is paid Rs. 1,26,000. I am not mentioning that in my allowance. Then there is a Surgeon and his establishment-maximum is Rs. 36,000 for Madras and 33,600 for Bombay I am not touching that. Because these are services which have to be paid. Then comes the maintenance and repairs of furnishings of official residences. Maximum is 34,000 to Bengal Madras 21,500 and Bombay is 25,000 with a minimum of 4,000 to Assam, We have seen the Government Houses of Governors and they are also big enough. Our Governor-General was Governor of Bengal and he stated there were 134 rooms and he was not himself able to visit these rooms and for its maintenance Rs. 25,000 may be a somewhat , reasonable amount. Therefore after seeing the Government House in Delhi I Was actuated to increase this amount to Rs. 1,35,000.

For Contract Allowance, i.e., an allowance for miscellaneous expenses including maintenance of motor cars a sum of Rs. 1,08,000 is provided for Bombay; Madras comes next and Bengal comes third. Minimum is 11.500 for Orissa. Tour expenses are very heavy. 1,22,000 for Bengal, 1,13,000 for Madras and 65,000 for Bombay is provided. Previously the Governors used to visit for pleasure. They had no duty to perform. . Rather he was an administrative head and in that sense he was Executive head and probably lie had to travel about. Today our Governors will not have that executive Work. They will only visit whenever occasion arises. Therefore I have given for touring 10,000 to the President and 7,000 to Governors. I consider it a reasonable amount. he Governors are not expected to go away from their places and the President also. So I think a lump sum of 1,35,000 for the President and 15,000 for Governors would be reasonable, for repair and maintenance of furniture and motor vehicles also including sumptuary and other allowances, instead of the 35,000 1 had provided previously.

The Honourable Dr. Ambedkar stated that these may be left to Parliament to

decide. This is a very big item. I am told now 18 to 20 lakhs is being spent for the Government House, Delhi, for various purposes. We have no definite figures but a very large sum is being spent. Therefore I do feel that a specific mention in a schedule should be made for the purpose of Allowances for the President and Governors. After all the salaries are for their own personal purposes and I do not want to be told by the people that the Governors have taken small salaries and they are indirectly getting some money from these allowances. We have to tell the public at the same time that from the heavy sum of 2 lakhs allowances we have come to a small sum which is really necessary for the upkeep of the Government Houses. If we are simply converting the structure of the living of the Governors and Presidents by asking them to become *Sanyasis,* then let me tell you that these Government Houses are not suitable. Then they have to take to some huts- perhaps the time may come I do not know when there may be; when our outlook and our system of living is changed. We do not want the articles in Government House to be destroyed or spoiled. We have to maintain them at the State expense and it is for the future generation really to see that these buildings are monuments. Of course some of these are rickety buildings. Even the Bombay Government House is very old. I do appeal to the Drafting Committee to provide allowances in the Constitution so that it may not be stated that from the allowance money is being squandered away and motives attached to Governors. With these words I move my amendment.

**Shri H. V. Kamath** (C. P. & Berar: General): Sir, will there be a general discussion on each part or on the whole article?

**Mr. President:** I will take the amendments on the whole article and then we can have the general discussion. No. 264.

**Prof. Shibban Lal Saksena:** Sir, I beg to move:-

"That with reference to amendment No. 210 of List VII (Second Week), for paragraph 8 of Part III, the following be substituted :

' 8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deuty Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution."

Sir, at present, Part III says-

"There shall be paid to the Speaker of the House of the People and the Chairman of the Council (if States such salaries and allowances as were payable to the Speaker of the Constitution Assembly of the Dominion of India immediately before the commencement of this Constitution."

Now, the position is, that for the interim period there is not to be a Speaker of the House of the People or a Chairman of the Council, of States. We are now making provisions only for the interim period, and later on the Parliament will decide the salaries. Therefore the present amendment does not fit in. Part III further states-

"..... and there shall be paid to the Deputy Speaker, of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the 15th August 1947;"

In the amendment moved by Dr. Ambedkar he wants:-

"That for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947. the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement' be substituted.'

If this amendment is accepted, the paragraph will read--

",..... and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement."

Now, this does not fit in with the present position There is obviously some mistake, and therefore my amendment has been given. This amendment of mine says that "there shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution. I am sure Dr. Ambedkar has made some mistake and the Drafting Committee has overlooked it. I will draw the attention of my Friend Shri T. T. Krishnamachari to this portion of Part III which is obviously a mistake. We shall not have, in the interim period any Speaker of the House of the People. I hope my amendment will be accepted by the Drafting Committee and the necessary correction made.

**Mr. President:** Then we come to Part IV. Amendments Nos. 165 and 265 are the same; Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad:** (West Bengal: Muslim): Sir, I have to move Nos. 265, 267 and 270. I have consolidated them again in the latest list.

Sir, I beg to move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (I.) of Paragraph 10, -

(i) for the figure '5,000' the figure '6,000' be substituted; and

(ii) for the figure '4,000' the figure '5,000' be substituted."

I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in subparagraph (3) of paragraph 10,-

(i) for the words and figures 'thirty-first day of October, 1948' the words 'commencement of this Constitution be substituted;

(ii) for the words 'the commencement of this Constitution' the words 'such commencement he substituted."

I do not move part (iii) of my amendment.

I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub,. paragraph (1) of paragraph 11--

(i) for the figure '4,000' the figure 5.000' be substituted; and

(ii) for the figure '5,000, the figure 4,000' be substituted."

I also move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (2) of paragraph 11,--

(i) for the words and figure 'thirty-first day of October. 1948' the words 'commencement of this Constitution' be substituted;

(ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

Sir, with regard to the third part of this amendment, I wish to move it in a slightly altered form though the effect will be the same. The change will be merely verbal. I beg to move:

"That in Schedule Two Part IV. Paragraph 11, sub- paragraph (2), for the words 'shall be entitled' the words 'shall in addition to the salaries specified in sub- paragraph (1) of this paragraph be entitled' be substituted."

Sir, with regard to the general.

**Mr. President:** Shall in addition to what?

**Mr. Naziruddin Ahmad:** "In addition to the salary specified in sub-paragraph (1) of this paragraph." This phraseology exactly in this form appears in subparagraph (3) of paragraph 10, and it has been omitted in this sub-paragraph by inadvertence, and the amendment which I suggest is appropriate in the context.

Sir, with regard to the general purpose of my amendments, they are intended increase certain salaries of the Judges of the Supreme Court and the High 'Courts so as to confirm to existing standards.

**Mr. President:** You are not moving amendment No. 271 ?

**Mr. Naziruddin Ahmad:** I am afraid I have not got a copy of it with me. Sir, I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted."

Sir, my object, as I have already submitted, is to restore the pay of the Judges of the High Courts and the Supreme Court to the old standard. Sir, with regard to judges, one fact must be clearly remembered. It is that the Judges are taken from very successful members of the Bar who earn very good and substantial incomes. If hi is not a good lawyer and does not earn much, it would not be worth while appointing

him as a Judge. It is very necessary that the standard of our Judges should be adequate and should be maintained at a very high level. Judges, especially of the High Courts and of the Supreme Court, are eminent specialists and it is very necessary that they should be sufficiently and properly paid for the very high and eminent quality of their work. They must be treated as experts and must be paid on that basis. If we do not pay our Judges adequately, the result would be that in course of time very highly qualified lawyers would not be attracted to accept judgeships of the High Courts and of the Supreme Court.

With regard to the existing pay of the Judges, there was an amendment moved by Dr. Ambedkar that it should be paid only to the existing Judges. I had submitted an amendment a few days ago to article 3 10 to this effect, but I was then told that the proper place for it would be really this Schedule. I yielded but I do not agree that this is the proper place. Article 310 was the proper place because that article, so far as the High Court Judges are concerned, provides that on. the 26th January 1950, the existing Judges should also automatically be the Judges of the High Courts. Article 310 was perfectly unnecessary because every officer in whatever capacity he serves, automatically continues to serve although the new Constitution comes into force. For the purpose of continuance of their services article 310 was clearly redundant. Such a provision was not considered necessary in the case of any other services. The article had a deeper purpose. I think it was introduced to reduce quietly and imperceptibly the pay of the Judges by transferring the provisions as to their pay to the second schedule and thereby getting an excuse to reduce their pay in a most indirect manner. I should think that even apart from article 310 the Judges would have continued as every other public servant would continue.

With regard to the Supreme Court Judges, the matter is entirely different. On the date on which the Constitution comes info force, the Federal Court Judges convert themselves into Supreme Court Judges. An article to that effect was necessary, but no article like 310 was at all called for or necessary in respect of Judges of the High Court. Now, Sir, article 310 allows existing Judges of the High Court to automatically carry on as Judges of the High Court on and from ,the commencement of the Constitution, they would have received the same salary as they were receiving previously. The pay of the Judges cannot be reduced merely because we have passed this Constitution. So, as I have already submitted, I insist that article 310 is an astute device to quietly reduce their pay.

Then we come to the question of merit. It is a well- known fact that the Judges of the High Courts were receiving high salaries commensurate with the high quality of intellectual work they were accustomed to do. In fact, by accepting the position of a judgeship of the High Court, there has already been a very substantial financial sacrifice. We have here in this House two eminent ex-Judges of High Courts and they will bear testimony that the post of a Judge of a High Court is no sinecure job. It is a very laborious and extremely anxious post, and a Satisfactory discharge of their duties involves tremendous labour and heavy work. It is not anybody and everybody who can prove to be a very good High Court Judge. It is only a specialist of very high attainments who can do so. Only a man of high intellectual abilities and one capable of putting in much industry that can discharge the duties of a High Court Judge. The qualities of the Federal Court or of the Supreme Court Judges are to be still higher. I submit therefore that the pay of these Judges should not be reduced. The pay which they were getting should be continued, but the present suggestion of the Drafting Committee is to the effect that only those Judges who were appointed before the 1st

November 1948, should continue to get their previous salary, but a Judge appointed later on would be receiving much less. I do not see the justice for this distinction at all, bearing in mind that the value of the rupee has considerably depreciated apart from the present devaluation. The rupee at the most was worth, before devaluation, about four annas as compared with its prewar value. Now on account of the recent devaluation, the rupee has further depreciated, and therefore the Judge's salary is really not worth much. The salary which is at present prevailing has been going on for a very long series of years. Also the Judges will have to pay a high rate of income-tax. If you pay a high salary to a Judge, you do not pay him all the money. You will deduct about 20 per cent. out of their pay, and if the Judge has other incomes, the deduction will be much higher.

**Dr. P. S. Deshmukh:** Let him forego that income.

**Mr. Naziruddin Ahmad:** That is a high standard which is not practicable in our life. The honourable Member who interrupted me would not be willing to give up his own income. I submit that this income-tax will have to be taken into account. Minus the income-tax, the pay becomes very small, and then again on account of the depreciated value of the rupee, they get really much less. Considering the expert knowledge and high quality of work which is expected of them, they should continue to receive the old salary. Their life is not as boisterous or exciting as some of us take it to be. They are practically isolated from, society. They cannot have the luxury of taking part in politics. (Shri H. V. Kamath: they go to clubs.) If they go to clubs, they enjoy themselves in a more sober manner than some of us would be inclined to. Judges after retirement were permitted to practise outside their Provinces. But now they cannot practise in any part of India. In these circumstances, I submit that no case has been made out for a reduction of their pay.

Coming to the pay of Supreme Court Judges, we are going to have Independence from the 26th January. (A Member: We are independent already.) We are not yet independent. We are still attached to the apron of the Anglo American bloc. We have no real liberty, no real freedom. On the attainment of the so-called Independence, the Federal Court will be converted to the Supreme Court. The Supreme Court will exercise not only the functions of the Federal Court but also those of the Privy Council. It will be the highest Court of India and will really be supreme in the matter of law. The Supreme Court will have higher powers and a high status than the Federal Court.

But while we raise the status from the judgeship of a Federal Court to that of the Supreme Court, and enhance their status and power, we are reducing their salary. This is a piece of injustice. Nothing is more important for the working of a Democracy than that the efficiency and quality of the Supreme Court Judges should be kept intact. If their pay is reduced, then only men of lesser intellect than what the increased quality, authority and prestige and power of the Court demands will be attracted to these high posts. The result would be depreciation of the quality of the work of the judiciary. The Supreme Court deserves the highest consideration from this House and the country. They have to be recruited from the Judges of the High Court and have to come to the Indian Capital and have to maintain two establishments at home and at the capital.

Then I come to the other part of my amendment relating to the pay of existing Judges. According to the present proposal, the existing Judges who were appointed up to the 31st October 1948, would a love continue to get their old pay. I submit this

date is arbitrary and not based on sound principle. The salary of those Judges who were appointed after that date and before the inauguration of the new Constitution should also be protected. There is no reason why they should get lea. Then there is a provision that a Judge of the Supreme Court could have an official residence; still that is confined to those Judges who will be appointed later on. Judges who were receiving high pay would be getting their pay but they would not be entitled to an official residence. I submit that the treatment of these two classes of Judges on two different bases is based on some sort of commercial instinct. I submit that all Judges of the Federal Court should have an official residence free of cost. Two of the amendments connected with this part of the subject are merely consequential and do not require any special mention.

Then I come to amendment 270, part (iii). This really fills a gap which has crept in due to an inadvertence on the part of the Drafting Committee. I draw attention to paragraph 10, sub-paragraph (3). There it is stated that an existing Judge should get the difference between the present pay and the new pay "in addition to the salary specified in sub-para (1) of this para". There the fact that the difference between the former pay and the new pay would be "in addition to" the salary which they would get is specifically mentioned in para. 10. But this condition is omitted in sub-para. (2) of para. 10. The effect is that a Judge who is now drawing Rs. 4,000 who should be drawing Rs. 3,500 on account of the new pay would get Rs. 500 more in addition to the Rs. 3,500 which is sanctioned; but as it is, it gives the impression that he gets only a special pay which amounts to the difference between Rs. 4,500 and Rs. 3,500 amounting only to 500. The fact that this would be "in addition" to the newly sanctioned pay is wanting in this sub-para. (2) of para. I 1. This is an inadvertent omission and I submit that my amendment should be accepted.

Coming to my last amendment, this is of a formal nature and I do not wish to take the time of the House in explaining it. I suggest that it should also be accepted.

**Shri Brajeshwar Prasad** (Bihar: General): Sir, I move:

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in paragraph 10,-

(i) in sub-paragraph (1), for the figures '5,000' and '4,000', the figures '3,000' and '2,000' be substituted respectively; and

(ii) in sub-paragraph (2), for the word 'without' the word on' be substituted."

Sir, I have moved this amendment because I feel that we are providing too much to these judges. Dr. Ambedkar quoted the salaries of the judge of the Dominions. A false impression would be created in our minds unless we also bear in mind the average income of an Australian or Canadian. I would like to know what is the difference between the average income of an Indian and that of an Australian or Canadian.

Another argument which is usually advanced by those who stands for fat salaries for the judges is that they have got an important part to play in the Federal Constitution. It is said that the judges are the guardians of the liberties of the people and as such they are entitled to a higher salary. The question of dignity is also involved. These are some of the grounds on which a high salary is advocated. I would like to enter into a. detailed discussion of these basic concepts which to my mind

appear to be without any foundation.

If this Constituent Assembly does not abide by this criterion, the criterion being the average income of an Indian, it will be weakening the foundations of' the State. Already people in this country believe that the Government of India have given all possible facilities to the Judges and Governors without taking into. consideration the facts of our life. They have given all kinds of allowances to a handful of persons who are placed in different capacities such as Governor-General, Prime Minister, Ministers, Comptroller and Auditor-General, etc. These officers of the State who draw fat salaries, may I humbly submit, are looked down upon by the average man in this country. I am not in favour of the proposition that no high salaries should be paid. I am in favour of the proposition that as far as Foreign experts or technicians are concerned they should be given as much as they want but that as far as people living in this country are concerned as far as the people who are in the Congress are concerned, they must make some sacrifices for the cause of the country.

Am I to understand that after we have won our liberty all those ideals for which we stood should be put in cold storage? Are those ideals to be derided, looked down upon and laughed at? Far-sighted statesmen, politicians and public workers must bear in mind the fact that the urge for economic equality is so strong and insistent in our minds that they cannot easily afford to ignore it. I know as much as any other Member of this House that all talk of economic equality at the present moment is Utopian but you cannot say that this is a concept which has no foundation in reality. You are going to provide Rs. 5,000 and 6,000 as salaries but what about the common man in the villages? You say it is a democratic government. Have you consulted the people? Do you intend to do that? With great fear and trepidation, I beg to submit that I do not share the opinion of those lawyers who say that the judiciary has got a Very important part to play in the politics of our country. Of course everybody likes to over-estimate his own importance in life. A lawyer is always prone to think that he performs a very useful work in society. I would like to ask those persons who have not read the work of Mahatma Gandhi (I refer to Hind Swaraj, the political bible of every congressman) to refer to that chapter where he has expressed his, own ideas about lawyers and judges.

I am of opinion that in this transition period through which we are passing it is neither the legislature nor the judiciary but the executive which has an important part to play. In the 19th century, especially in America, the judiciary did play a vital part, but circumstanced as we are today the judiciary has no future in this country. The judiciary plays an important part in a society where the spirit of legalism is prevalent, where the foundations of the State are strong and where there is no. revolutionary upheaval. In India the facts are otherwise. Our economic situation is deteriorating fast; the threat of internal revolution is growing and becoming insistent day by day and the danger of a freiogn war is also looming large on the horizon. I do not see how the judiciary will be the guardian of our constitution, how it will be able to protect the life and liberties of the people when people are bent upon making mischief and resorting to insurrectionary methods.

Another argument usually advanced is that you must give such salaries and allowances as will enable the judges to maintain their dignity. I am apposed to this idea of dignity.' The whole concept is sheer vulgarity. The ideal before the people of this country has been plain living and high thinking. Dignity has nothing to do with money. It is only in the West where this conception is prevalent. But our conceptions

and ideas are looked down upon by wise people. Some of us who still abide by our old ideals and traditions would like to emphasise, even though we know full well that we will not be heard, that we stand and shall stand by the ancient ideals of plain living and high thinking.

I would in this connection make one observation which is not strictly relevant. People may ask what about the allowances of the Members of the Constituent Assembly. I am not in favour of Rs. 45 per day. I want that we should be provided with a free third class pass for Delhi so that we may come here to attend the Assembly. We want that the Government should provide a hovel for us to live in and function as legislators, We want that this Government should provide for us only jail diet and we do not want a single pice more than this..

**Dr. P. S. Deshmukh:** Are you taking jail diet?

**Shri Brajeshwar Prasad:** I am very keen on this point. I am sure this question is going to be raised either in this House or in the other House. It will not be strictly germane to the issue which is before the House at present if I digress more on this point.

**Dr. P. S. Deshmukh:** Are you eating in Jail?

**Shri Brajeshwar Prasad:** Dignity has no relation to the economic position of men. Men who have been honoured and respected most in this country have been saints and not millionaires. The dignity of a Judge Will depend on the work that he will do, provided he does it in a spirit of service and sacrifice. It will not depend upon the amount of salaries and allowances that we may confer upon him. We are people in favour of a fat salary for a Judge? They say that no good lawyer will condescend to become a Judge if you do not give him proper allowances and a proper salary. So, unless you tempt him with higher salaries he will not come and accept the post of a Judge. Sir, we do not like such. Judges who will not work unless they get proper salaries and allowances. They are undependable persons who are mercenaries. How can they be protectors of our liberty if they cannot work unless they are given Rs. 5,000 as salary? As far as lawyers are concerned, we must do something in order to prevent them from earning beyond a certain limit. We must pass some laws so that it may become impossible for them to earn more than Rs. 1,000 a month.

**Shri Mahavir Tyagi:** What is your amendment?

**Shri Brajeswar Prasad:** I am supporting my amendment that the salaries should be reduced and should be in consonance with the economic facts of our life. I would like to deal with this question to a greater extent and with more precision but I feel that the time at my disposal is short, I like to speak in general on the article itself. So, with your permission I shall make a few general observations on the other aspects of the article.

I refer to the schedule and to the salary of the President. I support the amendment moved by my Friend. Prof. Shibban Lal Saksena. I support this amendment because I feel that the first President will be the last President under this Constitution. It is with this background that I am making my observations. Had I known that this Constitution would last for some time to come, that not only Congressmen but non-Congressmen would also become Presidents of the Indian Union, probably I would not make the

observations that I am going to make now. It is really a matter of surprise and wonder how a man like Raja gopalachari our trusted leader, how a man like Sardar Vallabhbhai Patel who has sacrificed everything, how a man like your august self can think in terms of money. I know that these eminent personalities will never think in terms of money. I know, Sir, that you are going to be the President or somebody else from Members of the Congress High Command.

**Mr. President:** You must not go into personalities.

**Shri Brajeshwar Prasad:** I am not making any personal reference. I am saying that some Members of the Congress High Command will become President.

**Mr. President:** You need not speculate either

**Shri Mahavir Tyagi:** Why not any of the low Command?

**Shri Brajeshwar Prasad :** I hold the opinion that a Member of the Congress High Command, who has worked throughout his life without salaries and allowances will very gladly work without any salary or allowances as President of the Union. I am, sorry, I am referring only to salary and not allowances. I feel that if we take this bold step it will rehabilitate the prestige of the Congress. It has a psychological value. The enemies of the Congress may not like this idea of mine. They may consider such an idea as impracticable. But what about Congressmen? We have no right to ask others to tighten their belts. We have no face to talk about non-violence and truth unless we reform our own conduct.

**Mr. President:** I think there is a lot of repetition going on. Other Members have made that point and so have you. I may remind the honourable Member that we have to finish this and the States question today.

**Shri Brajeshwar Prasad:** I wish to make two more observations. I would like to refer to the example of the great Khalifas of Islam. I want that our President should follow the footsteps of the great Shah Omar and Abu Bakr.

Gandhiji was fond of referring to them as examples. Are we going to bury these principles of Asia at the altar of some European concept? I would refer the House to that letter which Gandhiji wrote to Lord Irwin on bended knees: he prayed for bread and got stones instead.

**Mr. President:** Amendment No. 167 of Mr. Kamath has already been covered by the amendment moved. Mr. Kamath may move 168 and the others.

**Shri H. V. Kamath:** Sir, I move:

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. sub-paragraph (3)of paragraph 10 be deleted."

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (2) of paragraph I 1, be deleted."

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in sub-paragraph (3) of

paragraph II, for the words 'Every such judge' the words 'Every judge of a High Court' be substituted."

Amendment No. 168 seeks to delete sub-paragraph (3) of paragraph 10 of the proposed Part IV of this Schedule. Similarly amendment No. 171 seeks to delete sub-paragraph (2) of paragraph II of the proposed Part IV.

The last amendment is a more or less verbal one in connection with subparagraph (3) of paragraph II of this Part.

Amendment No. 167, seeking to delete the phrase or the clause "with regard to the non-payment of rent by Judges" has been covered as you, Sir, have observed, by the amendment moved by my honourable Friend, Mr. Brajeshwar Prasad.

Taking the last amendment first, that is amendment No. 173, because it is a short one, I invite the attention of the Drafting Committee to the unclear meaning of the phrase as it stands. In sub-paragraph (31 of paragraph II the phrase used is "Every such judge", while in sub-paragraph (4) of para. 10 of this Part, the phrase used is "Every judge of the Supreme Court". If this phrase "Every such judge" in sub-para. (3) of para. I I were to be accepted by the House, it might mean that it has reference only to persons referred to in sub-para. (2) of this paragraph 11. Moreover, I see no reason why this should not be on the same lines as the language of sub-paragraph (4) of para. 10, where a Judge of the Supreme Court is referred to. It is meet and proper that this phrase should be modified so as to refer to every judge of the High Court categorically and not merely to " every such judge". Otherwise it might be misunderstood as having reference only to those judges referred to in paragraph 2.

I hope Dr. Ambedkar will find nothing in this amendment of mine to stand against on consideration of mere prestige and that he will see his way to accepting this very verbal and formal amendment.

My first amendment, Sir, which has been covered by Mr. Brajeshwar Prasad's amendment seeks to delete the provision exempting the judges from paying rent for their residences. I wonder why Judges are being treated so very lavishly in our Constitution. If my honourable Colleagues were to look at this schedule as moved by Dr. Ambedkar, they will see that part IV relating to Judges covers nearly a page and half, while the others with regard to the President, the Governors, the Speaker, the Deputy Speaker are summed up in a paragraph or two. The House will also recollect that Dr. Ambedkar when speaking on this schedule, chose that part relating to judges first before he spoke about the President and the other dignitaries referred to in this schedule. Though I do not cavil at any member of the Drafting Committee-I feel it was perhaps inevitable that the Drafting Committee weighted as it is by lawyers should have a soft comer for Judges; and some malicious critics might also say that some of us want to put ourselves right with our Judges in the India that is to be, we want to put ourselves in the right side of Judges and ingratiate ourselves.....

**Mr. President:** Please do not make any insinuations.

**Shri H. V. Kamath:** 1, for one, do not share that view, but I fear we. lay ourselves open to malicious criticism outside the House, and therefore, I felt that this provision regarding the non-payment of rent was undignified and detracts from the dignity of the Constitution. If the House will refer to article 48 of this Constitution which has been adopted already as well as article 135 of the Constitution also adopted by the

House, they will see that neither the President of the Republic nor the Governor of a State has been given a residence free of rent; I mean it is not specifically stated in the Constitution. The relevant articles relating to the Governors and the President state that the President or the Governor shall have an official residence. That is an that those articles state and there is no reference to the payment or non-payment of rent. I ask the House, is it not undignified of us to say that such a dignitary will not be liable to pay rent for his house? We have already accepted the salutary provision that no dignitary, however high-placed he may be, shall be exempt from the payment of income-tax, as the Governor-General has been heretofore. When even the poorest labourer pays a rent of a rupee or more for his little tenement, why. should not a judge pay a rent for his house? I am sure no judge will ask for this generous concession to him. I really fail to See why this provision as regards rent, so derogatory to the dignity of the House and of the Constitution, has been sought to be moved by Dr. Ambedkar in this House.

Next, coming to salaries, I do not wish to quarrel with him because the Chief Justice of the Supreme Court will receive Rs. 5,000 and the other judges Will receive Rs. 4,000 each, and as regards the judges of the High Court, the Chief Justice will receive Rs. 4,000 and puisne judges will receive Rs. 3,500. But what I fail to see is why the present incumbents of these offices of judges of the Federal Court and the judges of the High Courts shall be entitled to receive the same salary as they were getting before. The other day the Honourable Sardar Vallabhbhai Patel pleaded for the continuance of conditions of service, salary, pension and cognate privileges in respect of the services of the Secretary of State, the 1. C. S. and perhaps the Indian Police service and similar services. The House accepted, and rightly too, his plea and his appeal to the House to pass that particular article because there had been a guarantee given to these services by Government in August 1947. I do not know whether a similar guarantee has been given to the judges of High Courts and to the judges of the Federal Court and also to the Auditor-General to the effect that whensoever the Constitution will come into effect their salaries and other conditions of service will be secure. If that has been given by Government, I have nothing to say. We have got full confidence in Government, and we do not want the Government to go back on their lighted word, and if' they have given any such guarantee to the judges of the Federal Court or the High Courts as regards their salaries and conditions of service, it is a different matter. Otherwise I see no reason why we should introduce a special clause or a paragraph in the schedule to the effect that the present incumbents will continue to receive the same salaries as before. I am sure that if we consult most of the judges at present serving in the High Courts and in the Federal Court, most of them, patriots as they are, and willing to serve the country with all their might and main, will not ask for' this special concession. If one or two- even that I doubt,-ask for this special concession, I think the Constitution should not make a provision for a few individuals when no guarantee has been given by Government to these individuals. The Constitution deals with the whole country, its dignitaries, its people, its officers and public servants, etc., and not any particular individuals. If a few persons do not agree to serve the country under the Constitution we shall not and need not go out of our way to make provision for these few individuals. In the case of civilians it was rightly pleaded and accepted by the House because of the guarantee given by the Government to those civilians, but no guarantee so far as I know has been given by the Government to judges of the Federal Court or of the High Courts in respect of their salaries and conditions of service. That is why, Sir, I have sought to move the amendments Nos. 168 and 171 which have a bearing on the present incumbents of these offices of judges of the Federal Court and the High Courts.

One word, Sir, about these salaries. I agree wholeheartedly with my honourable Friend Mr. Tyagi that the highest dignitaries of the State, the President the judges and the ministers of the State ought to be genuine tyagis. He must be a real *Tyagi* in mind and spirit, in the spirit of the Gita which says:

It is not the actual amount of the salary that a person is drawing; but the test is whether he is or is not attached to that salary. If he is actuated by the spirit of *"Aparigraha"* and is willing to resign his job at any time for a higher cause, then he is a real *tyagi;* he is a real *sanyasi.* He must serve in this spirit. In this modern world, as in ages gone before, while I will not go the length of saying: I feel that every person, every human being, his mind and spirit, is conditioned by the limitations of his body which persists in his corporeal or embodied existence in this world. He has got to be placed above want; he has got to be placed above fear; he has got to be placed above insecurity. Therefore salaries are and should be provided.

Dr. Ambedkar pleaded for the acceptance of these salaries and quoted certain figures from U. S. A., Canada and other countries. My honourable Friend Mr. Brajeshwar Prasad raised the pertinent point as to what relation or ratio those salaries bear to the national income or the per capita income of those countries. I do not wish to go into that subject. Dr. Ambedkar might throw some light on this subject in his reply to the debate. What I would like to say is this. Rumour has it that our Ministers have accepted a voluntary cut of 15 per cent. in their salaries. It is a very laudable decision if it is true. Mr. Brajeshwar Prasad referred to our own allowances and salaries. I am also in favour of reduction in our allowances. But, I would also suggest that this matter of allowances.

**Dr. P. S. Deshmukh:** Provided all accept it.

**Shri H. B. Kamath:** That was what I was going to say: provided that all public servants accept a voluntary cut in their emoluments; I would suggest that this thorny question of the salaries of Members of Parliament-it is well known that Members of this House do not receive any salaries, but only allowances-be placed on a sounder footing as soon as the provisional Parliament meets or earlier, and the Members also might be given a salary, and a nominal allowance when they come here. That would be much better.

**Dr. P. S. Deshmukh:** And a much wiser course.

**Shri H. V. Kamath:** Yes, much wiser too. After all Members have to cam here from for distances unlike Ministers who stay in Delhi and de their work in Delhi.

Lastly, I would once again refer to my amendment which seeks to delete the provision for non-payment of rent. If this were to be included, I would also suggest that we might include therein a provision about a furnished house, and further as to how many bath rooms, how many bed rooms a Judges residence will have. Otherwise, this reference with regard to a free residence for a judge does not at all fit in with the dignity of the Constitution that we are considering, This must go, considering especially that the articles relating to the President and the Governors have no such provision exempting them from payment of rent.

Before, I close, I would earnestly request the Drafting Committee, and the House to see to it that whatever salaries may have been fixed in the past, we as a free

Republic, as free India which has got to take an eminent place, in the comity of nations, which has got to play a vital part in the battle for progress and liberty and welfare of mankind, let us at least attempt in an honest and humble way to transvalue the values that exist today, and give a now direction and a new light, if I may say so to a mankind that is groping in this war-torn, war-weary world for new values and new light.

**Shri Prabhu Dayal Himatsingka** (West Bengal: General): Mr. President, I had given notice of amendments 212 and 213 which are on the agenda paper on page 4:

"That in amendment No. 10 of list I( second Week), in the proposed Part IV, in sub-para-graph (2) of paragraph 11, after the word and figure thirty-first day of October, 1948' the words or as Chief Justice before the tenth day of October. 1949' be inserted."

and certain other amendments have been suggested. After having heard Dr. Ambedkar explain the position that those persons who have been appointed after 31st day of October 1948 were given an indication that that salary would be subject to the decision of the Constituent Assembly, and if the Constituent Assembly decided to reduce their salary, they will have to agree to such cuts, I do not propose to move it in that amended form. I find that in clause (2) of paragraph II, there is a lacuna and evidently, it is due to the fact that it has not struck the Drafting Committee. It runs as follows: "Every person. who was appointed permanently as a judge of a High Court in any province before the thirty-first day of October, 1948 and has on the date of the commencement of this Constitution become a Judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a Judge of the High Court immediately before such commencement." This contemplates that any person who was appointed as a Judge before the 31st of October 1948, will continue to draw the higher salary that he has been drawing on the day of the commencement of the Constitution. But, if a person is appointed after the 31st of October, he will come within the clause, that is to say, the salary will be reduced and he will get Rs. 3,500. If such a Judge who was appointed before the 31st of October 1948 continues to be a Judge in the same province and his salary is increased in the meantime after October 1048, he will continue to draw the higher salary if he is in the same province. But, if such a Judge has agreed to go to another province and has undertaken an additional liability of having to run a second house in the new province, he will not get the benefit of the additional salary. If a Judge is transferred from Bengal to Nagpur, he will not be entitled to the benefit of this additional salary. I evidently feel that there must be some mistake in the drafting. Otherwise, it could never be the intention of the draftsmen that a person who continues in the same province should draw the higher salary or the difference, but if he is transferred, if he undertakes to go to another province, he will not get the higher salary. He continues to be a Judge; he was appointed as a Judge before October 1948. With your permission, therefore, I suggest:

"That in amendment 21 1, of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph II, for the words 'in the corresponding State' the words 'in a State for the time being specified in Part I of the First Schedule' be substituted."

Therefore the effect of this amendment will be-

"That in para. 11 sub-para. (2) for the words 'corresponding State' occurring in the fourth line of the said para. the words 'in a State for the time being specified in Part I of the First Schedule' be substituted."

There is no reason why a Judge who has agreed to go to another province should be penalised, whereas a Judge who has continued to be in his own province and has not undergone the troubles of a transfer and additional expense should get more. I think if it is properly considered the Drafting Committee should have no objection to accept the amendment proposed by me. This will do away with the anomaly of persons of the same category-to and differentiation being made between two such persons. This is not an amendment in favour of any particular person. This will cover all the Judges who will come within this category. If there is a transfer from one province to another, they, will all be covered if they are drawing higher salaries. If there are no such cases, even then it will not affect anyone under the rules. Otherwise, there is this anomaly or omission or perhaps an unconscious injustice that might be done to any-person who may have undertaken to be a Judge in another province.

As regards scale, personally I would have been glad if the salary had continued to be, for all the Judges, the same that they have been drawing, as everybody knows the Judges should be above temptation and they should have no wants. After all, they do discharge very important duties and there are so many temptations Which come in their way and if they at all have any want, they may be tempted to go wrong. Of course money is not the only thing that might tempt a person. Character and other things are needed, but the Congress party having agreed to 3,500 being fixed for future Judges I do not quarrel with it, but I certainly oppose the amendments of Shri Brajeshwar Prasad and Mr. Kamath who want to reduce, the salary further to 3,000 and 2,000 and I hope the amendment I have moved will be accepted.

**Shri R. K. Sidhva:** There are some amendments in my name.

**Mr. President:** I shall see that.

266 and 269 are already covered. 272: Mr. Saksena.

**Prof. Shibban Lal Saksena:** Sir, my amendment which has been moved also by Mr. Kamath was intended to remove this provision for special pay. I am Opposed to it, on principle. We are, now framing a new Constitution and in this we are providing the salaries which the incumbents of the various offices should get in Free India. But we are here providing in the amendment moved by the Drafting Committee than Judges and the Auditor-General shall continue to get that portion of present salary which is in excess of the new salary as special pay. The reason given is that some guarantee was given to these officers that they will not have their salaries reduced in their period of office. I think the guarantee was for the Judges of the Federal Court and pot for the Judges of the Supreme Court or other Judges. I personally feel that if the future Chief Justice of the Supreme Court and Judges of the High Courts and the Auditor-General in the future will be content with the salaries provided here, I not see why Judges who will take up their places in the new set-up in the Supreme Court and High Courts and the Auditor-General should not be content to have their salaries as fixed for the new incumbents. At present the Chief Justice gets Rs. 7,000 and Judges get Rs. 5,500. According to the new provision the Chief Justice will get only Rs. 5,000. Suppose one of the Judges on the Bench is promoted to Chief Justice ship he will get only Rs. 5,000. There will be an anomaly again. As Judge he draws Rs. 5,500. As Chief Justice

he will get Rs. 5,000. We cannot provide for all these anomalies. What I wanted was that the assurance given was to the existing Judges of the Federal Court and when we arc abolishing the Federal Court and are providing for a Supreme Court under the new Constitution, I do not think the guarantee has any meaning. Besides I think the officers also will not relish this special pay which only they will get and their successors will not get.

I do not for a moment consider that the Chief Justice and the Judges or the Auditor-General should not have proper salaries. In fact I feel that these officers should have handsome salaries because we have put down many conditions on them in the provisions concerning them. They must retire at 65 and 60. In the 'case of Supreme Court Judges also they will not be allowed to practice at the bar after retirement. All these are stringent conditions and I do fed that Judges of the High Court should be men who should be independent, who should not be afraid of giving rulings which may go counter to the wishes of the powers that be and for that purpose I think they must be above want, and should have no need to hanker after favours from the Executive. So the practice of giving them good salaries is quite wholesome and I also approve of the provisions. In fact I would very much like to settle the question of their pensions also. In England and America Judges of the Supreme Court have no age of retirement They go even up to ages of 80 and 90 and they have been very good judges even at these ages. We know that their pension is about three-fourths of their salaries, These arc very great advantages and that contributes to their independence in giving judgments. Therefore, I am not opposed to giving high salaries to Judges. Besides I also know that those people have got to maintain special standards of life. They have to be reserved and they are denied the privileges of mixing with people. They cannot have all the parties and entertainments which the Minister enjoy and so I do not grudge them the salary provided for them. But I do not think there should be any differentiation or distinction between the first incumbents and those who succeed them. Let them all have the same salary, and if you think the salaries given are not proper, you may raise the salaries, but let it not be that the present Chief Justice of the Supreme Court will get a higher salary and his successors will get less. This should not be done.

I have to say that the accounts of the Republic will not be safe unless the Auditor-General is a man of extraordinary independence and integrity. 1, therefore, think that his salary should be a handsome one and exactly on the same footing as that of the Chief Justice of the Supreme Court. I do not want that he should get a higher salary than his successors. I do not, therefore, want any difference between the salary of the present incumbent and his successors.

**Mr. President:** Mr. Sidhva. I have seen your amendment No. 94 and amendment No. 96. I do not think they arise now. They were to the original proposition which is embodied in amendment No. 92. That amendment has now been superseded by the amendment moved by Dr. Ambedkar, and these amendments do not fit ill there. I think these arc all the amendments. Shri Alladi Krishnaswami Ayyar.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. President, Sir, in supporting the article relating to the salaries as regards the Judges of the High court and of the Supreme court under the new Constitution, I should like to state a few words in support of the proposition as moved by the Honourable Dr. Ambedkar. The scale of salaries now proposed is practically the same as that proposed by the Drafting Committee in the Draft Constitution published in February last year, with slight

alterations in regard to the Judges of the Supreme Court a free house being provided for, and a slight reduction in the salary of the Associate Judges. In fixing the salary of the Judges the committee was quite alive, to the importance of maintaining the dignity, the efficiency and the independence of the judiciary, especially in a Federal Constitution where the highest judiciary is called upon not merely to decide ordinary disputes between citizen and citizen, and the State and the citizen, but also to decide questions of great constitutional importance on which would depend the future development of the Constitution. They took into account the scale of salary obtaining in Canada, Australia, South Africa and the great continent of America, and the scale of salaries obtaining in India in the British regime, as also the need for some kind of retrechment, having regard to the general poverty of our country.

In any question of revision of salary, we cannot altogether ignore the administrative set-up with which we are starting. If we are starting over-night with a Constitution, with a fesh agency, with a fesh judicial or executive agency, we might have a carte blanche, and we might provide any salary we like, having regard to the economic and other conditions of our country. We have to remember we are building upon existing foundations, though in theory we are perfectly at liberty to frame any Constitution we like and we are in a position to provide any salary we like. These are the considerations which influenced the Drafting Committee in making the particular suggestion they have made. The slight alteration in regard to the rent-free quarters is due to the peculiar conditions in Delhi. It was felt that you must be in a position to provide free residence. Instead of the Judges having to wait some time for their lodging, it was thought it was much better to provide for an official residence for the Judges. That was the reason why a provision has been made in regard to the residence of the Judges.

The Drafting Committee, I might mention, was also quite alive, for example, to the system obtaining in the Continent where the salaries of Judges are much lower than those obtaining in England and in countries which are influenced or dominated by British jurisprudence. We have rightly adopted what may be called the British system of administration of justice. On the continent the Bench and the Bar are distinct institutions. Judges are not recruited at all from the bar, and in France the highest salary of the President of the Court of Cassation is about Rs. 1,300. Similarly the highest salary in the German Reich also was about Rs. 13,00. But then, they were really part of the civil service. We were anxious that the independence of the judiciary should be maintained, and we felt that such independence is best secured by the recruitment from the bar, and we have had regard to the fact that you cannot expect professional gentlemen to accept a place on the bench unless a decent remuneration is provided for. At the same time, we could not ignore the economic condition of the country, and we cannot treat the Judges as a separate caste, different altogether from the general cadre of services in the country. Taking all these factors into consideration, with an anxiety to maintain the independence of the judiciary, their honour and their prestige, the Drafting Committee, in consultation with other bodies finally has come forward with this scheme of salaries.

There are a few other points which have been adverted to, in the course of the debate. The first thing is, where is the need for any special provision in regard to the judges who are appointed before November last year? Now to far as the members of the Civil Service and the Judges who were appointed to their respective posts before the Indian Dominion Act are concerned, their salaries were safeguarded by a special provision in the Dominion Act, which was adverted to in the course of the debate on

the Civil Services, the other day. In the ordinary course, the Judges, including the Chief Justice, continued to be appointed in the old scale of salaries, even after the Dominion Constitution came into force, and even after the publication of the Draft Constitution in February last year; and we are told, it is only after November last that the Cabinet made it known to the future appointees that they must be prepared to accept their posts subject to the new scales of pay that might be adopted by the Constituent Assembly. It is taking these factors into account that a special provision has been inserted safeguarding the emoluments of those who were appointed to their respective posts prior to November last year. It is advisedly that we put the difference is an allowance in regard to those judges who were appointed before November, because the general principle is that the particular scale of salary is applicable to all judges. Those who were appointed as judges before November entered on their ask on a certain understanding and therefore the Committee thought it proper that the differential pay must be considered as a special allowance. This is to emphasise the principle that the normal and accepted salary is that salary provided in the general provision of the Constitution. This has resulted no doubt in certain anomalies. They must be faced; they cannot be helped. For example, the Chief Justice of a High Court, if appointed later as a Judge of the Supreme Court, will get a lower salary than as Chief Justice of the High Court, though it may be he has a right to free residence in Delhi. Again, judges discharging the same or similar functions will get different salaries in the same Court, but these anomalies cannot in any way affect the main principle under lying this article. This is the one reason why the article as proposed deals with this differential, pay as I have already pointed out, as a special allowance. These are the points which I wanted to refer to so far as the judges are concerned.

Then, some point was made in the course of the debate that you must make a special provision in the Constitution that the President's salary is subject to Income-tax. Unless an immunity is given in the Constitution, it is an accepted principle of constitutional law that every officer; be he the President, the Chief Justice or a Judge of the High Court, or be he a Minister, will be subject to income- tax. If you make a special provision that the President's salary would be subject to income-tax, it will be open to the argument that, so far as the other officers or dignitaries are concerned, they are not subject to income- tax. That is not the principle of the Constitution. Therefore while increasing the salary of the the President to Rs. 10,000. advisedly no reference is made to the fact that he shall be subject to income-tax. Every officer, every dignitary, however high-placed lie may be, will be subject to income-tax unless the Constitution expressly exempts him from the operation of the income-tax law. That is the second point that I wanted to mention.

Then, so far the President's allowances are concerned, there is no need to go into the question of the allowances of the President, because Parliament is the supreme master of the situation. Instead of cumbering the Constitution with a detailed list of the allowances to which the President is entitled, reference is made to the fact that for the time being the President will be entitled to the allowances which the Governor-General was having. Later on, it win be open to Parliament to go into the whole question and revise the allowances as circumstances, the needs of the country and the dignity of the position of the President would require.

With these few words, Sir, I support the article as put forward by Dr. Ambedkar.

**Pandit Hirday Nath Kunzru:** (United Provinces: General): Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a

month and the Governor of a State Rs. 4,500 a month. It was then proposed.....

**The Honourable Dr. B. R. Ambedkar:** President Rs. 5,500 a month.

**Pandit Hirday Nath Kunzru:** I have got the Draft Constitution before me and I have read out the figures from it. It was therefore proposed that the salaries of the principal judicial functionaries should be lower than these salaries. It was provided that the Chief Justice of the Supreme Court should get Rs. 5,000 a month and any other judge of the Supreme Court Rs. 4,500 a month. It was also provided that the Chief Justice of a High Court should get Rs. 4,000 a month and any other Judge of a High Court Rs. 3,500 a month. So far as the High Courts are concerned, we all know that the salaries of the Judges in all provinces were not the same. In the C. P. and the provinces of Orissa and Assam, the salaries were lower. Assam gave the lowest salaries. It gave Rs. 4,000 to its Chief Justice and Rs. 3,500 to every other Judge. Now, this is the wale of salary that has been proposed for the Judges of all the High Courts in the Constitution.

In the amendment placed before us by Dr. Ambedkar the salaries of the President and the Governors have been raised. The salary of the President has been very nearly doubled, and that of the Governors has been increased by Rs. 1,000 a month, but the salaries of the Judges of the Supreme Court and of the High Courts have been retained at the figures mentioned in the Draft Constitution. Only one exception has been made and that is in the case of permanent judges of the provincial High Courts. The amendment says that any Person appointed permanently as a Judge of a High Court in any province before the 31st Day of October 1948 and becoming a Judge of the High Court at the commencement of this Constitution in the corresponding State under clause (1) of article 310 of this Constitution shall be entitled to the same condition of service as respects salary, leave and pension as he was entitled to before the commencement of this Constitution. An amendment has now been proposed, that the special provision made for persons appointed permanently before the 31st day of October 1948 should be deleted. I take it that an exception has been made in the case of persons who will be appointed permanently as judges of High Courts before 31st October 1948, broadly speaking, to brine the provision into line with Section 10 of the Independence Act, 1947. That Section entitled all persons appointed by the Secretary of State or the Secretary of State in Council to the civil services of the Crown in India and all permanent judges of the Supreme Court and the High Courts to the same conditions of service, and other rights as they could enjoy under the Government of India Act, 1935. Dr. Ambedkar's amendment, however, differs in certain respects from the provisions of Section 10 of the Independence Act. The In. dependence Act gave a guarantee only in respect of those persons who had been appointed as permanent judges before the 15th August 1947. Dr. Ambedkar's amendment extends this right to persons appointed up to the 31st October, 1948. The amendment thus goes beyond the provisions of Section 10 of the Independence Act. But in one respect it fails to carry out the provisions of that Section. That Section laid down. that a person appointed permanently as a judge of a High Court, whether in the same province in which he was serving as a temporary or additional judge or in any other province, would be entitled to the same conditions of service and privileges that he was entitled to before the 15th of August 1947. In respect of the persons appointed to the civil services by the Secretary of State or the Secretary of State in Council the obligations created by the Independence Act have been fully carried out but the guarantees relating to the judges of High Courts have not been respected in one respect which I

have already dealt with.

I think therefore that the amendment moved by Mr. Prabhu Dayal Himatsingka deserves to be favourably considered. A man may have been appointed as a judge, say, of the U. P. High Court some time ago. But he may, before the 31st October 1948, become the Chief Justice of, say, the Patna High Court. He will not, in that case, be entitled to receive Rs. 5,000 per mensem as his salary. It seems that in accordance with Dr. Ambedkar's amendment, he will be entitled to receive only. Rs. 4,000, which is the same salary that he was entitled to receive before his transfer from the U. P. to Patna. This does not seem to me to be at all desirable. If you want to make an exception in the case of persons appointed as permanent judges before 31st October 1948, then carry out the guarantee that you mean to give not merely in the letter but also in the spirit. Once you have appointed a man permanently as a judge of a High Court, he can look forward to promotion of his work is satisfactory. Every judge of course cannot become a Chief Justice or a Judge of the Supreme Court, but some judges can and I see no reason why the judges who have been promoted because of their merit should be debarred from the benefit of the guarantee given under Section 10 of the Government of India Act.

As regards the future judges, Dr. Ambedkar referred to the salaries given in the United States, Australia, Canada and South Africa to the judges of the High Courts. He said, I believe, that with the exception of the United States, no country gave its judges more than India. If he said so, he must have for. gotten that in England the judges of the High Court receive a higher salary than the judges of any High Court in India. We may, broadly speaking, say that with the exception of the United States and England, none of the countries mentioned by Dr. Ambedkar gave its judges higher salaries than India did.

I do not know what the pensions of the judges in Canada, South Africa and Australia are. But we have to take these rights into consideration in determining the salaries of the judges. In the United States of America, the pension of a judge of the Supreme Court is, I understand, equal to his salary. In England, the pension of a judge of the High Court is 70 per cent. of his salary. Under the Government of India Act, 1935, roughly speaking, the pension of a judge who has served for twelve years will be about one-third of his annual salary. Whatever justification there may have been for this when the Government of India Act was passed it is obvious, that the judges of the High Courts should be given higher pensions now. I was not able to hear all that Dr. Ambedkar said but I did not hear him refer to this question at all in his speech. The memorandum sent by the judges of the Supreme Court and the Chief Justices of the various High Courts in India deprecates a reduction in the salaries and gives it as the opinion of the judges that, the age of retirement of the judges and their pensions should be raised. The salaries have been reduced and the age of retirement has not been raised, but the pensions can still be raised. The judges of the High Courts and of the Supreme Court will occupy very responsible positions; they will, so to say, be the guardians of the Constitution. It is necessary therefore that their salaries and conditions of service and their position should be such as to command the respect of the people and to enable them to discharge their duties without any anxiety with regard to the maintenance of themselves and their families. I am personally in favour of the amendments moved by Mr. Naziruddin Ahmad regarding the salaries of the judges of the Supreme Court and those of the High Courts. But whatever the decision of the House on that point may be I think that if the reduction in the salaries is to be justified from any point of view it is imperatively necessary that the pensions of the

judges both of the Supreme Court and of the High Courts should be raised. I do not know what my honourable Friend Dr. Ambedkar feels on this point but I shall be surprised if even lie does not think that the present pensionary provisions require to be changed. I think that the judges of the Supreme Court and the High Courts should be allowed to draw, say, two-thirds of their salaries as pension.

**Mr. President:** So far as pension is concerned, may I point out that this is only an interim provision until the Parliament makes another provision? It is a matter left over for Parliament to consider.

**Pandit Hirday Nath Kunzru:** This is quite true but I should have liked my honourable Friend Dr. Ambedkar, when he explained his amendment, to refer to this matter too. I know that a law will have to be passed by Parliament fixing the pensions of the judges, but if responsible persons here- and no one is in a more responsible position than the Chairman of the Drafting Committee today-were to express the opinion that the, pensions ought to be increased and ought to be at least two-thirds of the salaries, I am sure this will carry weight with Parliament. But if the matter is left in the air, if no person to whose opinion Parliament may be expected to attach weight refers to it and leaves honourable Members to imagine that the present pensionary provisions require no change, it is very doubtful whether Parliament would be inclined to pass any law increasing the pensions.

This is my justification, Sir, for having referred to this question. I do not however wish to prolong this discussion any further. I do not think that there is the slightest chance of any amendment being accepted by the Drafting Committee. We all know the course that the discussions in this House have taken during the last two years. Broadly speaking no amendment, however reasonable, had a fair chance of being accepted by the Drafting Committee, but I do hope that even the Chairman of the Drafting Committee will not consider it inconsistent with his dignity to say that in his opinion the pensions of the judges of the Supreme Court and the High Courts should be raised.

**Shri L. Krishnaswami Bharathi** (Madras: General): Sir, the question be put.

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

"That the question be now put."

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar:** Sir, all I wish to say is that there am three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule 11 allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally.....

**Shri H. V. Kamath :** I did not refer to rent and I do not know whether it is a free house or not.

**The Honourable Dr. B. R. Ambedkar :** I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are any number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my .judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do. is to ask me to accept a general proposition, that is to say, a proposition saying ..any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur. The anomaly exists . because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend

is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that' that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph I I sub-paragraph (2). 1 would like to introduce after the word "shall" in the seventh line the following words :

"In addition to the salaries specified in sub-paragraph (1) of this paragraph."

I have also another amendment in sub-paragraph 3 of paragraph II. I would omit the first "such" and after the word "judge" I would add:

"of the High Court."

**Shri H. V. Kamath :** That is my amendment.

**The Honourable Dr. B. R. Ambedkar :** I accept it, and I now House will accept the Schedule as amended.

**Shri R. K. Sidhva :** What about my amendment regarding the salaries and allowances of' the president and the Governor ?

**The Honourable Dr. B. R. Ambedkar :** That will be decided by Parliament.

**Mr: President :** I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

The question is :

"That in amendment ND. 207 of List VI (Second Week), in paragraph I of the Part, I, before the figure '10,000' and before the figure '5,500' the words 'not mom then be inserted.'.

The amendment was negatived.

**Mr President :** The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the Pan I, for the figure and word '10,000 rupees' the figure and word '1 rupee be' substituted."

The amendment was negatived.

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

"That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

'The salaries of the President and the Governor shall be subject to income-tax.'

The amendment was negatived.

**Mr. President :** The question is

'That in amendment No. 207 of List VI (Second Week), for paragraph 2 and 3 of the Part 1, the following be substituted :-

'There shall be paid to the President and to the Governor the following allowance :

'The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.'

"The President shall also draw Rs. 10,000 per annum as touring expenses.

'The Governor shall draw lump sum of Rs. 15,000, per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

'The Governors shall also draw Rs. 7,000 per annum as touring expenses."

The amendment was negatived.

**Mr. President :** There is no amendment to Part 11. I come to Part III amendment No. 264.

The question is

"That with reference to amendment No. 210 of list VI (Second Week), for paragraph 8 of Part III, the following be substituted :-

'8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.' "

The amendment was negatived.

**Mr. President :** I now come to Part IV-amendment 265.

The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Pad IV, in Paragraph (1) of Paragraph 10,-

(i) for the figure '5,000' the figure '6,000' be substituted; and

(ii) for the figure '4,000' the figure '5,000' be substituted. "

The amendment was negatived.

**Mr. President :** Part (iii) of amendment 267 was not moved. So I shall put the first two parts to the House.

The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Ph (3) of paragraph 10.-

(i) for the words and figure 'thirty-first day of October, 1948' the words 'commencement of this Constitution' .-be substituted;

(ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

The amendment was negatived.

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

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Ph 11,-

(i) for the figure '4,000 the figure '5,000' be substituted; and

(ii) for the figure '3,500 the figure '4,000' be substituted',

The amendment was negatived.

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

That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,--

(i) for the words and figure 'thirty-first day of October, 1948' the words 'comment of this Constitution' be substituted;

(ii) for the words the commencement of this Constitution' the words 'such commencement' be substituted."

The amendment was negatived.

**Mr. President :** The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

"In sub paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words specified in sub-paragraph 4 (1) of this paragraph, shall' add the words 'in addition to the salary specified in sub-paragraph (1) of this paragraph."

**The Homourable Dr. B. R. Ambedkar :** I would like to have my own words.

**Mr. President :** I think the wording is the same.

**Pandit Hirday Nath Kunzru :** Is Dr. Ambedkar entitled to move an amendment after the closure has been accepted ?

**Mr. President :** There is no difference between what Dr. Ambedkar has said and

Mr. Naziruddin Ahmad's wording.

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

"That in amendment No. 211 of List VI (Second Week) in the proposed Part V. in sub-paragraph 2 of paragraph 11 in the seventh line after the word 'shall' the following be added :

"in addition to the salaries specified in sub-paragraph I of this paragraph.'

The amendment was adopted.

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

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted.'

The amendment was negatived.

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

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in Paragraph 10,-

(i) in sub-paragraph (1) , for the figures '5,000' and '4,000', the figures '3,000' and 2,000' be substituted respectively; and

(ii) in sub-paragraph (2) for the word 'without' the word 'on' be substituted."

The amendment was negatived.

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

"That in amendment No. 10 of the List I (Second Week), in the proposed Part IV. subparagraph (3) of paragraph 10 be deleted."

The amendment was negatived.

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

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. subparagraph (2) of paragraph 11, be deleted."

The amendment was negatived.

**The President :** The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. in subparagraph (3) of paragraph I 1, for the words 'Every such judge' the words 'Every judge of a High Court' be substituted."

The amendment was adopted.

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

"That for Part I of the Second Schedule, the following be substituted:-

PART- I

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1.There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments *per mensem,* that is to my :-

The resident..... 10.000 rupees.

The Governor of a State.... 5,500 rupess.

2. There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this constitution.

3.The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4.While the Vice-President or any other person is discharging the functions of. or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.' "

The amendment was adopted.

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

"That in the heading in Part 11, after the word and figure 'Part I' the words and or Part III' be inserted."

The amendment was adopted.

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

"That for paragraph 7, the following paragraph be substituted:--

'7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.' "

The amendment was adopted.

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

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assmelby and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement be,

substituted."

The amendment was adopted.

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

"That for Part IV of the Second Schedule, the following to substituted:-

PART IV

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS OF STATES IN PART I OF THE FIRST SCHEDULE

(1)There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates *per mensem,* that is to say :-

The Chief Justice.....5,000 rupees.

Any other judge.....4,000 rupees.

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled with out payment of rent to the so of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11.(1) 'Mere shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, at the following rates per *mensem,* that is to say :-

The Chief Justice.....4,000 rupees.

Any other judge.....3,500 rupees.

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the com mencement of this Constitution become a judge of the High Court in the corresponding state under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragarph (1) of this paragraph, shall in addition to the salary specified in sub-paragraph I of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary a specified and the salary which was payable

to him as a judge of the High Court immediately before such commencement

(3) Every judge of the High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4)The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High of the corresponding Province.

12.In this Part unless the context otherwise requires,-

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an ad hoc judge;

(b) "actual service" includes-

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave,; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."'

The amendment was adopted.

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

"That the Second-Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Second Schedule, as amended, was added to the Constitution.

**Shri H. V. Kamath :** Mr. President, will you be able to throw some light on the length of this session ?

**Mr. President :** It all depends upon you. I do not mean you particularly; I mean the House. So I think we have to meet again in the afternoon. We Shall sit at four o'clock. The House stands adjourned, up to 4 o'clock.

**An Honourable Member :** We shall meet from four to six o'clock.

**Mr. President:** That we shall see.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.

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The Assembly re-assembled after Lunch at Four of the Clock, Mr President (The

Honourable Dr. Rajendra Prasad) in the Chair.

## DRAFT CONSTITUTION-*(Contd.)*

## Part VI-A

**Mr. President :** We shall now take up Part VI-A.

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

"That after Part VI, the following new Part be inserted:-

**PART VI-A**

## THE STATES IN PART III OF THE FIRST SCHEDULE

Application of provisions of Part VI to State in Part III of the First Schedule.

211A. The provision of Part VI of this Constitution shall apply in relation to the States for the time beingspecified in Part III of the First Schedule as they apply in relation to the. States for the time being specified in Part I of that Schedule subject to the following modifications and omissions, namely

(1) For the word "Governor" wherever it occurs in the said Part VI, except when it occurs for the second time in clause (b) of article 209, the word "Rajpramukh" shall be substituted.

(2) In article 128, for the word and figure "Part I" the word and figure "Part III,, be 'substituted.

(3) Articles 131, 132 and 134 shall be omitted.

(4) In article 135,-

(a) in clause (1), for the words, "be appointed" the word "becomes" shall be substituted;

(b) for clause (3). the following clause shall be substituted, namely

"(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.";

(c) in clause (4), the words emoluments and' shall be omitted.

(5) In article 136, after the words "senior-most judge of that court available" the words or in such other manner as may be prescribed in this behalf by the President' shall be inserted.

(6) In article 144, the Proviso to clause (1) shall be omitted.

(7) In article 148, for clause (1) the following clause shall be substituted, namely:-

"(I) For every State there shall be a Legislature which shall

consist of the Rajpramukh and-

(a) in the State of Mysore, two Houses;

(b) in other States, one House."

(8) In article 163, for the words "as are specified in the Second Schedule" the as the Rajpramukh may determine" shall be substituted.

(9) In article 170 for the words "as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State" the words "as the Rajpramukh may determine" shall be substituted.

(10) In clause (3) of article 177-

(a) for sub-clause (a), the following sub- clause shall be substituted, namely "

"(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order;

(b) after sub-clause (c), the following sub- clause shall be inserted, namely :-

"(ee) in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancere and Cochin for the formation of the United States of Travancore and Cochin;"

(11) In article 183, for clause (2), the following clause shall be substituted, namely:--

"(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in this behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be."

(12) In clause (2) of article 191, for the word "Province" the words "Indian State' shall be substituted.

(13) For article 197, the following article shall be substituted, namely

`salaries, etc., of Judges.

197. The judges of each High Court shall be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by the President after consultation with the Rajpramukh:

Provided that neither the salary of a judge nor his rights in respect of leave, of absence Or pension shall be varied to his disadvantage after his appointment.'"

I think I will move the other amendments afterwards.

As will be seen, the underlying idea of this Part is that Part VI of this Constitution which deals with the Constitution of the States will now automatically apply under the provisions of article 21 ]-A to States in Part Ill. But it is realized that in applying Part VI to the Indian States which will be in Part II] there are special circumstances for which it is necessary to make some provision and the purpose of this particular amendment 217 is to indicate those particular articles in which these amendments are necessary to be made in order to deal with the special circumstances of the States in Part III. Other. wise the States in Part III so far as their internal constitution is concerned will be on a par with the States in Part 1.

**Mr. President :** Shall we have the amendments ?

**Shri K. M. Munshi** (Bombay : General) : May I read the Statement ....

**Mr. President :** After the amendments are moved. Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad :** Mr. President, I will move Nos. 237 and 238, but a consequential amendment in the body of the Constitution would be necessary and I have suggested that in amendment No. 254.1 beg to move :

"That in amendment No. 217 of List VII (Second Week), in the proposed new article 211-A. for the word 'modifications' the words 'adaptations, modifications' be substituted."

I also move:

"That in amendment No. 217 of List VII (Second Week),-

(i) in item (3) of the proposed article 211 A, for the words 'shall be omitted' the words `shall not apply to this part' be substituted;

(ii) in item (4) of the proposed article 21 ]A, in paragraph (a), after the words in clause(1) the words 'for the time being specified in the First Schedule' be omitted and be inserted"

I also move 254 as consequential amendment to the acceptance of Part II of amendment 238. I move :

"That in clause (1) of article 135, the words 'for the time being specified in the First Schedule be deleted."

Sir, with regard to the scheme of article 21 I-A, I submit that the Drafting Committee has resorted to a kind of short-cut. They have merely adapted the articles applying to the Provinces so as to suit them to the purposes of the Indian States. Instead of this process they should have re- written the articles absolutely anew. There are many provisions which are similar to the Provinces and the Centre. If the process of adaptation was carried on like this, many provincial articles might have been adapted by a single section like this. In this process, there is a danger of overlooking a large number of anomalies and it is difficult to say what anomaly remains even after the adaptation. I submit that if possible these articles as adapted should be re-written as different independent Part altogether. That is a suggestion

which I hope the Drafting Committee will consider.

My first amendment relates to the body of article 211 A. It says that Part III of the First Schedule, viz., the provisions of Part VI shall be accepted subject to the following "modifications and omissions". I wanted to make it read adaptations, modifications and omissions'. The word 'adaptation' seems to me to be very appropriate. What we are doing is to adapt provisions applying to the Provinces to make them suitable for the Indian States. So these are really not mere modifications and omissions but really and essentially they am adaptations. That is why the word "adaptation" is particularly suitable in the context and should be accepted.

Then, Sir, as to the next amendment, it is also of a drafting nature. I shall merely indicate it and leave it to the Drafting Committee to consider the mater'. It is in item 3. It is said that "articles 131, 132 and 134 shall be omitted". Instead of that it would be better to say that these articles "shall ,not apply to this Part". That is to say, articles 131, 132 and 134 shall not apply to Part VI-A which is under consideration. This is of a drafting nature and I should leave it to the Drafting Committee to consider.

The next amendment, to my mind, is a matter of some importance. It relates to the adaptations of article 131, clause (1). It, I mean the original article, says that the Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State for the time being specified in the First Schedule. We want to adapt it to apply to the Rajpramukhs. As so adapted, it would read that the Rajpramukh shall not be a member of either House of Parliament or a House of the Legislature of the State for the time being specified in the First Schedule. I submit that as the time when this original article was drafted, the picture of the Indian States was rather vague, and therefore, we concentrated ourselves on phraseology applicable to the Provinces, namely, "the States for the time being in the First Schedule". I submit that the Rajpramukh should not only be not a member of either House of Parliament or of the States for the time being specified in the First Schedule, but also not a member of the legislature of any State for the time being specified in the Third Schedule. What I mean to say is that the working should be such that.....

**The Honourable Shri K. Santhanam** (Madras : General) : The honourable Member is confusing the Part I of the First Schedule with the First Schedule. The First Schedule includes all the States.

**Mr. President :** Specified in the First Schedule, and not Part I of the Schedule.

**Mr. Naziruddin Ahmad :** I am grateful to Mr. Santhanam for pointing it out. In that case, this amendment and amendment No. 254 would also be unnecessary.

Sir, these articles are coming in in absolutely huge numbers every morning and we have to consider them on the day they are received. With regard to the other amendments, they might be considered by the Drafting Committee.

(Amendment No. 239, List VIII, Second Week was not moved.)

**Mr. President :** Amendment No. 240-Mr. Sidhva.

**Shri R. K. Sidhva :** Sir, I move : "That in amendment No. 217 of List VII (Second

Week), in item (4) of the proposed article 211A, in paragraph (b), the words land such allowance shall be a charge on the revenues of the State' be added at the end of the proposed clause (3)."

And there is a similar amendment, No. 241.

Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item 10 of the proposed article 211A, in paragraph (a) the words land such expenditure shall be a charge on the revenues o the State' be added at the end of the proposed sub-clause (a)."

**The Honourable Shri K. Santhanam :** Para. (10) is a charging section. If you read it with article 177, it will be seen that these allowances will be a charge. That is what Mr. Sidhva wants.

**Shri R. K. Sidhva :** My point is that it should not be a charge on the Union. As the Privy Purse is chargeable to the Union, I want to know whether the allowances are to be charged to the Union or the State. If it is charged to the State, then my amendment is not necessary.

**The Honourable Shri K. Santhanam :** Article 177 refers only to the Rajpramukhs.

**Shri K. M. Munshi :** It is only chargeable on the States.

**Mr. President :** If you refer to paragraph (1) it is covered by that. It says-

"In clause (3) of article 177 for sub-clause (a),. the following sub-clause shall be substituted, namely -

'(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order : "

**Shri R. K. Sidhva :** It does not indicate that it will be chargeable to the State.

**The Honourable Shri K. Santhanam :** The whole article 177 deals with it.

**Shri R. K. Sidhva :** If it is now clear, I have no objection. If it is chargeable to the State, that is what I want.

**Mr. President :** Article 177 clause (3) covers it.

**The Honourable Dr. B. R. Ambedkar :** My amendment No. 10 covers it.

**Shri R. K. Sidhva :** I see it now. Then there is another amendment No. 246, relating to the new article 235A. Will that come up later on ?

**Mr. President :** Yes. We now come to amendment No. 242-Shri Brajeshwar Prasad.

**Shri Brajeshawr Prasad:** Sir, I beg to move:

"that in amendment No.217 of list VII (second week), in item (13) of the proposed article 211aA, the words 'after consulataion with the 'Rajpramukh' be deleted from article 197"

Sri, I am opposed to the statutory obligation on the part of the president to consult the Rajpramukh. I know in practice the president will always consult the Rajpramukh but if there is any statutory obligation it means that the sphere of the sphere of action of the proposition that advise tendered by the Rajpramukh therefore sir, I am in favour of the proposition that the authority of the president in this sphere should be unrestricted and unhampered sir there is another reason why I am against the Rajpramukh I want that all powers as for as possible, should be vested in the hands of the president, which means in the hands of the government of India, being fundamentally opposed to federalism and provincial autonomy and being an advocate of a unitary state, I feel that powers should be vested autonomy and being an advocate of a unitary state I feel that powers should be vested, as far as this topic is concerned, in the hands of the president and the president alone.

**Mr. President :** There are two more amendments, notice of one of which has been given by Kaka Bhagwant Roy.

**Kaka Bhagwant Roy :** (Patiala and East Punjab States Union) Mr. President, Sir, I move :

"That in amendment No. 217 of List VII '(Second Week), for paragraph (b) of item (4) of the proposed article 211A, the following be substituted :-

'(b) for clause (3), the following clause be substituted; namely-

(3) The Rajpramukh shall be entitled. without payment of rent to the use of his residences. and there shall be paid to the Rajpramukh such allowances as the President may, on consideration of the recommendation made by the Legislature of the State, by general or special order, determine.' "

Sir, the big allowances of the Rajpramukhs are to be a direct charge on the State revenues, and the State revenues 'are paid by the States people. So, the representatives of the people-I mean the State Legislatures should have the right to discuss the allowances which are to be paid to the Rajpramukhs. You remember, Sir, that when we were discussing Schedule VII, I put up a similar kind of amendment and I was assured by Dr. Ambedkar that, when we took up the States Chapter, we shall surely consider over it. I think Dr. Ambedkar would be kind enough to consider over this amendment and accept it.

**Prof. Shibban Lal Saksena :** Mr. President, Sir, I beg to move:

"That in amendment No. 217 of List VII (Second Week), in pargaraph (a) of item (10) of the proposed article 211 A, for the words 'the President by general or special order the words 'Parliament by law' be substituted."

**Mr. President :** The copy that I have, reads--

"That in amendment No. 278 of List X (Second Week), in clause (1) of the Proposed article 197, for the words

'President after consultation with the Rajpramukh' the Words ,parliament by law' be substituted."

**Prof. Shibban Lal Saksena :** The amendment that I am moving is 288 of List XII.

**Mr. President :** I have just received it. You can move it,

**Shri T. T. Krishnamachari :** But that has not been moved.

**The Honourable Dr. B. R. Ambedkar :** How can you move it'?

**Prof. Shibban Lal Seksena :** I am not moving the amendment which the President read out. I am moving No. 288 of List XII.

**The Honourable Shri K. Santhanam** : Before that there are amendments Nos. 276, 277 and 278 in List X.

**Mr. President** : We have not yet come to that. He may move that and then we shall take them up.

**Prof. Shibban Lal Saksena** : Here we are making provisions for allowances to be paid to the Rajpramukhs and we have said that these allowances shall be determined by the President by general or special order. Now, in the original article, the salary of the Governors is to be determined by Parliament, and I do not know why the allowances of the Rajpramukhs should not be determined by Parliament. In fact, the allowances should be fixed once for all and should not be varying. Therefore, I think that these allowances should be determined by Parliament and not by the President. They should not be liable to variation with every change of President. This is my amendment No. 288.

**The Honourable Shri K. Santhanam :** Mr. President, Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211 A for paragraph (b) the following be submitted :-

'(b) for clause (3) the following clause shall be substituted, namely -

(3) Unless he has his own residence in the Capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.'"

The point of this amendment is that in the clause as originally drafted, the provision is that the Rajpramukh shall be entitled without payment of rent to the use of his residences; if there are his residences, certainly we need not make a constitutional provision that he is entitled to use them. It is only when he has to use some residence which is not his by right, the question of payment of rent arises. That is why I want to make the provision that only when a Rajpramukh has not got his own residence in his Capital, he should be entitled to the use of an official residence without payment of rent, and my amendment has been tabled accordingly. Sir, I beg to move :

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211A for article

197, the following be substituted :-

"Salaries, etc. of Judges. 197. (1) There shall be paid to the judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh.

(2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh :

Provided that neither the allowance of a judges nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. "

Sir, our attempt has been to bring the States as far into line with the provinces as possible. So far as salaries are concerned, it has been found necessary that the salaries of the High court Judges in the States should differ at least for the present from those of the High Courts in the provinces. Therefore the President has been given the right under article 193(7) . The Parliament has been given power to fix the other allowances, and rights in respect of leave of absence and pensions. There is no justification why Parliament or Parliamentary legislation should not apply to the judges in the States High Courts as well. Therefore so far as clause (2) and the proviso are concerned, I have adopted the same language as in article 197 with the difference that to start with the allowances may be fixed by the President. In clause (1) I have given the President the right to fix the salaries of judges so that the new article 197 will follow the old article 197 as closely as it is possible and necessary to do so-

**Shri H. V. Kamath** : On a point of clarification, may I ask my honourable Friend Mr. Santhanam whether, in view of the fact that Rajpramukhs have been specifically exempted from payment of rent for their official residence, the article relating to the Governors also will be suitably amended? That article does not exempt them specifically.

**Mr. President** : That question does not arise at this stage.

**Shri H. V. Kamath** : Governors and Rajpramukhs are on a par with each other.

**Mr. President** : That may be, but we are not dealing with Governors here.

**The Honourable Shri K. Santhanam :** I may add that the Rajpramukhs have generally their own residences in the capital and therefore no question of rent will arise.

**Shri A. Thanu Pillai** (Travancore & Cochin Union) : May I know from my honourable Friend, Mr. Santhanam, why he makes a distinction between salaries and allowances of High Court Judges?

**The Honourable Shri K. Santhanam** : Because article 197 has made the distinction. It has fixed salaries in the Schedule II and made it unalterable by Parliament. But clause (2) of 197 makes the allowances and other rights in respect of leave, pension, etc., subject to parliamentary legislation. Because under 197 we have

made the distinction. I am only trying to preserve the same distinction with respect to the States.

**Shri H.R. Guruv Reddy** : (Mysore State) : Mr. President, Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item (1) of the proposed article 211A, for the word `Rajpraukh' the words `Maharaja, Nizam' or the Rajpramukh' be substituted."

Sir, it may be said that this matter would be explained elsewhere in the Constitution. But I feel that it is necessary……..

**Shri T. T. Krishnamachari** (Madras : General) : May I point out that it is the intention of the Drafting Committee that this definition should be included in the definition clause 303 to which we propose to make amendments and if the honourable Member would wait, he will probably get an opportunity of putting these words as he wants them as an amendment to our proposal.

**Shri H.R. Guruv Reddy** : In that case, I will have it postponed. I shall move 287, I move :

"That in amendment No. 217 of List VII (Second Week), in paragraph (b) of item (4) of the proposed article 211A, in the proposed clause (3), for the words `payment of rent' the words ` any obligation' be substituted."

The use of the word "rent" looks as though it is belittling the rulers of the States. Therefore, I suggest the word "obligation" be introduced. Nothing else.

**Prof. Shibban Lal Saksena** : Mr. President, Sir, I beg to move :

"That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words `President after consultation with the Rajpramukh' the words `Parliament by law' be substituted."

Amendment No. 278 was moved by my Friend, Mr. Santhanam. My object in moving this amendment is this. Already my honourable Friend from Travancore has raised the question, which Mr. Santhanam also answered. He said that he was trying to conform to article 207 in List 7 of amendments now under discussion. I think that is no reason. I feel that salaries must be fixed. They must not be variable and it must not be for the President to fix them from time to time after consultation with the Rajpramukh. Whatever the salary, it is only proper that it should be fixed by the Parliament. The Parliament should be the ultimate authority. I am prepared to concede that during the transition period you may keep this clause, but if you want it permanently in the Constitution, these salaries must be fixed by the Parliament by law.

**Shri Raj Bahadur** (United States of Matsya ) : In view of the statement made by Shri K. Santhanam I do not move amendment No. 277.

**Mr. President** : These are all the amendments. The article as well as the amendments are open to discussion.

**The Honourable Sardar Vallabhbhai J. Patel** (Bombay : General) : Sir, I have prepared a speech which I thought I would not be able to deliver because of the strain that it would cause me and I have requested Mr. Munshi to read it on my behalf. It

gives a general resume of the origin of the amendments which have been proposed by Dr. Ambedkar. There are a large number of them about which it is necessary to explain how they came to be introduced. It is also necessary to give a general idea of the background of all these things. Therefore, if you will permit, I shall ask Mr. Munshi to read it.

**Mr. President** : Yes, Mr. Munshi may read it.

**The Honourable Sardar Vallabhbhai J. Patel** : *Sir it has been may endeavour to keep the house fully informed of our policy and the developments in respect of the States. Apart from the statements I have made on the floor of the House from time to time, I laid before the house in July last year a White Paper on States in which was set out in detail not only the policy pursued by the Government of India towards the States but also the various agreements and Covenants entered into with the Rulers were reproduced. In March last I placed before the House another detailed report on the policy and the working of the Ministry of States. Now that the process of integration of the States has been completed I propose to place before the House next month another Sate Paper which will contain a comprehensive review of all the developments which have taken place in respect of the Indian States since this Government was called upon to face the problem of States.

The amendments which are now being proposed concerning the provisions of the Constitution applicable to the States, embody the results of the bloodless revolution which within a remarkably short period, has transformed the internal and external set up of the States. The fact that the new Constitution specifies only nine States in Part III of Schedule I is an index to the phenomenal progress made by the policy of integration pursued by the Government of India. By integrating 500 and odd States into sizeable units and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. this is an achievement which should redound to the credit of any nation or and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. This is an achievement which should redound to the credit of any nation or people at any phase of history.

As the House is aware, when the States entered the Constituent Assembly of India, it was thought that the Constitution of the States would not form part of the Constitution of India. It was also understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of those commitments and the conditions then obtaining certain provisions were incorporated in the Draft Constitution, which placed the States in certain important respects on a footing different from that of the Provinces.

As a result of the policy of integration and democratization of States pursued by the Government of India since December 1947 the process of what might important developments in this direction have been the extension have been the extension of the legislative authority of the the Dominion over the States and the federal financial integration of the States. The States had originally acceded in respect of the three subjects of Defence, Foreign Affairs and Communications only. With the formation of the Unions the legislative power of the Dominion Parliament was extended in respect of the Unions of States to all matters specified in the Federal and Concurrent Lists

except those relating to taxation. The content of the accession of the State of Mysore was also likewise extended.

The gap in the financial field has now been filled by the arrangements which have been negotiated with the States on the basis of the recommendations made by the Indian States Finances Enquiry Committee. The fundamental basis of this scheme is that federal financial integration of the States is a necessary consequence of the basic conception underlying the new constitution of the Union of India - that of Provinces and States as equal partners. The scheme, therefore, is based upon complete equality between the Provinces and States in the following respects :-

1.The Central Government should perform the same functions and exercise the same powers in States as in Provinces ;

2.The Central should perform function through its own executive organizations in States as in Provinces ;

3.There should be uniformity and equality in the basis of contributions to Central resources from Provinces and States;

4.There should be equality of treatment as between Provinces and States in the matters of common services rendered by the Central Government, and as regards the sharing of divisible federal taxes, grants-in-aid, `subsidies', and all other forms of financial and technical assistance.

The fact that these far-reaching changes in our fiscal structure are being introduced with the full concurrence of the States is in itself a great tribute to the excellent work done by the Indian States Finances Enquiry Committee under the chairmanship of Sir V. T. Krishnamachari, who brought to bear on this important problem his vast experience in Indian States.

These important developments enabled us to review the position of the States under the new Constitution and to remove from it all vestiges of anomalies and disparities which found their way into the new Constitution as a legacy from the past.

When the Covenants establishing the various Unions of States were entered into, it was contemplated that the constitutions of the various Unions would be formed by their respective Constituent Assemblies within the framework of the covenants and the Constitution of India. These provisions were made in the covenants at a time when we were still working under the shadow of the theory, that the assumption, by the Constituent Assembly of India, of the constitution-making authority in respect of the States would constitute an infringement of the autonomy of the States. As however, the States came closer to the Centre, it was realised that the idea of separate Constitutions being framed for the different Constituent units of the Indian Union was a legacy from the Rulers' polity and that in a people's polity there was no scope for variegated constitutional patterns. We, therefore, discussed this matter with the Premiers of the various Unions and decided, with their concurrence, that the Constitution of the States should also form an integral part of the Constitution of

India. the readiness with which the legislatures of the three States in which such bodies are functioning at present, namely, Mysore, Travancore and Cochin Union and Saurashtra, have accepted this procedure, bears testimony of the wish of the people of the States to eschew the separatist trends of the past.

In view of these important developments it became necessary to recast a number of the provisions of the Constitution in so far as they related to the States. The amendments we are proposing have been examined by the Constitution-making bodies of Mysore, Saurashtra and Travancore and Cochin Union. Some of the modifications proposed by these bodies have been incorporated in the amendments tabled before the House. Others have been dropped as a result of the discussions I have had with the representatives of these Constituent Assemblies.

It is a matter of deep regret for me that it has not been possible for us to adopt a similar procedure for ascertaining the wishes of the people of the other States and Unions of States through their elected representatives. Unfortunately we have no properly constituted legislatures in the rest of the States; not will of India emerges in its final form. We have, therefore, no option but to make the Constitution operative in these States on the basis on the basis of its acceptance by the Ruler of the Rajpramukh, as the case may be, who will no doubt consult their Councils of Ministers. I am sure neither the honourable Members representing those States in this House nor the people of the States generally, would wish that the enforcement of the Constitution in these States generally, would wish that the enforcement of the Constitution in these States should be held over until legislatures of these States, when, constituted under the new Constitution, may propose amendments to the Constitution. I wish to assure the people of these States that any recommendations made by their first legislatures would receive our earnest consideration. In the meantime, I have no doubt, that the Constitution framed by this House, where all the States except one are duly represented, will be acceptable to them.

In view of the special problems with which the Government of Jammu and Kashmir is faced, we have made a special provision for the continuance of the constitutional relationship of the State with the Union on the existing basis. In the case of Hyderabad State the acceptance of the Constitution will be subject to ratification by the people of the State.

As the House will see, in several respects the Constitution as it now emerges, is different from the original draft. We have deleted such provisions, as articles 224 and 225 , which imposed limitations on the Union's legislative and executive authority in relation to States in the federal sphere. The entries in the legislative List, which differentiated between the States and Provinces have likewise been dropped. The legislative and executive authority of the Union in respect of the States will, therefore, be co-extensive with its similar authority in and over the provinces. Subject to certain adjustments during the transitional period, the fiscal relationship of the States with the Centre will also be the same as that between the Provinces and the Centre. The jurisdiction of the Supreme Court will now extend to the States to the same extent as in the case of the Provinces. The High Courts of the States are to be constituted and will function in the same manner as the Provincial High Courts. All the citizens of India, whether residing in States or Provinces, will enjoy the same fundamental rights and the same legal remedies to enforce them. In the matter of their constitutional relationship with the Centre and in their internal set-up the States will be on a par with

the Provinces.

I am sure the House will note with gratification the important fact that unlike the scheme of 1935, `our new Constitution is not an alliance, between democracies and dynasties, but a really union of the union of the Indian people built on the basic concept of the sovereignty of the people. It removes all barriers between the people of the States, and the people of Provinces and achieves for the first time the objective of a strong democratic Indian built on the true foundation of a co-operative enterprise on the part of the people of the Provinces and States alike.

As the House is acquainted with trends of developments affecting the States it is not necessary for me to explain to the House the various amendments which have been tabled. There are two or three matters, however, about which I should like to make a few observations.

One of these is the proposed article 306-B. As the House is aware, the States, as we inherited them, were in varying stages of development. In most cases the advance had to be made from the starting point of pure autocracy. Having regard to the magnitude of the task, which confronted the Governments of the Unions in the transitional period, and to the fact that neither the Services inherited by them nor the political organizations, as they existed there, were in a position to assume, unaided, full responsibilities of the administration, we made a provision in some of the Covenants that till the new Constitution came into operation in these Unions, the Rajpramukh and the Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India and comply with the instructions issued by that Government from time to time. The stress of the transitional phase is likely to continue for some years. We are ourselves most anxious that the people of these States should shoulder their full responsibilities; however, we cannot ignore the fact that while the administrative organization and political institutions are to be found in most of the States in a relatively less developed state, the problems relating tot he integration of the States and the change-over from an autocratic to a democratic order are such, as to test the mettle of long-established administrations and experienced leaders of the people. We have therefore, found it necessary that in the interest of the growth of democratic efficiency, the Government of India should exercise general supervision over the Governments of the States till such time as it may be necessary.

It is natural that a provision of this nature which treats States in Part III differently from Part I States should cause some misgivings. I wish to assure the honourable Members representing these States, and through them the people of these States that the provision involves no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part III States that in the States of other categories. We do not wish to interfere with the day-to-day administration of any of the State. We are ourselves most anxious that the people of the States should learn by experience. This article is essentially in the nature of a safety-value to obviate recourse to drastic remedies such as the provisions for the breakdown of the constitutional machinery. It is quite obvious that in this matter the States, e.g., Mysore and Travancore and Cochin Union where democratic institutions have been functioning for a long time and where Governments responsible to legislatures are in office, have to be treated differently from the States not conforming to these standards. In all these cases our control will be exercised in varying degrees according to the requirements of each case. The proviso to the article gives us the

necessary discretion to deal with each case on its merits.

I hope this statement which embodies our considered policy will allay any apprehension which the Governments of any of these States may have concerning this article.

Another matter about which I would like to remove misgivings is the proposed amendment to article 3. This amendment places the States in Part III on the same footing as the States in Part I in respect of territorial readjustments. The Constituent Assembly of Mysore recommended to us that the article as already adopted by this House, which provides for prior consent of the House, should remain unaltered. We have not found it possible to agree to the suggestion for the simple reason that in such matters there should be no differentiation between Part I and Part III States. I, however take this opportunity of assuring the representatives of Mysore State that whether the article provides for consultation or consent of the legislature of the affected State, the wishes of the people cannot be ignored either by the Central Government or legislature. After all, we are a democracy; the main sanction behind us is the will of the people and we cannot act in disregard of public opinion.

I now come to the proposed article 267-A in respect of which some explanation is necessary. The Government of India have guaranteed to the Rulers of merged and integrated States payment of privy purses as fixed under the terms of the various Covenants and Agreements of Merger. Article 267-A give constitutional recognition to these guarantees and provides for this expenditure being charged on the Central Revenues subject to such recoveries as may be made from time to time from the Provinces and States in respect of these payments.

I shall first deal with the financial aspect of these arrangements. In the past, in most of the States there was no distinction between the expenditure on the administration and the Ruler's privy purse. Even where the Ruler's privy purse had been fixed no effective steps was not, directly or indirectly, charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers and on the members of the ruling families. This expenditure has been estimated to exceed twenty crores of rupees per year.

All the agreements of merger and covenants now provide for the fixation of the Ruler's privy purse which is intended to cover all the expenses of the Rulers and their families including the expenses of their residences, marriages and other ceremonies, etc. The privy purse guaranteed under these agreements in less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankerrao Deo and Dr. Pattabhi Sitaramayya. It is calculated on the basis of 15 per cent, on the first lakh of average annual revenue of the State concerned ten per cent, on the next four lakhs and seven and a half per cent above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognised as viable and the amounts fixed in such cases are payable during their life-time only. The total annual privy purse commitments so far made amount to about Rs. four and a half crores. When the amounts guaranteed to certain Rulers during their life-time are subsequently refixed the total annual expenditure in respect of privy purses will amount to less than Rs. four crores.

Under the terms of the Covenants and the agreements entered into by the Rulers

privy purses are payable to the Rulers, out of the revenues of the States concerned and payments have so far been made accordingly. During the course of the discussions with the Indian States Finances Enquiry Committee, it was urged by most of the States that the liability for paying purses of Rulers should be taken over by the Centre on the ground that-

a. privy purses have been fixed by the Centre;

b. privy purses are political in nature; and

c. similar payments are not made by the Provinces.

Apart from these considerations, the position has definitely changed since the execution of the Covenants. In the first place, so far as the merged States are concerned, with their total extinction under the new Constitution of India, as separate entities, the basis of liability for privy purse payments guaranteed to the Rulers of the States will undergo a change, in that the States, from the revenues of which privy purses are payable, would cease to exist. Secondly, the term "revenues of the State" has now to be viewed in the context of the federal financial integration of States. This integration involves a two-fold procession, of `functional' partition of the present composite State Governments, and the other of `merger' of the partitioned `federal' portions of the State Governments with the present Central Government. It follows, therefore, that when the federal financial integration becomes effective, the liability in respect of privy purse payments should strictly speaking be shared on an equitable basis by the functional successors to the Governments of merged and integrated States, that is, the Central Government, on the one hand, and the Governments of Provinces and States on the other. Having regard to all these factors, we have decided that the best course would be that these payments should constitute a charge on the Central revenues, but that, at the same time, provision should be made for the recovery of such contributions from the Governments of the States, during such transitional period and in such amounts as may be considered appropriate. These recoveries are to be made in accordance with the scheme for financial integration of the States.

I have already stated that the privy purse settlements made by us will reduce the burden of the expenditure on the Rulers to at least one-fourth of the previous figure. besides, the States have benefited very considerably form the process of integration in the form of cash balances inherited by them from the Rulers. Thus, for instance, the Rajpramukh of Madhya Bharat alone has made over to the Union large sums of money yielding interest sufficient to cover a major portion of the total privy purses of the Rulers, who have joined this Union. So far as the assumption of the part of the burden by the Centre is concerned, we must remember that this arrangement flows as a consequence of the financial integration of the States, which will have an effect of lasting character on the economy of this country. The fiscal unification of India will patch up the disruptive rents in the economy of India which rendered effective implementation of economic policies in the Provinces impossible. Thus, for instance, in the matter of income-tax evasion alone, which has been a serious matter in recent years the gains from federal financial integration will prove very substantial. From the financial point of view, therefore, the arrangements we have made are going to benefit very materially the economy of this country.

I shall now come to the political and moral aspect of these settlements. In order to

view the payments guaranteed by us in their correct perspective, we have to remember that they are linked with the momentous developments affecting the most vital interests of this country. These guarantees form part of the historic settlements which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence.

Human memory is proverbially short. Meeting in October, 1949, we are apt to forget the magnitude of the problem which confronted us in August, 1947. As the honourable Members are aware, the so-called lapse of paramountcy was a part of the Plan announced on June 3, 1947, which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had not option to act otherwise. While there was recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically contiguous, the Indian Independence Act released the States from all their obligations to the British Crown. In their various authoritative pronouncements, the British spokesmen recognised that with the lapse of paramountcy, technically and legally the States would become independent. They even conceded that theoretically the States were free to link their future with whichever Dominion they liked although, in saying so, they referred to certain geographical compulsions, which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare independence and others to join the neighboring Dominion. If the Rulers had exercised their right in such an unpatriotic manner, they would have found considerable support from influential elements hostile to the interests of this country.

It was against this unpropitious background that the Government of India invited the Rulers of the Sates to acceded on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the *status quo* except for accession on these subjects. It had been made clear to them that this accession did not also imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new constitution of India. These commitments had to be borne in mind when the States Ministry approached the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the Rulers had elected to stay our, they would have continued to draw the heavy civil lists which they were drawing before and in large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as *quid pro quo* for parting with their ruling powers was to guaranteed to them privy purses and certain privileges on a reasonable and defined basis. the privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. We would do well to remember that the British Government spent enormous amounts in respect of the Mahratta settlements alone. We are ourselves honouring the commitments of the British Government in respect of the pensions o those Rulers who helped them in consolidating their Empire. Need we cavil then at the small-purposely use the word-small-price we have paid for the bloodless

revolution which has affected the destinies of millions of our people.

The capacity for mischief and trouble on the part of the Rulers if the settlement with them would not have been reached on a negotiated basis was for greater than could be imagined at this stage. Let us do justice to them; let us place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these agreements, is to ensure that the guarantees given by us in respect of privy purse are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilisation of the new order.

In commending the various provisions concerning the States to the House I would ask the honourable Members to view them as a coordinated over-all settlement of a gigantic problem. A particular provision isolated from its context may give a wholly erroneous impression. Some of us might find fault with what might appear as relies of the previous autocratic set up. I wish to assure honourable Members that autocracy in the States has gone, and has gone for good. Let us not get impatient with any particular term which might remind us of the past. The form in which the Rulers find recognition in the new Constitution of India, in no way impairs the democratic set up of the States. The Rulers have made an honourable exist; it now remains for the people to fill the breach and to derive full benefit from the new order.

I take the liberty to remind the House that at the Haripura Session the Congress in 1938 defined its objective in respect of the States as follows :-

> "The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India and considers the States as integral parts of India which cannot be separated. The Purna Swaraj or complete Independence, which is the objective of the Congress is for the whole of India, inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of federation that can be acceptable to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India."

I am sure the House will agree with me when I say that the provisions which we are now placing before the House embody in them full achievement of that objective. *(Cheers)*

**Mr. President** : We shall now proceed with the further discussion of amendment No. 217 which Dr. Ambedkar has moved and the various amendments which have been moved to that amendment. If any Member wishes to say anything he can do so now.

**Dr. B. Pattabhi Sitaramayya** (Madras : General) : Mr. President, Sir, on a previous occasion when I first spoke in this House I had stated that it was a sudden impulse that overtook me which draw me to the mike. I beg permission to repeat the same.

As I heard page after page, paragraph after paragraph, sentence after sentence of the masterly document that has been just now read to us. I felt exalted and transported to a new world of vision, a dream-land which we had in mind when we effected a compromise at Haripura, in terms of the resolution which, fortunately, has

been recalled to your minds by being read verbatim. That was the result of a struggle between two sections, the more conservative and the more radical, which was ultimately brought about by the masterly intervention of the present Home Minister and the Prime Minister and our revered Mahatmaji. It was in 1936 that I began to take direct and active interest in the affairs of the States because I felt that they could not be kept apart from the provinces of India for any length of time and as I travelled from State to State and cleared thousands of miles by car, I felt that there was no natural partition between the States and the Provinces. They were not separated either by forests or jungles or deserts or rivers or mountain ranges but they were all of a piece with one another and only a toll bar represented by a rope was the dividing line between the two areas and if you travel through Kathiawar which is now called Saurashtra with its 417 States, you cannot pass any two miles without changing over from State to province and province to State. that was an impossible state of things. How it had come into being was unimaginable and there was no point in postponing the consideration of the amalgamation of the provinces and the States. That was how the Haripura Resolution was brought into existence and today we have the unique satisfaction that under the strategy and statesmanship of our Home Minister who is also the Minister for the States, it has been possible for him to bring about this unity in financial matters, in strategic matters, in matters of the army and above all, in matters of the Constitution.

All congratulations are due to the representatives of the States who are assembled here for the ready manner in which they have acceded to these suggestions. At first when we were engaged in the Negotiating Committee in February 1947, it looked to me as though it would be a miracle to bring the representatives of the various States into this House, but when these men who were not able to stand within a mile of the Palaces of the Princes were sitting side by side with them on equal terms, it was a pleasurable sight to witness, and from that day forward we have progressed from step to step and stage by stage until today we have about 92 of them represented in this House sitting on terms of equality and friendly comradeship with us all.

One point I would like to mention and that is the privy purse. When a palace is built especially in a clayey and slushy area which makes the foundations weak, more bricks are thrown into the foundations than are visible in the walls or on the façade. It is the façade that draws attention it is façade that I worked artistically, but the bricks are all thrown into the foundations never to be seen but always bearing the burden of the mighty edifice that is visible above. that was the foundation that we had laid in trying to bring the sixteen Deccan States into one Union and this is the second occasion upon which the Home Minister, who is the Minister for the States, has made a direct reference to the names of three of us in respect of the propriety of the measure of the privy purse that has been granted to the princes. We had to do the spade-work and we had to offer a bait to our princes, we had to draw them into the scheme of Union. All honour to those sixteen princes who had agreed to come into the scheme of Union. All honour to those sixteen princes who had agreed to come into the Union for the first time at a time when neither unification nor unionisation was visualized or conceived. All honour to the Rajas of Phaltan, of Sangli, of Bhor and of Aundh who had taken the initiative in this matter and made it possible; on foundations which had to be well and truly laid and therefore more money had to be spent upon them, we had to give privy purses on a much larger scale, we had to give privy purses on a much larger scale. It was the fortunate privilege of the Minister for the States to build upon those foundations and negotiate a much smaller privy purse and all honour to our

Minister of States for having made it almost the minimum.

Perhaps there is a feeling in the country and some friends who have no responsibility placed on them in regard to the administration of the State are fond of speaking somewhat disparagingly of the amount of privy purse that has been granted to our princes. Let it be made clear that there is no mistake made in granting these, which have been on the most moderate scale, and I am sure that as time passes perhaps the Princes themselves will feel that this kind of `maintenance' life ill suits them. It is not the Princes that are so much the burden on the administration as the Jagirdars. Hyderabad has 1,200 Jagirdars, Gwalior has 600. All these have to be liquidated and when you take into consideration the compensation that is due to all these people, you will find that in the proportion in which you have put an end to autocracy, you are also increasing your privy purse liability and maintenance liability. this is inevitable. But as has been very well pointed out in this document it makes for a saving of 20 crores which are the illegal allowances taken and of several crores which are legally saveable from the budges as they had obtained up to now. The privy purse after all is a small matter. It is the monetary equivalent of the moral surrender of the Princes. Moral surrender is what we want and all honour to the Princes that have readily agreed to such an arrangement. You can easily increase the resources of the country. You can easily decrease your expenditure by agreement. Therefore I must offer my congratulation to the Ministry upon the magnificent achievement for which they are responsible.

Finally, I should like to say that while much has been done, there is a little yet to be achieved. Madhya bharat comes next to Mysore and Travancore for the excellent traditions that it is building up and Rajasthan has still to build up such traditions. Saurashtra is not likely to be isolated for long, and then you have the problems in PEPSU and the Himachal States and last of all, Vindhyaprant. I am sure that that statesmanship and farsightedness, that acuteness of vision and that perspicacity which have been able to achieve these results will be able to follow them up by equally brilliant results in regard to these four problematical questions that still confront the States Ministry and the country.

When this is done, the whole of India will have been placed upon one common foundations and the achievements which are visualised in the Haripura Resolution will have been completed. I, therefore, offer my thanks and congratulations not merely as an individual but also as the Officiating President, as the Substitute-President and now as the President of the Indian National Congress. I welcome the settlement and congratulate the Honourable the States Minister upon this magnificent achievement for which there is no parallel in history. I can easily recall the Confederation of the German States being brought together after the Battle of Jena I 1871, when France was defeated and all the Confederacy was converted into a Federation. Even that does not make any approach to the unionization of the 562 Islands of autocracy, citadels of personal rule, which had been established by the British for their own purposes. The British had gone but when they had gone, they had left a blot upon their own good name by publishing the document of 12th May 1946 relating to paramountcy which they had not allowed to be published till 23rd May 1946, i. e, till we had given our reply tot he 16th May document round which all negotiations had centred. By one stroke of the pen they had released these 562 lions from their cages. And they let them loss upon the country. Fortunately, the States Ministry had been able to get hold of them and make them real citizens of usefulness; and we are sure that with their co-operation in the fields of diplomacy and industries-the two fields for which they are

eminently fitted-they will help to exalt the good name of India in the comity of nations.

**Mr. President** : I do not mind allowing some more speakers to speak, but I suggest we finish this Part today.

**Shri Ram Sahai** (Madhya Bharat ) :* [Mr. President, I believe there could be no occasion for greater satisfaction of the people of the Indian States than the present one when the people of those regions find themselves on the same level as the people of the Provinces. No one can doubt that the people of the States have been able to secure this privilege only because of the great interest that Sardar Patel has taken in the problems of the States. No one can, of course, doubt that the Resolution passed by the Haripura Session of the Indian National Congress with respect to the States and the agitation carried on by the All-India States Peoples Conference as a result of that resolution for the integration and uniform agitation have all combined to facilitate the task of the Sardar in this respect and we have enabled him to solve the problem of the States at the earliest possible moment. All the Regional Councils affiliated to the All-India States Peoples' Conference had laboured hard in this direction and as a result of their efforts and the leadership and guidance of Sardar Patel, you find today that the States have been able to get the same status under the Constitution which is enjoyed by the Provinces.

Only last year a convention of the representatives of the States in the Constituent Assembly was held in Delhi. The statement issued by that Convention also demanded that provisions should be made in the Constitution at an early date so as to put the States and the Provinces on the same level. It was as a result of that that a Committee to draw up a model constitution was appointed under the States Ministry and it drew up such a model constitution. But the conditions changed so quickly that we find that we have advances much beyond the model constitution and we find that the people of the states are getting the same rights as the people of the provinces and the responsibilities and the opportunities of work for both are the same under the constitution moreover a part relating to the states is being added to the constitution as recommended by the committee which had drawn up the model Constitution I may here point out that the people of the states had come to entertain many doubts about the implications of the article 306-B which has been inserted in the constitution some of us even went to see the Sardar in this connection the clarification that sardar patel gave to us of that article gave us very great satisfaction and all the doubts that we had in our mind were completely removed and we were convinced that in view of the conditions existing in different states such an article was really needed.

Formerly the States used to be under the control of the Political Department. Now I believe they will have to work under the guidance of the States Ministry. But I believe there would be a big difference between the former and the present system. Formerly the Ruler of the State used to act with a view to maintain the foreign rule in India. But now the work that we shall have to do under the guidance of the States Ministry would be mainly with a view to establish as early as possible an efficient and effective administrative system. We are being provided with all the rights and facilities which are being provided to the Provinces. I, therefore, believe that it is not desirable for us to entertain any doubt or suspicion in this respect, more particularly in view of the statement made by Sardar Patel in the House in which he has made matters very clear and has given the necessary assurances.

There is a Legislative Assembly in Madhya Bharat. In Gwalior, an Assembly of this type had been in existence for the last thirty years and in Indore also such an Assembly had been in existence for about fifteen to twenty years.

The Assembly that has come into existence after the merger of several States in the Madhya Bharat Union has no doubt been in existence for a short while only. But even that Assembly has got representatives of the people of all Constituent States and that Assembly has been conducting its business according to the constitution drawn up by itself. But I believe that now we shall be working almost in the same way as the Provincial Governments work under this Constitution which we are adopting.]*

**Shri A. Thanu Pillai** : Mr. President, Sir, I wish to add my humble quota of praise and thanks to the States Ministry and the great personality that is now in charge of that Ministry. Sir, the changes that have come about in the relations between the Indian States and the Government of India and the rapidity of those changes are really marvelous. I shall refer just to one fact. A few months ago it was considered necessary to appoint a committee to draft a model constitution for the States. That means that even then the idea was that the Indian States would have to frame their own separate constitutions. And we have now reached the stage at which we are able to frame the constitution for the whole of India, including the States, here, and that is an achievement certainly of which any administrator, any Ministry, can be justly proud; and coming from one of the Indian States, and I may say, one of the foremost of the Indian States, I am particularly glad that I have an opportunity of witnessing this change and taking part in framing the Constitution, and making the Constitution for the States, part of the whole Constitution of India.

This brilliant record of achievement should serve as an inspiration to all of us, including the people of the States. As was mentioned here, the States are in different stages of different degrees of development. I am glad that the provisions relating to the Provinces are made applicable to the States. The States that are foremost in the whole country owe that fact to their adopting the methods prevailing in the Provinces. I mean the administrative and legislative methods, early enough. If Mysore, Travancore and Cochin are now in the forefront of Indian States, that is largely due t the fact that we adopted early enough the administrative methods and the legislative methods that were obtaining in the Provinces. The North Indian States legged behind because they pursued their old methods, and the result is that today we find they are distinctly backward. Therefore, when we adopt the same system, when we adopt the same kind of provisions for all the States and the provinces we can naturally hope for rapid progress so far al these States are concerned. Let us hope that will be the result.

Now, Sir, I wish to refer to one or two matters to which reference has already been made here. As for article 306-B, I fully appreciate why that article is sought to be introduced. But I would like to mention the fact that some States are really on a par with the Indian provinces and there is certainly no necessity or justification to treat those States differently from the provinces. From the speech of Sardar Patel that was read out to us, we find that the aim of the States Ministry is as far as possible to introduce the same administrative and legislative methods in the States as in the provinces and deal with the States both in respect of administrative and legislative mattes and in regard to interference by the Centre in the same way as the provinces. If that is so, I would ask, why not except at least such of those States as deserve to be placed on a part with the provinces even at this stage and exclude them in the Constitution itself from control by the Central Government? I fully understand the

spirit in which the provision now proposed in the draft Constitution is sought to be introduced, and every Member of this House who comes from the Sates must view it in that spirit. But we should not go beyond the necessities of the situation. There are not only the legal and constitutional aspects of the matter; there is also the question of sentiment and self-respect involved in this. Why treat Mysore and the Union of Travancore and Cochin differently from Madras or Bombay? That is the question that naturally arise. These States are as much advanced as any Indian province. Why should you treat them differently? Where is the necessity? The Drafting Committee may be good enough to consider this my suggestion and if the proposed control is considered necessary in the case of some States, a Schedule of such States may be included in the Constitution excluding advanced States like Mysore, Travancore and Cochin. To leave it to the President to exclude such States by executive order cannot justified.

Then, there is another minor matter raised by Mr. Santhanam which I wish to refer to. He suggested that even though the pay of the High Court Judges in States or States Unions could be fixed by the President in consultation with the Rajpramukh, their allowances and pensions should be dealt with differently and that they must be fixed by Parliament. I can understand the case in regard to pensions because pension of High Court Judges, are to be a charge on the consolidated Fund of India. If this is so, pensions may be fixed by Parliament. But if there is any justification to have the salaries of High Court Judges in the States fixed by the President in consultation with the Rajpramukh, there is justification also for having their allowances fixed in the same way. so, I would suggest that in Mr. Santhanam's proposed amendment this modification may be made, that is to say, that that amendment should be restricted to pensions only, leaving allowances to be treated on the same basis as the salaries.

Then, Sir, in regard tot he privy purse, I have nothing to say. I think the proposed provisions should be acceptable to the Members that come from the States.

Finally, I would like to make an appeal to the Government and to this House in regard to the financial position of the Indian States. It is a matter of common knowledge that because of the federal financial integration, the Sates stand to lose a good part of their financial resources. Provision is sought to be made for enabling States to run their administrations as they have hitherto been doing for some considerable period, and I hope effect will be given to this provision in a very liberal spirit by the Government of India. In fact, I must make an earnest appeal that the consideration of this problem should be in a very liberal and sympathetic attitude. Otherwise, the administrations of the States cannot go on. So far as Travancore and Cochin are concerned out a total revenue of 10 to 12 crores, we stand to lose three or four crores; unless amends are made, our administration cannot function and would come to a standstill. I hope this matter will receive the earnest consideration of the Central Government.

Provision is sought to be made for agreements being entered into between the Central Government and the States Unions in regard to the financial adjustments necessitated by federal financial integration. Provisions have to be made to meet all cases in regard to which agreements will have to be entered into. In regard to duties that are abolished in the States, provision is proposed for reimbursement being made by the Centre. Provision should also be made for agreements being entered into to give financial aid to the Indian States on account of loss of income tax and other sources of revenue. I hope al these necessary provisions will be made in the

Constitution.

With these observations, I support the article that is placed before the House.

**Mr. President** : It has been represented that many Members from the States would like to participate in the discussion in connection with these articles relating to the States. I think this is a very reasonable desire on their part, and I am prepared to accommodate them. So, I would not put the whole thing to the vote today. We may continue the discussion tomorrow but there is one suggestion which I would like to make. We would have in that case the other amendments placed before the House so that the whole things may be taken ultimately at one time when all the amendments are there before the House.

**Mr. President** : If you would finish within a short time, I am prepared to allow you to speak now.

**Shrimati Annie Mascarene** (Travancore & Cochin Union) : My President, Sir, after listening to the speech of the Sardar, I feel that all my difficulties with regard to the States have disappeared. Section 306B had been rather a disquieting one since I had come across it, and I had thought that in the making of democratic India, the States are going to be under a Roman-like tutelage for ages to come. Travancore, Cochin and Mysore, in fact the South Indian States, had been the territories in which democracy had been given its first advent. I am not flattering myself, but I should like to inform this House - I think they already know - that adult franchise was first introduced in India by Travancore, and democratic institutions were introduced in Travancore and Cochin before any other province could think of them. When article 2306B was introduced, we though, are we going to be dropped down with an inferiority complex by the Sates Ministry? The wisdom of the Bismark of India had been too deep for us to understand. He has so moulded the destiny of democratic India that States which are already quite advanced are on a part with the provinces, and the States which are to advance hereafter re given a safety valve so that they may develop without fear.

There is one point which strikes me as being of great importance and that is the centralization of power. No nation, no empire had survived in the world without a strong centralization of power. The confederation of Germany as moulded by Bismark today finds a place so difficult on the map of Europe that European administrators find it a problem to dismember them. The examples of Venezelos in Greece and Sun Yat Sen in China are enough to convince us that this Bismark of India is an administrator whose wisdom and experience are unequalled. The States people are very much obliged to the States Ministry for the work they have done during the last few months. They are able to feel now that they are no more going to be tyrannized by autocracies which under the British Administration repressed them. 40 per cent of the territory of India and 23 per cent of the population of India are now on a par with the provinces and provincial subjects, so much so the moulding of the destiny of democratic India is made easy and in a short time we shall be one of the foremost democracies that the world had ever seen. We should congratulate ourselves that this is the first occasion in the history of the world when four hundred millions of people have launched on the ocean of self-government and that is going to be the best example ever known in the history of the world. I thank the States Ministry once again and request the people of the States under development to rise equal to the occasion and come soon on a par with the provinces so that by next year we shall have no States but only provinces in a

democratic India.

The Assembly then adjourned till Ten of the Clock on Thursday, the 13th October 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

**Thursday, the 13th October, 1949**

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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.

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## DRAFT CONSTITUTION-*(Contd.)*

### Part VI-A-*(Contd.)*

**Mr. President :** I think it would be better to take the ot' her articles which are sought to be amended in connection with the States and take all the amendments, and then have the general discussion. I do not think it is necessary for Dr. Ambedkar to read the whole thing.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, I move.

"That article 224 be omitted."

"That article 225 be omitted."

"That after article 235, the following new article be inserted, namely:--

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| Armed forces in States in Part III of the First Schedule. | '235 A. (1) Notwithstanding anything contained in this Constitution, a State for the time being specifiedin Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf. |

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.' "

"That for article 236, the following article be substituted, namely:-

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| Power of the Union to undertake executive, legislative or judicial functions in relation to any territory not being part of the territory of India. | '236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.' " |

"That article 237 be omitted."

"That after article 274 D, the following new articles be inserted, namely:-

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| Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on goods imported into or exported from such States. | '274 DD. Notwithstanding anything contained in the foregoing provisions of this Part the President may enter into an agreement with a State for the time being specified in Part III of the the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on Goods imported into the state from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement : |

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

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| Effect of article 274A and 274C on existing laws. | '274 DDD. Nothing in articles 274A and 274C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.' " |

'That after article 302, the following new article be inserted, namely :-

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| Rights and privileges of Rulers of Indian States. | '302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A* of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.'" |

'That after article 306, the following new articles be inserted :-

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| Temporary provisions with respect to State in Part III of the First Schedule. | "306B. Notwithstanding anything contained in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution: |

'Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.' "

"That for clause (1) of article 258, the following clause be substituted :-

'(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to-

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this constitution by the Government of India or from any other sources;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267A of this Constitution,

and when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.' "

"That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely :-

Privy purse sums of Rulers.

'267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse--

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under chase (1) of article 258 of this Constitution, be determined by order of the President.' "

"That after article 270, the following new article be inserted :--

'270A. (1) As from the commencement of this Constitution--

Succession to property assets, liabilities and obligations of Indian States.

(a) All assets relating to any of the matters enumerated in the Union Liste vested immediately before such commencement, in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India, and

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India.

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the first Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities in obligations other than the assets and liabilities referred to in clause (1) of this article.' "

**Shri Brajeshwar Prasad** (Bihar: General) : Sir, I would like to suggest that these two amendments No. 218 and 219 relating to articles 224 and 225 should be disposed of first, or the amendments standing in the name of honourable Members to these articles will also have to be moved.

**Mr. President :** They have to be deleted. It does not take any time to dispose of them.

The question is:

"That article 224 be omitted."

The motion was adopted.

Article 224 was deleted from the Constitution.

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

"That article 225 be omitted."

The motion was adopted.

Article 225 was deleted from the Constitution.

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**Mr. President :** Then we shall take up amendments to 220.

**Shri Brajeshwar Prasad :** Sir, I move :

"That in amendment No. 220 of List VII (Second Week), in clause (1), of the proposed new article 235A, for the words 'until Parliament by law otherwise provides' the words 'until the President by order otherwise provides' be substituted."

I am opposed to these words, because I hold that these words are inappropriate. There must be a clear distinction between executive orders and legislative authority. This is a subject which is purely of an executive character. The question as to when the armed forces of the State should be fully integrated with the Indian Army is not a legislative matter. It is a matter which can be decided by the executive authority. There should be no confusion between the executive and the legislative functions. Here no vital principle is involved. We have already accepted that the State Army is also a part of the Indian army. Even in the transitional period they are recognised as part and parcel of the Indian Army. Therefore, I want that these words should be deleted and substituted by the words that I have suggested in my amendment.

Sir, there is another reason why I am in favour of the President exercising this function in preference to the Parliament. If we want that the pace of integration should be accelerated, then the power must be vested in the hands of the President and not of the Parliament. Parliamentary action means delay.

Sir, I would like to move another amendment standing in my name, I refer to amendment No. 251. I move :

"That in amendment No. 225 of List VII (Second Week), in the proposed new article 306B,--

(i) the words 'during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in

respect of any State', be deleted; and

(ii) the words 'for the time being specified in Part III of the First Schedule' be deleted."

This power of general control and supervision for a period of ten years is not adequate to meet the needs of the hour. I am quite convinced in my own mind that all the problems that confront the Indian States will not be solved within this short time. Sir, the maladies that have confronted us for the last two centuries cannot be solved by any stratagem within such a short time. Federalism tends towards unitary state. Whether we make this provision or not, the power of central supervision, direction and control will automatically apply one way or the other. Therefore, I feel that this power should not be a temporary power. This power should be vested for an indefinite period.

There is one other point to which I would like to draw your attention. Yesterday in the speech of the Deputy Prime Minister (which was read out by Mr. Munshi) the words used, as far as I can remember, were that "these provisions shall continue for such period as may be necessary". Now, here, the words used are that they shall not continue for a period longer than ten years. I would be quite satisfied if these words are taken out. I feel that this is a very unrealistic provision. It has got no meaning. We cannot arbitrarily lay down a period within which all problems in the native States must be solved because in the Constitution we have made a provision that our power shall not continue beyond a period of ten years.

There is another part of the amendment to which I would like to draw the attention of the House. I do not understand why this step-motherly treatment is being meted out to the provinces. We also want to benefit by the mature experience of the Centre. Why make this invidious distinction? I am dissatisfied--I am not talking here of any province in particular; let there be no illusion in the minds of anyone that I am dissatisfied with the administration of this province or that. I am talking here in general terms--I am dissatisfied with the system of provincial autonomy.

**Mr. President :** I do not think we need discuss that question once again here. We are concerned here with the States. The other question we have discussed *ad nauseam.*

**Shri Brajeshwar Prasad :** I am referring to the amendment wherein I want that the words "for the time being specified in Part III of the First Schedule" should be deleted. It means that this provision should be applicable to all the provinces as a whole. Probably I have not been able to explain the implications of this amendment.

**Mr. President :** Then it is out of order. As a matter of fact I have noted my paper that it is out of order. It is out of order because we are not discussing the question of the provinces here, but we are discussing the question of the States. So far as the provinces are concerned, we have dealt with the question already and finished with it.

**Shri Brajeshwar Prasad :** Sir, I bow down to your ruling.

**Shri R. K. Sidhva** (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

"That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235A, for the

words 'may until Parliament by law otherwise provides' , continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf' the word 'shall merge into the armed forces of the Union and shall form part of the forces of the Union, be substituted."

Sir, with your permission I shall move amendment No. 252 also which reads thus (I am deleting the first part of the amendment relating to ten years and am moving only the second part) :

"That in amendment No. 225 of List VII (Second Week), in the proposed now article 306 B, the following be inserted at the end of the article but before the proviso :-

> 'During the period of ten years as stated therein all States shall introduce immediately laws for full-fledged elected local bodies within one year from the commencement of this Constitution."

As far as the first amendment is concerned, I find that the armed forces which at present exist in the States are to be under the control of the Commander-in-Chief of India : that is to say, they will be under the control of the Forces of India. But I do not understand why a special distinction should be made in the case of armed forces being retained in the States. We have in the provinces no armed forces. All the provinces today have got their police forces and there are also armed police forces, but there are no military armed forces in any province. There were none in the previous regime and there are none even now. Of course under the old regime the Indian States maintained armed forces for reasons which we know. But now when they have merged with provinces or have formed into separate units why should they have separate armed forces within the States? I wish, therefore, that all the armed forces should be removed from the States and be merged with the armed forces of India. Then they will be under the control of the Indian Union. I see no reason why the States should be given the special privilege of keeping separate armed forces. It might create many conflicts. The armed forces in India will be under the supervision of the Commander-in-Chief. If these separate armed forces are allowed to be kept in the States without any specific reasons, for what purpose will they be maintained? After all the police force is there. If any necessity arises, the armed forces will be available from the Indian Union. I therefore hope that the amendment moved by me would be considered by the Drafting Committee, that the armed forces of the States should be merged with those of the Indian Union and they should be under the control of the Commander-in-Chief of India.

As regards the second amendment I entirely agree with what was stated yesterday in the statement of the Honourable Sardar Vallabhbhai Patel, which was read out by Mr. Munshi. The conditions in Indian States in regard to political matters are not parallel to what exist in the provinces. We all know that very well. I do not come from the States, but I have extensively toured in the Indian States and Congress workers have taken me many times to Indian States for propaganda work. From what little I know of several Indian States, their condition is most miserable. There is no local body existing there. When I went to Cutch I did not find a printing press there and when I was addressing a meeting and was referring to the ballot box and the advantage of votes the public did not know what was the ballot box and what was secret voting. From this you can understand how the people of the States have been kept in darkness by the rulers in these States. In Cutch no printing press even was allowed. That is the condition in many of the States as I had occasion to visit.

I do not say that all the States are in this condition. As was stated yesterday by

the Honourable the Deputy Prime Minister there are progressive States like Travancore, Mysore and Cochin and others for which of course we have admiration. They have worked very well even during the British regime and they have been really progressive. We do not bring them into the picture here. But there are really most retrograde States-a large number of them-and I therefore feel that it is perfectly correct to control their administration from the Centre for ten years. And what is the control? It is a preventive measure. They will be allowed to function as usual, but if extraordinary circumstances arise in their administration the Centre will certainly have a say in the matter. It is perfectly correct. We must admit that some of the States are in such a miserable state-I will use the word-and a good number of States. There are no administrations there, let me tell you. Excuse me if I have to say these things, but there is no municipality, there is no local body there. In a State where the public do not know what is a local body, what is a municipality and what are the powers of a municipality, you can understand how they can function and administer the State politically successfully. Therefore, we had achieved most marvellously in bringing one-third of our population in the Indian States into the Indian Union. We ought to be proud today that 10 crores of the population of the Indian States have been made free, who were actually slaves. When we took charge from the British Government they told us that there would be 10 crores of people in States for whom the question of freedom need not arise. The British Government thought they might bring peace or they may create disturbances; but our Deputy Prime Minister has shown like a magic lantern that he shall so see I hat all these feudal states be brought on a par with other parts of the country. When I was a boy, I had seen a drama of Alladin and his wonderful lamp; but what we have seen today is real Alladin magic lamp and we are all proud of it. Not only is the Deputy Prime Minister proud; he is, of course indeed proud, but we ought to be proud too and it is very unfair that the people sometimes while maligning the Government forget the greatest achievement that we have achieved of releasing 10 crores of people who were actually under subjugation and slavery. It is matter of pride for any nation that within a period if one and a half years we have liberated these people who were slaves. The British people when they went away did not consider what will happen to them and really like magic a change has been brought about and today they are free.

With all this when that first stage has been finished the second stage is a very important part and that is we have to administer these States efficiently. Personally my view is that some of the States which are on the border should be merged with the adjoining provinces; by merging into the adjoining provinces they will certainly come into the progressive parts of the provinces. This has been done in some cases, but not in many cases Eventually that should be the best course, but there are certain States which have to remain independent, as for as for instance Rajasthan. Rajasthan, as you know, is a scattered Rajputana State and I do feel that the Centre must keep their hold. I am myself proud to see Rajasthan become the biggest Rajasthan. but I am very sorry to say that the administration there is not quite good and when I was appointed as a member to investigate the wishes of the people of Bharatpur and Dholpur a member to investigate the wishes of the people of Bharatpur and Dholpur of course, my personal view is different- they wanted to join the Rajasthan. and the State Ministry resolved that they should be merged with Rajasthan. I do not find fault with the State of Rajasthan, because there are no proper people available for the administration of the States and it is not their fault. They were not trained. You can very well understand Sir, we in the provinces, those who have been in the local bodies, in the municipalities, had a good training. They knew the municipalities are the first training for a citizen to take charge of the basic administration and therefore, Sir, I have made a suggestion in my amendment that while the control shall be there, the

"control" in the sense that has been explained by the Honourable Sardar Patel yesterday will, be only when the necessity arises. During that period, I desire that the local body should be immediately formed, a full-fledged local body should be immediately formed, laws should be passed and they should be put into operation within one year from the commencement of the Act, so that people may know really what is an administration, what are the franchise, what are the powers, what are the rights and what are the privileges in a small sphere, in their own town, in their own villages. When they come to know that really a local body is a thing where also a small city or a small town has to be governed by themselves, they will create for themselves good administrators for administering their own State. At the same time we shall have very good ministers to take charge of the administration and bring these States into life with the provinces. I hope my friends from the States will not misunderstand me when I support the proposition for control for 10 years. After all it does not look nice that they should be under the existing conditions when we are all free and when we want absolute control, there should he some control from the Centre. I do not share the view that there should not be any control on any free local bodies. Today all local bodies, municipalities, corporations are all governed by certain Acts and I can tell you, Sir, that even in a corporation like those in Bombay, Calcutta, Madras, the Provincial Governments have a control. At any time if they feel that the administration of the corporation is going wrong, they have the power to intervene. The whole position, therefore, is four the purpose of this Act to intervene in case of necessity just as in the Calcutta Corporation. The Calcutta Corporation's business was very Wrong and therefore, there was a provision in the Act that the Government can intervene in the event of the administration not functioning properly and the Government of Bengal took charge of the Calcutta Corporation, one of the biggest corporations. As you may know, Mr. President, the administration of Calcutta Corporation has been taken under the control of the Government. There is nothing wrong in it. After all it is our Government now. There was the stigma in pre-independence days and I myself was fighting when such a control was under the British Government. I said then that our opportunity should be given when they do not function properly, an opportunity should be given them a second time to improve. I do hold that view that even before the suppression of any local body opportunity should be given by the Government to improve. When they continuously go wrong, then the control should be taken by the Centre. Similarly, I am sure, Sir, that when an occasion arises when anything is going wrong in the States the Centre should give a warning to that State and if the State does not improve and continues in that condition, then the Centre will certainly have the right to intervene and in the interests of the whole country-not only in the interest of the State alone,-the Centre will be justified in taking possession of that State. I therefore say that those States which are very backward in those states municipal laws should be passed immediately so that they may have a first- class training. If they have three or five years term of office, they can very well advance *(Interruption).*

Therefore I contend Sir, what I have stated in amendment No. 252 the Drafting Committee will kindly consider in view of the control that has to be taken by the Centre in the event of any inefficiency in the State that may exist. With these words, Sir, I commend both the amendments Nos. 246 and 252 for the acceptance of the House.

**Prof. Shibban Lal Saksena** (United Provinces : General) : Sir, I beg to move :

"That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words 'and the Union shall bear the expenses thereof' be added at the end."

This amendment No. 220 says :

"Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union."

The question arises, who shall bear the costs? In the first part it is said that until Parliament otherwise decides, the armed force shall be maintained by the State itself. In part 2 it is said that armed force shall form part of the forces of the Union. There is some discrepancy between the two. I personally feel, Sir, that what is intended is that very soon we shall have all the forces under the control of the Union and until Parliament passes a law to that effect, they continue to remain as they are. I think as they become part of the forces of the Union, the expenses should be borne by the Union and they should be under the control and discipline of the Union as is intended by clause (2). In fact, many of the States may not be able to provide for the maintenance of these forces. I, therefore, think that even though it May take some time for the Parliament to pass a law taking over all these forces, still *de facto* the forces must come to the Union and the expenses thereof must also be borne by the Union.

I have also given notice of amendments 303, 304 and 305. Amendment No. 303 refers to article 274 DD and says :

"That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DD, after the words 'the President' where they occur for the first time, the words subject to the approval of the Parliament be inserted."

Article 274 DD says : "Notwithstanding anything contained in the foregoing provisions of this part the President may enter into an agreement with a State..... etc." What I want is that this power which is being given to the President to enter into financial agreements with the States, especially when agreements must be subject to the approval of Parliament. Therefore, I want to introduce these words.

Then Sir, article 274 DDD says : "Nothing in articles 274A and 274 C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide." To this, my amendment is :

"That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DDD, for the words 'President may by order' the words 'Parliament may by law' be substituted."

What I want is that here also for the words "the President may by order provide", the words "Parliament may by law provide", be substituted. My only argument is that I do not want that this power should be given to the President which means the Cabinet, but it should be given to Parliament especially in matters of such importance.

Then, Sir, there is an amendment to article 306B which has been commented upon so much and about which the Honourable Sardar Patel has made a statement. After his exposition, I think much of the criticism goes. But, still I think that Mr. Thanu Pillai's suggestion was a better one. We should have divided the States into Schedules and some of the States should be excluded from the operation of this article. I hope

States like Mysore and Travancore will not be subject to this provision, and that the President will from the beginning pass an order to that effect. My amendment in article 306A is:

"That in amendment No. 225 of List VII (Second Week) in the proviso to the proposed new article 306 B, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The proviso reads that the President may by order direct that the provisions of this article shall not apply to any State specified in the order. That means that when a State has to be taken out of this guardianship the President may issue an order. I want that Parliament alone should be able to do it by law. It is quite possible that some of the States may think that they are fit to be excluded from the operation of this article and they should be able to approach the Parliament and Parliament should be able to do it by law. Otherwise, they may have to hang on the President, and to be in his good books to get out of his control. I think if Parliament has that power, they will not have to be subservient to the States Ministry of the Government of India. This amendment will give Parliament the paramount power and I think this is desirable.

While I have given notice of amendments to this Chapter, I do want to join in the chorus of praise which has been showered on our leader, the Honourable Sardar Vallabhbhai Patel on this historic occasion. I think this is the biggest task that has been accomplished by our Government in the past two years. This one single achievement of Sardar Patel will entitle him to an immortal place among the builders of modern India. The British had created five hundred and odd States and he tried to divide our country into so many Pakistans. By the genius of the Honourable Sardar Patel and by the work of the officials of the States Ministry, we have been able to accomplish this great achievement. I join the House in congratulating Sardar Patel on this great achievement. Friends here have compared him to Bismarck. I consider Sardar Patel's achievement to be greater than that of Bismarck. For Sardar Patel accomplished this revolution without shedding a drop of blood. I pray to God that he may be spared long, and be soon restored to his normal health and vigour, so that he may lead the Nation to greater victories in the future.

(Amendments Nos. 247, 297 and 298 were not moved.)

**Mr. President :** Amendment No. 222 : Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** I have already moved that.

**Shri S. V. Krishnamoorthi Rao** (Mysore State) : In view of the Statement made by the Honourable Sardar Patel yesterday and the assurance given by him so far the Mysore State is concerned, I am not moving this amendment. (No. 249). I would like to participate in the debate.

(Amendment No. 250 was not moved.)

**Mr. President :** Amendment No. 279 : Sarangadhar Das.

**Shri Sarangadhar Das** (Orissa State) : Mr. President Sir.....

**Mr. President :** This amendment is only for deletion. It need not be moved. You

can speak about it later.

**Shri H. R. Guruv Reddy** (Mysore State) : I do not wish to move amendment 289 in view of the assurance given by Sardar Patel.

**Mr. President :** Prof. Shibban Lal Saksena, you have given notice of some amendments this morning.

**Prof. Shibban Lal Saksena :** Mr. President, Sir, notice has been given of amendments to the new articles 258, 267-A, 270-A and 264-A.

**Mr. President :** 264-A has not been moved.

**Prof. Shibban Lal Saksena :** I beg to move:

"That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258 the following words be added:-

'after that agreement has been approved by Parliament.' "

My second amendment is :

"That in amendment No. 299 of List XIII (Second Week), sub-clauses (a), (b) and (c) of the proposed clause (1) of article 259 be re-lettered as sub-clauses (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :-

> '(a) questions arising from or connected with the resting in the Union of assets and liabilities of such states related to any of the matters enumerated in the Union List.' "

This second amendment is really an improvement on amendment 300 of Mr. Krishnamachari. Regarding the first amendment, I feel that when important agreements about financial matters are made with the States, it must be the Parliament which must be the final authority. Therefore I want to add "after that agreement has been approved by Parliament."

My amendment to article 267A is:

"That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed new article 267A be deleted."

When the agreement provides for an allowance free of income-tax, there is no need for this clause. My next amendment to article 267A is--

"That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed new article 267A, for the words 'by order of the President' the words by Parliament by law' be substituted."

Here also it should be the Parliament that should finally sanction the expenditure. Therefore, I have suggested this change.

Then my amendment to new article 270A is:

"That in amendment No. 302 of List XIII (second Week), in clause (1) of the proposed new article 207A, the words 'and approved by Parliament' be added at the end.'

This relates to the properties. Clause (1) says :-

"As from the commencement of this Constitution all assists relating to any of the matters enumerated in the Union List vested immediately before such commencement in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India."

To this I want to add at the end 'and approved by Parliament.'

I only desire by all these amendments to assert and maintain the final authority of Parliament and I hope these amendments will be accepted.

**Mr. President :** The article and the amendments are open for discussion. Mr. Sarangadhar Das.

**Shri B. Das** (Orissa : General) : Sir, I have tabled two amendments to article 267A. I move :

"That in amendment No.301 of List XIII (Second Week), after clause (2)of the proposed new article 267A the following new clause be added :-

> '(3) Where any sums are guaranteed or assured to any Ruler's family members or relations such sums be treated as part of privy purse and as free of tax.' "

Another amendment I have tabled is to the following effect :-

> "That in amendment No. 301 of list XIII (Second Week), in clause (1) of the proposed new article 267A. after the words 'to any Ruler' the words 'or his family relations' be inserted."

It is understood from article 267A that the money granted to any ruler should be free of taxes. When negotiations were going on, most of us understood that Ruler's mother and other family members and widows of former rulers who receive grants by those negotiations will not be taxed income-tax or any other tax. It was surprised last right to receive a visit from the Dowagar Maharani of Mayurbhanj who had been granted Rs. 3,000 p.m. as her allowance when negotiations took place. For April and May she received Rs. 3,000 per month and for these two months she was paid fully. Thereafter Rs. 707 p.m. is being deducted from April last as income-tax on the same. She is the wife of a Maharaja who is no more and the daughter of a Maharaja. How could she pay income-tax when income-tax did not exist in many States? It means that many of these relatives of rulers, such as the ruler's mother, his sister-in-law as in the case I cited and others, they will all be taxed, income-tax. Yesterday our revered leader, Sardar Vallabhbhai Patel, made an excellent speech whereby he guaranteed peace and tranquility for the citizens of the States. I think such peace and tranquility is guaranteed to the relatives of the rulers also. According to the draft article 267-A, the privy purse is to be free of income-tax. There are many States in India which never paid any income-tax. Particularly when we come to the lady members of the ruler's family-the ex-Raja's family--it is very hard on them they cannot understand why any income-tax should be deducted and in such large proportion as Rs. 707 out of Rs. 3,000 per month! It includes super-tax and other taxes also. Perhaps that State had no income-tax at all, and even if it had, it was not

on such a high level as is prevalent in our provinces. Till last night I had not understood that the relations of the Princes and the Maharanis--the mother of the ex-Ruler, or wife of the late Ruler will be subjected to such deduction of income-tax. I think privy purse means money that is sanctioned to a ruler and his family members. Therefore, they must be exempt from any tax. If the ruler with a huge sum of Rs. 20 lakhs or 25 lakhs as allowances is not subjected to income-tax why should the relations of the rulers be taxed income-tax and that too at the maximum rates of income-tax assessment that is prevalent in India, and that has never been understood in the States ? Sir, this is a lacuna that has been left over and it must he corrected. It is no use harassing people who were enjoying great privileges in those States. If the rulers or the descendants of the rulers are to enjoy such, privileges in the future. I do not understand why the ruler's mother and the near cognate Maharani of the State should be taxed income-tax. I hope this wrong will be corrected and righted.

**Mr. President :** The whole thing is now for discussion. Mr. Sarangadhar Das.

**Shri Sarangadhar Das :** Mr. President, I had given an amendment to delete article 306B, but as deletion is not being moved, I want to say a few words about this article.

First of all, I want to say that I am second to none in recognising and praising the work that the Honourable Sardar Vallabhbhai Patel has done in reducing the number of States from five hundred and odd to seven. I happened in 1947, as a Member of the All-India States Peoples Conference, to know what the dangers were and what a gigantic task it was. I personally at that time did not believe that it could be done in such a short time. But it has been done, and for the consummation of this monumental work the whole credit must go to Sardar Vallabhbhai Patel and the States Ministry. I am also aware that when we had objected to the distinction made between the Provinces and the States in the new constitution, in certain fundamental matters last winter, he had given us an assurance that he was trying to bring the States on a par with the Provinces, and that he has done now.

But my objection now to article 306B is for this reason that we are trying to have democratic institutions all over; we have destroyed autocracy and introduced democracy; but in having this article 306B whereby the States Ministry, I mean the Government of India, will have control over these States Unions. It makes a distinction between the Provinces and the States, and to my mind it strikes at the root of democratic institutions. I am in a minority of one here. Because I know very well that many of the States Members who happen to be Ministers in their States Unions or States do not like this article, do not like this subordination to the Government of India, in respect of their day-to-day administration, and yet they, because of a certain mandate, cannot speak and they will not speak. My objection to the article is particularly on this ground that by having control and by sending directions from the Centre to the States, bureaucratic rule will completely prevail. There will be no real representative Government.

I can also say from my experience of the last one and a half years with regard to the Indian States that have been merged into the Provinces, that the officials who have been sent by the Provincial Governments as administrators into these States have acted in such a way that they are the successors of the Rajas, they are the successors of the rulers in their whimsical rule, and the general people in those States have that impression. Whatever nominated representatives there used to be last year

in Orissa and C. P. States, they had no voice and the people soon found out that the so-called representatives who were nominated as Councillors by the Provincial Governments had no voice in the matter of administration. They were nobodies, and consequently the officials are ruling now as they were ruling in the Raja's regime. And it is very unfortunate that our officials from the Provinces who were trained in a certain administrative machinery in the provinces, when they come to there States where there is no democracy, where there is no voice of the people, they have acted as if they were the rulers themselves. Probably they think they have an opportunity to be the rajas for some time and they have done so.

I also know that in many of the big Unions that have been formed during the last year there are officials, the subordinate officials and the high ones, who act in that manner and the people have no say, no opportunity of airing their grievances. Consequently, when the States Ministry, or I should say the Government of India will give directions for the day-today administration, it will assure those officials that although the States Unions will have their legislatures and there will be representatives elected by the people, even those elected people might take some decisions which may be contrary to the decisions of the Government of India, and that the decision of the Government will have to be carried out by those officials, and that the representatives will have no other say but to keep quiet, and let the machine go on according to the desire of the Government of India. Everyone concerned will realize the supremacy of the officials. I quite appreciate, as some of the speakers have already stated, and Sardar Vallabhbhai himself has stated in his statement, that in the States the people do not have democratic traditions, there was no local board, no municipality. I know there were States where even a library could not be established, because the Raja and his Dewan were afraid that people by reading books would become rebels.

I appreciate that, but now that we are introducing democracy. I strongly protest that there should be one treatment for the provinces, where the ministries will be autonomous without any interference from outside and another treatment for States and that those States Unions or States like Mysore will have to take orders from the Central Government. I know that some of them will be exempted and they deserve that exemption. Even then, when Mysore gets the distinction of being fully autonomous, and Rajasthan becomes a subordinate body, I believe this House will realise what the feeling of the representatives of Rajasthan will be. My contention is that when the article takes any of these States or States Unions under a period of tutelage, it may be for ten years or Parliament might decide on a period of fifteen or twenty years, it deprives the administration of its representative character.

Now, it seems that exactly as the British Government wanted during the last fifty or sixty years to train us in democractic forms of Government, so also our own Government, our own leaders, who were condemning the policies of the British Government, are now introducing the same technique in the case of the States people, and I have a feeling that the Government at the Centre and also most of the Members from the provinces here have a step-motherly feeling towards the people of the States. This will be evident from what has happened about the merged States. Last January we passed here an amendment to the Government of India Act for completely merging some States into the provinces of Bombay, Madras, C. P. and Orissa. At that time we had hoped and we had some assurance from some quarters that there would be election under the restricted franchise of the 1935 Act, but there has been no election and I know definitely that in two of the provinces at least, members have

been nominated by the provincial government through official machinery. It is an interesting thing to know that the nominations were not even made by Congress Committees. One would presume that Government being run by Congress, it would listen to the Congress Committees. In one province the recommendations of the Congress Committees were thrown out. In another the Congress Committees were not consulted at all. One would take it that as the government is run by the Congress Party it would consult its own machinery, but it was not done. In most cases officials have nominated the members. They are called people's representatives. To my mind it is an insult to the people of the States that some people who were unknown in public life or used to side with the Raja, have been nominated. From this I want the House to understand that now that autocracy has been destroyed and we have democracy all over India and the whole country is integrated into one whole, there is a tendency on the part of the Government at the Centre to keep the people of the States under tutelage.

Now, when it comes to the intelligence of the people of the States as voters, I would say--and I am very well acquainted with my province--that there is no difference between the intelligence, the awareness of the general electorate in the provinces and in the States. If you consider that the electorate's ignorance results in this kind of nominations and directions from the Centre, then I would say it was a mistake on our part to introduce adult franchise in our Constitution I would say that if we do not have any belief in the people, then let us have adult franchise gradually. Of course, personally I do not share that view. I say that as an argument only. I believe that once democracy is introduced, if people make any mistakes, they will immediately learn from those mistakes, and that is the way democracy can grow and that is why, speaking from my experience not only in my own province and in the States of Orissa but also in Rajasthan and parts of Madhya Bharat, this is a retrograde measure, this article 306B. Sardar Vallabhbhai has accomplished the integration of the whole country into one whole and has got rid of autocracy in such a short time. This retrograde article 306B will detract a great deal from the good that he and the States Ministry have done.

I said at the beginning that I am in a minority of one because I do not belong to the party that dominates this Assembly. I was in the party, I have come out lately; that is why I am speaking, I am free to speak. But I wish to give you this warning, to honourable Members of this House, and to the Government, that unless this step-motherly attitude towards the people of the States is removed and they are allowed to function just the same as the people of the provinces arc functioning or will function under the new Constitution in the future, unless the States people are given the same rights as the people in the Provinces are, I do not think this democracy will grow. Anything may happen in future. There may be troubles in these States Union Ministries, there may be a blow-up somewhere, at any rate democracy will not grow.

That is why I appeal to the Honourable Members of the House as well as to Sardar Vallabhbhai that if it is necessary to have this article 306B, it should not be put into action in any of the States. I feel that if the Government of any State breaks down, provision has been made in articles 275, 276 and others which will be applied to the Provinces and these might as well be applied to the States Unions. That is why I think 306B is not necessary and if it is passed, as have no doubt, it will be passed, my appeal to Sardar Vallabhbhi and the Government of India is that it should not be put into action. If there is anything wrong in any or the Union Governments it should be set right by persuasion.

**Shri K. Chengalaraya Reddy** (Mysore State) : Mr. President, Sir, it gives me great pleasure to make a few general observations in connection with the proposal that has now been placed before the House. The proposal is that Part VI of the Constitution which applies to the States enumerated in Part I of the First Schedule should also be made applicable to the States to be mentioned in Part III of that Schedule with Such modifications and omissions as may be called for in the circumstances in which the States are placed. It is a matter of supreme gratification to me that towards the concluding stages of the work of this august Assembly this decision is being taken.

When this Assembly started its work it was a matter of grave doubt whether a common Constitution would at all be possible for all the units comprised in the Dominion of India. It was assumed and admitted that so far as the Indian States are concerned the Constitution for those States should be framed by the respective Constituent Assemblies of those States. It was in pursuance of that decision that Constituent Assemblies came into existence in some of the States and those Constituent Assemblies started their task of framing constitutions which were necessary for their particular States. But let me here recall the attempts made by the representatives of the Mysore State as also the representatives of some other States to bring about a procedure by means of which a common Constitution could be adopted for these States also.

As early as August 1947 when the representatives of some of these States came to this august House as Members, a serious attempt was made to set up a Committee of this House to evolve a model constitution which would be applicable to the Indian States with a view to incorporate such a constitution in the body of the Indian Constitution itself. But at that time it was not found either feasible or practicable and we were called upon in our respective States to frame our own constitutions. Even then when we started our work, we were conscious of the supreme necessity that such separate constitutions should be in consonance with the Indian Constitution and should be in accordance with the Aims and Objectives Resolution of the Indian Constituent Assembly. Even, when we had been given the opportunity and freedom to frame our own constitutions that was the stand that we had taken. And it is because of that background that I say now that it is a matter for supreme gratification for the people of the Indian States--at any rate I can speak authoritatively for the people of Mysore that this decision is about to be taken in this august House.

Well, Sir, we are face to face with a situation which all the statesmanship that the country can muster in order to make the freedom that we have won secure and stable beyond any risk whatsoever. It has always beer? felt that any variegated patterns of constitutions in several units would bring about disunity and some amount of working in different, diverse directions. It has been conceded now that the constitution for the Indian States also should be more or less uniform and be on the same lines as the constitution for the Provinces. In this connection I want to pay my humble tribute and congratulations to the Ministry of States and to Sardar in particular for the dexterous way in which this complicated problem of the Indian States has been tackled ever since August 15, 1947. The situation with which we were faced at that time was one full of potentialities for mischief, full of opportunities for the disintegration of India, full of possibilities for making the freedom that had been won being diverted into wrong channels. But for the statesmanlike handing of this problem I am afraid the opportunities that had been given for fissiparous tendencies to manifest themselves would have strick a mortal blow at India in its very infancy of freedom. So, I join in

the chorus of tributes and congratulations that have been extended to the Ministry of States and to the Sardar in particular from all over the world at the magnificent way in which this problem has been handled. It has been rightly claimed that what we have achieved today is a bloodless revolution, an achievement unparalleled in the history of any country at any time. Today we are proud of the fact that we are hammering out a Constitution which ensures for the first time in the history of India a united democratic and virile nation. Towards, this consummation as has already been pointed out the co-operative enterprise of the people of the States as well as of the people of the Provinces has been responsible, and for the first time in the history of India a people's polity based on the sovereignty of the people is coming into existence. So, I think there will be no difference of opinion anywhere in this country, in any State whatsoever, difference of opinion regarding the propriety or the desirability of having a common Constitution for all parts of this Union.

Having said that, Sir, I would like to refer to some details regarding the proposals that have been placed before this House. In the main, I am in agreement with the proposals that have been placed and most of the draft amendments that have been now put before the House should not be difficult of acceptance by all the representatives in this House, including the representatives of the Indian States. The general position is that so far as the various rights, powers and responsibilities that have been given to various authorities in Part VI of the Constitution are concerned, the same powers are to he given, to the corresponding authorities in the Indian States. There are some differences however, for which provision had to be made. It was never in doubt that so far as Fundamental Rights and citizenship rights are concerned, there would be no difference between unit and unit. But so far as the internal constitution is concerned it has become necessary to make some modifications. I would like to briefly touch upon them in order to clarify the position, because it has been asked by some honourable Members: "if you are for a common constitution, why do you want Cause modifications? Why do you want Part VIA at all?" it is not difficult for me to answer that question. But the lucid and comprehensive statement that has been made by Sardar Patel yesterday with regard to this matter is a convincing answer to such questions.

First, Sir, the one modification that has been found necessary is with relation to the constitutional head of the States concerned. In the provinces the constitutional head is to be the Government of that State. But, so far as the Indian States are concerned this cannot be the position, because the facts of history, the inexorable existing circumstances, necessitated a different arrangement to be made. It is because of that certain other provision has been made and a modification, an amendment, is placed before this House, so far as the Indian States are concerned, it will be the Rajpramukh that will be the constitutional head of those particular States. It should be clearly understood that so far as the powers of this Constitutional Head are concerned--by whatever name you may call him--they are absolutely identical with the powers that are conferred on the Governors in relation to the provinces. So, though a Rajpramukh is recognised as the constitutional head, the powers that he will be exercising will not be a bit more or a bit less than the powers that the Governor will exercise.

Regarding the definition of the word there is some difference of opinion. It has been urged that since the word 'Rajpramukh' means that he is a Pramukh amongst several other Rajas it may not be quite appropriate with regard to such States where there is only one ruler. This is sought to be got over by the definition of the word

"Rajpramukh" which will be duly placed before the House. The definition recognises the differences existing in various States and says that so far as Hyderabad is concerned "Rajpramukh" will mean the Nizam of Hyderabad. So far as Jammu and Kashmir and Mysore are concerned, it will mean the Maharaja, subject to the stipulation that they should be recognised as such by the President of the Union. There is nothing sur prising in this. There was a stipulation of recognition even under the old set-up when the British Paramount power was here and there is nothing of a very different nature that is proposed now. So, though a more appropriate word could have been found for the constitutional head of the States, in view of what has been embodied in the covenants that have been already entered into, where the word "Rajpramukh" has already been used, it is proposed to retain that word.

So far as legislative powers are concerned, there is no differentiation whatsoever. The field of legislation so far as the provines and Indian States are concerned, will be exactly identical and uniform and I need not advert to that aspect at any length.

Regarding the financial arrangements, Sir, I would like to say only one word. There also, the basis on which we are proceeding is that the relationship between the provinces and the Centre and the relationship between the Indian States and the Centre should be identical. When this principle is to be implemented, it will naturally mean certain dislocation in the finances of the Indian States. During the last few months attempts have been made in order to bring about some arrangement which will secure the implementation of the principle of uniformity and at the same time provide for the non-dislocation of the finances of the Indian States. The Federal Finance Integration Committee, presided over by Sir V. T. Krishnamachari, has gone into this question fully and almost all the States have provisionally signed the agreements in this behalf. In this connection, I want to urge one aspect. The arrangement that will be entered into by the States with the Centre is proposed for a period of ten years only. I want strongly to urge that this period of ten years may well be extended to a period of fifteen years in order to enable the Indian States to tide over the difficult situation that they will be faced with as a result of the Federal financial agreement. This proposal has already been mooted in the concerned quarters and I hope this suggestion of ours will receive the very earnest and sympathetic consideration of the authorities.

Then, Sir, regarding the redistribution of boundaries of States there has been some difference of opinion. Originally clause (3), as it was passed by this august House, provided for the ascertainment of the views of the Legislature so far as the provinces in Part I were concerned and the consent of the States in so far as the States in Part III were concerned. The Mysore Constituent Assembly was of the view that in so far as the Indian States are concerned, the previous consent of the States may be obtained before any redistribution of boundaries. I need not go into the reasons which actuated the Mysore Constituent Assembly to come to this decision and to make that recommendation. In view of the fact that so far as provinces are concerned the ascertainment of views only was sufficient, it has been put before us that even so far as States are concerned, such a procedure would be satisfactory and there need be no differentiation regarding this particular matter as between the provinces in Part I and the States in Part III. I do not want to pursue this point further, excepting to invite the attention of the House to the Statement made by Sardar Patel yesterday. He has definitely stated that whether it be the consent of the Legislature of the State or the views of the Legislature of the province, the wishes of the people will not be ignored whenever any redistribution of the territories has to come about. He has also stated

that the wishes of the Legislature of a particular State will not be ignored either by the Government of India or by the Parliament. In view of that assurance I do not want to pursue this point any further.

I want to refer to one more important aspect before I conclude. The whole object of the proposal that is now placed before us is to secure uniformity in relation to the Provinces mentioned in Part I and States in Part III. It is against this background, Sir, that the Sardar has said that there has naturally been some misgiving in relation to the proposed draft article 306B. Different opinions have already been expressed on the floor of this House by hounourable Members. I must respectfully submit that *prima facie*, this article 306 B provides for a differentiation as between Provinces and States. So naturaly one is tempted to put the question "why this differentiation?" If the object is to treat the Provinces and States alike then why subject these States in Part III of the Schedule to the general control envisaged in article 306B, I will be failing in my duty if I did not point out that so far as the Mysore Constituent Assembly is concerned, it was of the unanimous opinion that so far at any rate as Mysore was concerned this article should not be made applicable to it.

Well, Sir, we the people of the States have always been urging and agitating for a common Constitution on the assumption that there would be no differentiation between the Provinces and the States. Now, seemingly this article 306B brings about a differentiation. At the same time, I want to say this namely, that in our approach to this problem we have always been actuated by the dominating desire that the security and stability of India should not be jeopardized to the smallest extent. We want to consider every proposal that may be placed before us from that fundamental point of view. If the Ministry of States feels that under the present circumstances some such power is necessary in order to stabilise the position, in order to make democracy firm, and in order to place it on a firm footing in any of the States, then I would not like to question the wisdom of the Ministry of States in that respect. But it has to be borne in mind that this clause cannot be made uniformity applicable to all the States enumerated In Part III.

I am speaking only for Mysore on this occasion. Mysore has been known to have an ordered administration since the last so many decades. Mysore is known to have a permanent service of which not only Mysore but even India may be proud. Mysore was the first among Indian States--and may I say among the Provinces as well--to have a democratic House so early as in 1881. In 1907 another House called the Legislative Council was ushered into existence. So through all these decades the people of Mysore have been used to the working of democratic institutions. It is a fact that so far as the executive is concerned, there was a Diwan and the Diwan was the sole executive authority. But it can not be gain said that Mysore during all these decades has had experience of democratic institutions.

In view of that it would not be proper and desirable to bring a State like Mysore under the provisions of article 306 B. The Sardar has been pleased to say in the statement that he made to the House yesterday that it is obvious that so far as Mysore, Travancore and Cochin are concerned, where democratic institutions have been in existence since a long time and where Ministers have been owing responsibility to the legislature they have to be-treated on a different footing. It is my fervent hope that even in relation to the other States mentioned in part III of the Schedule it would not be necessary to invoke the aid of the powers that are vested in the Centre by article 306 B. Sagacity and statesmanship on the part of our leaders as

also the willing co-operation of the people of the Indian States have brought us to a stage when we can be proud of the achievements that we have secured so far. I hope that even in the future, though this article 306 B may go into the Constitution, it will not be necessary for the Centre to invoke the aid of this article either *suo motu* or because, of other considerations. I hope that this article will be more or less a dead letter in the Constitution. In any case I expect that 306 B will not be applied to the State of Mysore.

I do not want to take more time of this House. It has been said yesterday that the co-operative enterprise of both the people of the States and the Provinces has been responsible for this consummation. We are all proud of that; we all share in the joy of that. And I have already paid my humble tribute and congratulation to the States Ministry for this achievement. But a greater task still lies ahead of us. This co-operative enterprise has to be sustained in order to usher in what I may call Swarajya. Social and economic democracy has yet to be achieved and the political freedom that we have won and the Constitution that we are framing should be worked out in such a manner as would redound to the honour of India, and I have every confidence that the same enterprise, the same co-operation and the same steadfastness will be forthcoming in abundance in the future also in order to make this Constitution a great success in its actual implementation.

With these few observations I commend in general the amendments that have been placed before this House by the Drafting Committe and I would also appeal to the concerned authorities to be pleased always to consider the special conditions that may be existing in any State when applying the provisions of this Constitution as they are going to be passed very shortly in this House. Shri Jainarain Vyas (United State of Rajasthan Mr. President, Sir, we heared the masterly statement of Sardar Vallabhbhai Patel that was read out to us yesterday. We also heard the brilliant speech of' Dr. Pattabhi Sitaramayya, our Congress President, supporting the statement and Praising Sardar Patel for what he has done for the people of the Indian States. We have also heard some speeches from honourable Members of this House including that of Mr. Sidhva who characterized the people of the States as a backward class.

**Shri R. K. Sidhva :** I did not say that all States were backward class.

**Shri Jainarain Vyas :** I am very glad that he did not think us like that. We may be backward, but I may assure you Sir, and through you the Government of India, and specially the state Ministry, That we are grateful people also, and we are grateful to the Honourable Deputy Prime Minister, Sardar Vallabhbhai Patel for the changes he has brought in the country by diminishing, the number of states from 562 to seven.

I do not want to say much about the amendments, but I will restrict my remarks to article 306 B. On the face of it, as everybody has remarked, this article seems to be obnoxious and it looks as if it has been designed to put the people of the States--that is, the administration of the States--under surveillance for ten years. But after hearing the statement of Sardar Vallabhai Patel we have to desist from opposing it. He has referred to so many factors and I as one who has got some experience of the working of the States, and working for a short time in the administration of a State, know that inexperience on the part of administrators has played some part in the framing of this article. Then, there may be some faults, real or imaginary on the part of the administrators, but there are other factors also that have contributed to the framing of this action. In the States as Mr. Sidhva and others perhaps do not know, there are

intrigues. We may not be able administrators but in the State there are intrigues such as those not seen in the provinces, intriguing, carrying on whispering campaigns and playing all dirty tactics. These people are there and if the Government of India safeguard the interest of the administration as a whole against those intrigues, well, I cannot blame them for that.

Then there is one thing which I want to refer to, and it is that the unification of the States has been brought about, so early that so many details have not yet been worked out. There ought to have been pre-planning but there was no time for pre-planning and as such the States are in the process of being formed they have not been totally formed and from that point of view also some supervision seems to be necessary. I was one of those, Sir, who agreed that this supervision should last in those States which have not got legislatures and should last till such period as the legislatures are formed and after the formation of the legislatures these restrictions or supervision or control of the Centre should go but the period has been extended to ten years. But as Mr. Reddy has just pointed out. I hope this period would not be utilised for controlling the State administration. As a matter of fact, we ourselves, who are in the States would see that this restriction, control or supervision is not applied to us.

The difficulty with the States was that the people of the States were not given in opportunity. One of the speakers pointed out that there were restrictions on opening libraries in the States. It is a fact, Sir, I go a step further and say that there were restrictions in opening schools, even boarding-houses; and for a people who have got restrictions to open schools, libraries, boarding houses, to read and conduct newspapers, it is very difficult to understand the ways of the world; but in spite of that, I may tell you that ever since, the States Peoples Conference was created in 1927, there is a great deal of awakening in the Indian States and the people are not as they used to be before 1927. Given an opportunity, I can assure you Sir, the people would not lag behind the people of the provinces; on the contrary, I am afraid after ten years or even before ten years, a time may come when the people of the States may say that some of the provinces are very backward and some restrictions may be imposed upon them and not upon us? That time may also come, Sir.

When people refer to general backwardness of the States, well, I feel a bit pained, There are States which may be backward and there are States which nave become backward on account of certain reasons, but then there are States which are more forward than even the provinces. Take for example the State of Mysore, the State of Travancore and cochin. I do not want to name the provinces near about or on the East or on the North or the South or the West but some of the States are better administered. If you see from a cultural point of view some of the States have better seats of culture, better buildings, better accommodation, better facilities for the people. In my own State, sir, no I am very sorry, in my own division, which is a part of the Rajasthan now, there were famines and famines and famines. We did not allow Jodhpur to be made Bengal. We saved the people; we spent a lot of money on them, not only thousands and lakhs, but crores and those who think we may not be very forward from a democratic point of view will realize that from a humanitarian point of view the States were far ahead of many provinces and I can assure you that given an opportunity we will retain that culture and that humanity which we retained when the provinces perhaps forgot these things.

There are one or two things which I want to point out and that is that in the States we have got feudal elements. In the Division in which I live now, 90 per cent. of land

is under feudal landlords and some of them personally are very good people; but taken as a whole the feudalism in Rajputana may play a very nasty part in the future of the nation. I would request Sardar patel to take note of this fact and while controlling or supervising the administration of the States, he will see that these feudal elements are kept under proper control.

Another point which I want to refer to, Sir, is that the princes have been now given the right of citizenship and the right of rulership has perhaps been taken way from them in a way. This right of citizenship may also react against the people in some cases. I do not say that they should be refused human rights, but as restrictions have been placed upon the administration for ten years, I think restrictions should be placed upon the right of citizenship of the princes as well; otherwise given an opportunity to have a free play, they will use all the means at their disposal, all the weapons at their disposal to monopolise the administration of the States through other means. I hope, Sir, this point would also be taken into proper consideration when controlling and supervising the administrations.

I do not agree with Mr. Sidhva when he says that the States cannot find administrators. (Interruption.) Not in all States, I am glad to be told, but in some of the States. The difficulty as I pointed out was that the States could not have the legislatures and could not have the democratic traditions which the provinces had given that opportunity, I can assure Mr. Sidhva that the States, will give better administrators than the provinces have given to you. Can you forget Mahatma Gandhi? He was born in a State, mind that. We cannot forget Sheikh Abdullah. When the country was in difficulty and when the enemy was four miles away from Srinagar and when the army had gone away from Srinagar, he saved Srinagar, he saved the Hindus and he made a name. We cannot forget Sir S. Viswesvarayya, that famous administrator to whom a part of efficiency in the administration of Mysore is due. Well, the opportunity has not been given and we want that opportunity to be given. (Interruption). It shall be given because it is we who could take the opportunity. One thing which we have done is this: We have finished with the sovereignty of the rulers, and the second thing is that the rulers would not directly claim their salaries and their allowances also from the States now. Let them settle their accounts with the Centre. So the rulers have no power to interfere in the administration of the States, in the finances of the States, and that thing has been achieved. I also feet like others that we need a certain amount of control which has not been imposed upon the princes. I am sure when we create legislatures in our States, we will give you administrators and legislators and we would not give an opportunity to Sardar Patel to control or supervise in the way that article 306B is supposed to control us.

With these words, I generally support the amendments put forward and I offer my grateful thanks to the Honourable Sardar Patel for the statement which be made and which was, as I said, masterly and which leaves scope for the people of the States to improve their lot even before ten years. I thank once again the States' ministry and I thank you, Sir, for giving me this opportunity for expressing my views.

**Kanwar Jaswant Singh** (United State of Rajastan) : Mr. President, Sir, I am grateful to you for this opportunity that you have given me to express my views on Part VI-A. After the statement of the Honourable Sardar Patel yesterday, there is not much for the representatives of the States to say. Therefore, I will confine my remarks to the few essential things.

First of all, in article 211A clause (4) sub-clause (b), it is stated that the Rajpramukh shall be entitled without payment of rent to the use of his residences. I regard to this, I would submit, Sir, that practically in all the States the Rajpramukhs have got their own residences and therefore the question of the payment of rent does not arise. This point may therefore kindly be taken into consideration by the Drafting Committee when they finalise the thing.

In regard to clause 10(b), provision has been made in the case of the Sate of Travancore Cochin for a sum of Rs. 51 lakhs to be paid to the Devasom Fund as entered in the covenant from the exchequer of the union. There are other States also where such sums are spent on the Devasthan Department. I know for instance that in the Union of Rajasthan, a collateral letter has been sent to the Maharana of Udaipur where a large sum has been guaranteed for being spent on the Devasthan Department. This provision should, in my opinion, be included here when it has been done in the case of one State.

Then, Sir, coming to article 302A and article 267A about guarantee of Rights and privileges and Privy Purse Sums of Rulers of Indian States, this is a matter of great satisfaction. In view of the services of the Rulers and the patriotic manner in which they have accepted the advice of our venerable leader Sardar Patel their position should receive due recognition. They have parted with their power and kingdoms so gracefully and it is only in the fitness of things that these rights and privileges and privy purse without payment of Income-Tax should have been guaranteed in the Constitution.

Then comes the question of article 306B. With regard to this, Sir, though coming from a State, I welcome this provision. It is a very wholesome provision, so far as some of the States Unions are concerned. . It may be that for advanced States like Travancore and Mysore, such a provision may not be called for. So far as my province is concerned, that is Rajasthan, I feel that without such a provision, the security of the country may some time or other be jeopardised. The reason why I consider that so far as Rajasthan is concerned such a provision is essential is that, in the first instance, it is a border State on the border of Pakistan; and in view of the strained relations between the two Dominions, it is essential that there should be vigilance on the border and Central control is very necessary. Secondly, in view of the fact that a new Ministry has been installed there, who, though belonging to a political party, have very little experience and political background, and as stated by Sardar Patel in his statement yesterday, in view of the varying degrees of development of the political organisations in States, it is necessary that there should be such control.

Further, Sir, we have seen the working of the Ministry in Rajasthan for the last six months, and that is all the more reason why we feel that such a provision is absolutely called for. The Prime Minister and the other Ministers have been visiting the different places which were formerly the States. What they have been doing is this. They arrive and address public meetings; they abuse the rulers and abuse the jagirdars and do propaganda work. Beyond this, they do not do any substantial work. This is just in contrast of what our revered leader Sardar Patel does. He has missed no occasion to shower praises on the Rulers for the patriotic manner in which they have divested themselves so gracefully of their power and their kingdoms. But unfortunately, because of lack of experience and political wisdom, and large-heartedness our local leaders do not recognise the willing sacrifices of the Princes. They feel that the past bad relations should continue. They have false notion of their position. They feel that

as in the case of Rulers in the past, they should also display pomp and power. They feel that by doing so they will be able to enhance their prestige and strengthen their position among the people.

My predecessor who came here, Pt. Jainaram Vyas, referred to the question of jagirdars. I assure the House that the jagirdars are, first and foremost, Indians. Unfortunately or fortunately, I happen to be one of the jagirdars. I may assure you if our question is tackled tactfully by some eminent leader as Sardar Patel, when the complicated question of the Princes could be solved so satisfactorily, the question of the jagirdars in Rajasthan or anywhere else could more easily be settled and there should be no difficulty whatsoever. The Princes and we who have been so closely associated with the Princes are as much loyal Indians as anybody in this country, and yield to none in our patriotism and if our patriotism is put to the test in case of need, we will not be found wanting in any way.

With these words, I resume my seat.

**Shri P. Govinda Menon** (United State of Travancore & Cochin) : Mr. President, Sir, I rise to support the motion for incorporating Part VI-A in the Constitution, dealing with the Indian States and in doing so, I wish to express before this House certain thoughts which come uppermost in my mind on this occasion.

I would, first of all, like to say this, that regarding the provisions in Part VI-A, regarding certain amendments that might be required in the provisions proposed to be included with respect to the States, much has been said on the floor of this House yesterday and today. But; before walking into that field I wish to point out to this House the big step that has been taken by this House in deciding to incorporate a provision like this. When this motion made by Dr. Ambedkar is accepted by this House, I submit, Sir, the House would have recorded and registered one of the most phenomenal events which have taken place in the political history of India in recent years. The House call be proud of the work it has done hitherto; but I request the House to consider what this Constitution would have been, had there been no part like Part VI-A.

When power was transferred to India, when this Constituent Assembly was called to assemble, there was in existence a Constitution for the provinces of India--the 1935 Act. We have mostly adapted the provisions of this Act far the future Constitution of India with certain additions regarding Fundamental Rights, Directive Principles, abolition of separate electorates, etc. But I do submit that the decision to incorporate Part VI-A is registering the most important event that took place, *viz*., the complete integration of Indian States with the rest of India. Under the 1935 Act, a sort of hybrid Federation was thought of for India and protracted negotiations were carried on by the Crown Representative with the Princes in order to bring them into the Centre. These negotiations were finally dropped with the commencement of hostilities in 1939 and thereafter the old regime continued. In 1946 the Cabinet Mission came and later the Independence Act was enacted and that left the Indian States in a short of Independence.

It was in this context that this Constituent Assembly met late in 1946, and I wish to recall the fact that when the Constituent Assembly met for the first time the representatives of the Indian States did not find a place in this Assembly.

A Negotiating Committee was appointed by this Assembly. That was one of the first acts done by this Assembly. They negotiated with representatives of the Indian Princes to persuade the Indian Princes to send their representatives to the Constituent Assembly and while those negotiations were going on, parallel attempts were being made in certain quarters to sabotage the Constituent Assembly plan. But thanks to the vision of our leaders, thanks to the vision of certain statesmen in the Indian States, thanks to the aspirations of the Indian people to co-operate with India in the formation of an Indian Constitution for the whole of India, we found that a dozen members representing the Indian States sat in the Constituent Assembly in April 1947.

When that happened the situation with respect to Indian States was not defined. It was in a fluid state. Those of us who have got the printed text of the Indian Draft Constitution prepared for us would note, if we glance through the various articles there, that at that time it was thought that the Indian States will stand apart. You find so many references in the original draft Constitution to States in Part III, to States in Part V, various agreements under which alone States in Part III could join the Indian Union. That was the position in 1947. At that time, as was referred to by Shri K. C. Reddi Constituent Assemblies were brought into existence in several Indian States and the procedure which was followed in this Assembly was attempted to be repeated in the various Constituent Assemblies in the Indian States. Objectives Resolutions were passed, Minorities Committees were appointed and Drafting Committee were appointed, etc., etc.

But then with the grant of freedom to India or rather with the attainment of freedom by India, the situation that developed in India was a dynamic one--it was not a static one and the Indian leaders were really wise in not crystalising conditions as they obtained on the date of transfer of power in India. It was at this stage that a Committee was appointed--the Rau Committee--popularly known as the Model Constitution Committee. That Committee was appointed to suggest what shall be the form of Constitution for Indian States and in the membership of that Committee a majority was from the Indian States. The Report of that Committee was that the Constitution for Indian States should be as far as possible on a par with that for the provinces and it was further stated that the best way to effectuate this proposal will be to have a Chapter in the Indian Constitution showing the modification which must apply to the Chapter regarding provinces. It was in view of this suggestion that we are now proposing to incorporate Part VI-A in the Indian Constitution.

I must at this stage try to disabuse a notion which I find exists in the minds of certain people--not alone in the Indian States, but also in what are called the provinces. The notion is that this attempt or this idea to incorporate a part in the Indian Constitution to govern the Indian States has come from above, that it is an imposition from the Ministry of States, and that the people of the States are taking unwillingly what has been imposed upon them. I wish to declare here and now that that idea is wrong. The people of the Indian States have from the begining of the struggle for Indian independence joined hands with the people of the provinces and it is on account of the fact that the statements made by the Cabinet Mission in 1946 and the Indian Independence Act and the Constituent Assembly as planned by the Cabinet Mission did lay down a different procedure for the Indian States that Constituent Assemblies came into existence in the lndian states. I recall at this juncture a meeting which took place in Mysore in 1946 during the days of the Cabinet Mission, which was attended by representatives of Indian States People's movements in Travancore, Cochin, Pudukkottah and Mysore. In that meeting a unanimous Resolution was passed

by the representatives of the people that the Constituent Assembly for India should frame the Constitution for Indian States as well. That is to say, long before this plan was thought of by the Ministry of States the representatives of the people of the South Indian States assembled in Mysore in May 1946 and decided that it is the Indian Constituent Assembly which should frame a constitution for the Indian States. Thereafter as I submitted earlier, the Rau Committee also, which consisted of a majority of representatives from the Indian States, reported that it is this Constituent Assembly, representing as it does the will of the people of India including Indian States, that should frame the Constitution for India.

I will at this stage refer to the Resolution passed by the Legislative Assembly of the Travancore-Cochin State--a Resolution which that body, elected on adult franchise, thought it fit to pass at this stage. The Resolution reads as follows :-

"This Legislative Assembly of the United State of Travancore and Cochin, by virtue of its constituent powers hereby resolves:

> (1) that Travancore-Cochin State shall be one of the States in the Union of States, India, that is Bharat:
>
> (2) that a separate constitution for the Travancore-Cochin State is inconsistent with the aspirations of the people of the State and the status of the State as a Unit of the Indian Union;
>
> (3) that the provisions of the constitution for the governance of the State shall as far as possible be the same as those for the Units known as Provinces; and that the constitution of India framed by the Constituent Assembly of India shall be the Constitution which will apply to this State."

After all this, it will be idle to think that the desire of the people of the Indian States is anything other than this, that the Constituent Assembly of India should frame a common Constitution for Indian States and the Provinces as well. The desire of the people of Indian States has always been that India should be united, that the Government of India should be the government for the Indian States and the Provinces.

Once this fundamental proposition is accepted, when once it is known that this is the desire of the Indian people, then all that has been done by the Ministry of States during the last two or three years will be found to flow logically from that decision. The decision that the legislative and executive field of the Centre shall extend to Indian States, the decision that there shall be Federal financial integration, and the decision that the Constituent Assembly of India should frame the constitution for the States, all of them, logically follow out of this idea. But even in spite of that, I must inform this House that among certain people, not alone in the Indian States, but also in the Provinces, there is some misapprehension about this idea. They look upon the Government of India with memories--with bitter memories which have been there In the minds of the Indian people regarding the exercise of paramountcy. I wish to make it clear that the paramountcy of the Government of India during the days of the British is different from the paramountcy of the Union Government which it must have if it is to be a Union Government. The Government of India before the 15th August, 1947, so far as the Indian States were concerned, was a foreign government which represented the sovereignty of the British. Therefore, whatever the Government of India did during those days was really an interference from outside. But once this Constitution is passed, the nature of the Government of India changes. The people from the

Provinces should not think that it is a government of theirs only, and the people from the Indian States should not think that it is a government of somebody else. Whenever in the Constitution, and wherever in the Constitution, the words "Parliament". "President" and "the Government of India" are used, it must be remembered that these institutions denote or represent the sovereignty of the people of India, including the people of the Indian States. In other words, the Indian States and the Provinces are going to pool their sovereignty and to have a single undivided sovereignty in India.

By what happened on the 15th August 1947, every Indian States has got sovereignty and the Princes of the Indian States became Independent. By the result of the operations of the Ministry of States during the last two or three years, the sovereignty and the independence which the rulers of the Indian States got from the British have been transferred to the Indian people, to the people of the Indian States. That central fact must not be forgotten, and when during this debate one Member after another spoke about this defect and that defect in the programme of the Ministry of States, we forget that the Ministry of State has done a very important task during the last two and odd years, that is to say, to get transfer of power from the Rulers of the Indian States to the people of the Indian States.

I think, Sir, there is much in the contention that the benefit of the transfer of power should not be taken, without the conditions under which that transfer of power has been effected. Sardar Patel in his Statement yesterday, requested us to took at the picture as a whole, the scheme for the Indian States as a whole, and I think no reasonable man can take objection to that point of view. The people of Travancore have all along, and the people of other States have all along been advocating the sovereignty of the people of India, including the people of the Indian States.

Therefore, I feel extremely happy today. I enjoy the happiness of a man who has fulfilled a dream of his life, to note that by the introduction of this provision in the Constitution, we are going to have a united India where there will be practically no difference between the Indian States and the Provinces. There are differences in one or two respects, and they are well-known. Where we have Governors in the Provinces, we have got Rajpramukhs in the Indian States. There is some difference regarding their method of appointment. There is some difference regarding their emoluments. But beyond that, I for one do not see any difference between the Provinces and the Indian States under the scheme that has been placed before us.

Have stated so much about the general position, I would like to add one more point about my own State--Travancore-Cochin. Regarding some of the proposed amendments to be moved here, I endorse every one of the statements made by Sri K.C. Reddy, and I do not attempt to add anything, because I cannot do it better than he has done. Sardar Patel in his statement of yesterday did make a reference to Mysore, and Travancore-Cochin States and said that it is not intended that article 306B should apply to States which have got a degree of progress like the Travancore-Cochin State and the Mysore State. I am thankful to the Sardar for having made that statement. May I add, at this stage, that Travancore-Cochin have had representative institutions from very early times? If I am not wrong, even from 1860, there have been representative bodies in Travancore and from 1937 responsible government of a sort has been in existence in Cochin. Before any other State in India or any other province in India could introduce adult franchise, adult franchise was introduced in these two States, and exactly a year back election based on adult franchise took place

in Cochin and about six months earlier an election took place in Travancore. I think I am right when I say that it is in Travancore and in Cochin that the Indian National Congress or its corresponding bodies had to face the electorate on adult franchise for the first time, and both Travancore and Cochin did bring credit to the Indian National Congress by securing huge majorities in the legislatures even when the elections were held on the basis of adult franchise.

It was a due recognition of the progress made by those States, when Sardar stated yesterday that a provision like article 306B is not intended to apply in the same degree to all the Indian States. That statement encourages me to hug the feeling or the consolation that, if all the Indian States in Part III of the Schedule were in the same degree of advancement, were in the same degree of progress as Mysore and Travancore and Cochin, probably 'there would have been no city to incorporate a provision like 306B.

I wish to add this and then I will have done. Conflicting emotions are there in the minds of the people from the Indian States with respect to article 306E. Coming from Travancore and Cochin States, we thought that it was unnecessary and in the Legislative Assembly we passed a resolution to that effect., but we are in possession of the conditions in Travancore and Cochin States only, while Sardar Patel and the Ministry of States have got in their possession the conditions in all the States and the provinces, and they think that a provision like this is necessary. If we accept what has been stated here, it is because that when opinions conflict, the man with the greater information and the longer experience should have the final say. As I said, at the same time we are grateful, indeed very grateful, that this difference in conditions in certain States has been recognised by the Minister in charge of the States. With these few words, Sir, I wholeheartedly support the amendments that have been tabled before the House. Thank you, Sir.

**Shri Himmat Singh K. Maheshwari** (Sikkim & Cooch-Behar States) : Mr President, Sir, with your permission I shall take only two or three minutes of the time of the House, and I shall confine my remarks only to the amendment moved by my honourable Friend, Mr. Das, regarding the liability of certain allowances to income-tax. The proposals before the House guarantee the Continuance of Rulers' privy purses and their exemption from all taxes. The same immunity however is not extended to other allowances. The persons mainly affected by this are Rajmatas, widows of former rulers, who will enjoy their allowances for their life-time only. They will be hit very hard when they have their allowances reduced on account of deductions for income-tax and Super- tax. In the case of Maharanis and Ranis whose husbands are happily alive, the allowances will be exempt from income-tax as part and parcel of the Rulers' privy purses, but should any of these ladies unfortunately become widows, their position, I believe, will still continue to be the same, *viz*., that they will get their allowances from their sons and those allowances will be exempt from income-tax as part and parcel of the privy purses of the rulers. Therefore, there will be some sort of discrimination between the allowances enjoyed by Maharanis and Ranis whose husbands are alive, and the Maharanis and Ranis who lost their husbands before the present Covenants were entered into. In my opinion, Sir, the allowances of these royal ladies are not comparable to salaries. These are maintenance allowances. These ladies have lived in luxury and comfort in the past. They will now find their allowances reduced very radically on account of deductions of income-tax. The House is aware that even the allowances of the President. and the Governors and certain their dignitaries are going to be exempt from tax. Only their salaries are liable to tax, not

the allowances.

I therefore wish to appeal to the Honourable the Deputy Prime Minister and to the House to take a chivalrous and generous view of this matter and not to make the lives of these few unfortunate ladies miserable for such short periods as are still left to them before they pass away. In some of the States. Sir, the position of these unfortunate ladies is already very unhappy. Their relations with their sons are strained. If their allowances are reduced substantially, they cannot expect any help from the present rulers. Their lot therefore will be extremely hard. I hope the House will take this into consideration in granting exemption at least to the widows in respect of income-tax and other taxes.

**Mr. President :** Mr. Gokul Lal Asawa.

**Shri T. T. Krishnamachari :** (Madras : (General) : The question may now be put.

**Mr. President :** I have already called him.

**Shri Gokul Lal Asawa** (United State of Rajasthan) : Mr. President, Sir, I wish to make one or two observations on this historic occasion destined to open a new chapter in the history of the people of the Indian States. After the frank, lucid and comprehensive statement of Sardar Saheb, I do not think there need be any difficulty or hesitation on our part in accepting the amendments put forward, particularly article 306B. I must confess here that I was one of those who opposed the incorporation of such a provision being made in the Covenant of the United State of Rajasthan, but today looking to the ways--and should I say irresponsible ways, to put it mildly in which the Governments of some of the Unions are behaving or working, finding that we are passing through a critical transitional period, realising that we are still not out of the woods-who can say definitely that there are no troublous times ahead? And above all keeping in mind the observations of Sardar Saheb with regard to the meaning and purpose of article 306B, I see no justification for us to oppose the introduction of such a provision in the Constitution. Further, while the provision in the Covenant requires that both the Rajpramukh and his Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India, here under the present article we find that only the Governments of the States are to remain under general control. Now, this to my mind marks an improvement in the position.

One observation more and I have done. If I understand a right the feelings of some of us inside this House or outside, I may be allowed to say that what worried us most in the past and what worries us today somewhat is not so much the introduction of this principle of general control but rather its application, the working thereof: the mechanism and the technique for the exercise of general control, I mean the method, the manner and the range thereof. I hope those responsible for the exercise of general control, etc., will bear this important fact in mind.

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

**Mr. President :** I do not think there is any other speaker. Mr. Munshi, will you reply?

**Shri K. M. Munshi** (Bombay : General) : Mr. President, Sir, after the exhaustive and brilliant survey of the whole question by Sardar there is no need for any detailed reply. I would only mention one or two matters. In the first instance, I shall beg the permission of the House to keep back 274DD. Some technical flaw is suggested and the Drafting Committee would like to re-examine it. Then, as regards the amendments, I am quite prepared to accept the two amendments moved by my honourable Friend Mr. Santhanam, Nos. 276 and 278. Except these two amendmens I oppose the other amendments that have been moved. Explanations have been given about them and there is no need for this House to entertain those amendments.

There are one or two matters which I should like to mention. As Professor Asawa said just now, article 306B is a very useful measure and I am sure even those Members of the House who may have any compunctions about it will have been satisfied. The policy with regard to 306B has been authoritatively laid down in the statement of Sardar and I do not think that anything more need be said. It has already been stated in the statement and I am free to submit my personal opinion that so far as Mysore and the Union of Travancore-Cochin are concerned, whose affairs I know personally, I see no reason why they should attract article 306B, unless they fall from that steady and stable administration which they have inherited from the Dewans of the past, and I am glad to say that the present set-up there promises to maintain the tradition.

Only two remarks from my Friend Mr. Jainarain Vyas, I should like to refer to. One of his points was that feudalism in the States should be controlled. It cannot be controlled by mere authority. It cannot be controlled by rooting them out either by law or by force. So far as their power and prestige are concerned, they have shrunk on account of the democratic set-up that has been introduced in those States but you cannot eliminate those elements--people must learn to make them-the feudal elements--stable elements in the society. Before this change there was some point in saying, "Oh, the feudal elements should be eliminated", but those elements which have survived this revolution are as much ,citizens of the Republic as anybody else and it must be the duty of the other people, and particularly of the administration, to enforce the rule of law in such a manner that all the vestiges of feudalism disappear. It cannot be done at a stroke--any attempt to do so will only recoil upon the infant democracies in those States.

A second point which he made was that the Princes should be denied the right of citizenship. We must realise once for all that every person born in India is a citizen of India. In making what Sardar called the 'bloodless revolution', we did not propose to produce outlaws. In view of what the Princes have done in the past and what they did in bringing about the bloodless revolution, this kind of attitude will, I am afraid, come in the way of a satisfactory solution rather than accelerate it. The set-up in the Indian States now has been completely changed and the masses on the one side and those who have been rulers in the past have to adjust themselves in the new atmosphere. It is only in that way that we can make this revolution a complete success.

Sir, I agree with my Friend Mr. Govinda Menon that this is an historic occasion and it makes me as happy as it makes him. I remember the early days in 1947 when my Friend Mr. Govinda Menon was the only man representing the States in this House who was insistent that the whole thing should go and the States should be integrated. I can easily realise the joy that he feels in seeing that what he aimed at is now attained successfully.

This is no doubt a historic occasion. Thanks to the genius of Sardar and his statesmanship we have integrated the whole of India. *(Hear, hear)*. We have now an India which, even without Pakistan, is as large and much more integrated and harmonious and unified than ever before in history, and it is now for us, particularly the future Parliament and the future Government of India, so to consolidate all the different parts of the country that India may emerge a strong and compact nation. I feel happy also that the nightmare of the Indian States which have been a survival from Moghul and the British days is all gone and the sovereign people of India can now march forward from strength to strength and attain the cherished ideals which they have placed before the country in the Preamble to our Constitution.

**Shri R. K. Sidhva :** Sir, may I know what Mr. Munshi has to say about my amendment No. 246 about the armed forces to be merged in the Union?

**Mr. President :** Do you accept that amendment?

**Shri K. M. Munshi :** I do not accept that amendment. I said I would not accept any amendment other than those two moved by Mr. Santhanam.

**Shri R. K. Sidhva :** Cannot the armed forces of the States be merged in the Union Forces?

**Shri K. M. Munshi :** The section itself makes it clear that whatever forces are left in the States are part of the Union Forces. If honourable Members will see the Union List of the old Government of India Act of 1935, they will find that there was a separate heading called "The Armed Forces of the State" That entry has been omitted. There can only be one army now in India and that is the Army of the Union. By this article 246 these few contingents which are left in the States become integrated as part of the Union Army. But it will take some time to absorb them completely for organisational and other purposes. Till that time the whole thing has to be regulated by the President. At the same time, the article gives power to the Parliament to complete this process as early as Parliament thinks proper. Under the present conditions they could not be absorbed all at once and it must take time before they could be harmonised in every respect. That is the reason why article 246 has been drafted in this particular manner.

**Mr. President :** I will now put the various amendments that have been moved. The procedure which I propose to follow is this : I will take each amendment which has been moved by Dr. Ambedkar, take the vote on each separately and dispose it of. Then I shall put the whole part together.

Now, as regards amendment 217 article 211 A-there are several amendments. The first two are No. 237 and No. 238. These are the two amendments moved by Mr. Naziruddin Ahmed. They are more or less of a drafting nature, I wonder whether he wishes to have them put to vote. He is not here, so I will put them to vote.

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

"That in amendment No. 217 of List VII (Second Week), in the proposed Now article 211A, for the word 'modifications' the words 'adaptations, modifications' be substituted".

The amendment was negatived.

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

"That in amendment No. 217 of List VII (Second Week),--

(i) in item (3) of the proposed article 211 A, for the words 'shall be omitted' the words shall not apply to this part' be substituted;

(ii) in item (4) of the proposed article 211A in paragraph (a), after the words 'in clause (1)' the words 'for the time being specified in the First Schedule' be omitted and be inserted."

The amendment was negatived.

**The Honourable Shri K. Santhanam** (Madras : General) : In regard to my amendment No. 276 it has been suggested to me, Sir, that the words "Principal seat of Government" would be preferable to "Capital".

**Shri K. M. Munshi :** It is a verbal amendment which I am prepared to accept.

**Mr. President :** There is one slight change which has now been suggested that in place of the word "capital" we should use the word "principal seat of Government". I do not suppose there can be any objection to that. It is merely a verbal change. No. 276 has been accepted by Mr. Munshi.

The question is :

"That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211A for paragraph (b) the following be substituted :-

"(b) for clause (3) following clause shall be substituted, namely:--

'(3) Unless he has his own residence in the principal seat of Government of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent and there shall be paid to the Rajparamukh such allowances as the President may, by general or special order, determine.' "

The amendment was adopted.

**Mr. President :** We now come to the amendment No. 287 moved by Mr Guruv Reddy.

**Shri H. R. Guruv Reddy :** I do not want to press it, Sir. The amendment was, by leave of the Assembly, withdrawn.

**Mr. President :** We now come to No. 292.

**Kaka Bhagwant Roy** (Patiala & East Punjab States Union) : I would like to withdraw that amendment of mine, Sir.

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

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

"That in amendment No. 217 of List VII (second Week), in paragraph (a) of item (10) of the proposed article 211A, for the words 'the President by general or special order', the words Parliament by law' be substituted."

The amendment was negatived.

**Mr. President :** In regard to amendment No. 278 there is an amendment (No. 293) moved by Professor Saksena. I shall first put that to vote.

The question is:

"That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words 'President after Consultation with the Rajpramukh' the words Parliament by law be substituted."

The amendment was negatived.

**Mr. President :** No. 278 has been accepted by Mr. Munshi.

The question is:

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A, for article 197, the following be substituted:-

"Salaries," etc., of judges.

'197. (1) there shall be paid to the judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh:

(2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh :

Provided that neither the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment".

The amendment was adopted.

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

"That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235A, for the Words "until Parliament by law otherwise provides', the the words "until the President by order otherwise provides' be substituted."

The amendment was negatived.

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

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A the words `after consultation with the Rajpramukh' be deleted from article 197."

The amendment was negatived.

**Shri R. K. Sidhva :** I beg to withdraw my amendment No. 246.

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

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

"That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words 'and the Union shall bear the expenses thereof' be added at the end."

The amendment was negatived.

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

"That article 237 be deleted."

The motion was adopted.

Article 237 was deleted from the Constitution.

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

"That in amendment No. 223 of List VII (Second Week), in the proviso to the proposed new article 274 DDD, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

**Shri T. T. Krishnamachari :** Article 274 DD may be held over, Sir, to a subsequent day.

**Mr. President :** I shall put now article 302A to vote. The question is:

"That after article 302, the following new article be inserted, namely:-

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| Rights and privileges of rulers of Indian states | '302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State." |

The motion was adopted.

Article 302A was added to the Constitution.

**Mr. President:** I shall now put the amendments to article 306-B. Part (ii) of No. 251 is disallowed as being out of order.

The question is:

"That in amendment No. 225 of List VII (Second Week), in the proposed new article 306B,--

the words "during a period of ten years from the commencement thereof, or during such

longer or shorter period as parliament may by law provide in respect of any State", be deleted.

The amendment was negatived.

**Shri R. K. Sidhva:** I would like to withdraw my amendment No. 252.

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

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

"That in amendment No.225 of List VII (Second Week), in the proviso to the proposed new article 306 B, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

**Mr. President:** There are some amendments to amendment No. 299. I shall put the first amendment by Prof. Shibban Lal Saksena.

The question is:

"That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258, the following words be added :-

'after that agreement has been approved by Parliament'."

The amendment was negatived.

**Mr. President :** I shall put the second amendment of Prof. Shibban Lal Saksena, which, I think, is the same as amendment No. 300 by Shri V. T. Krishnamachari.

The question is:

"That in amendment No. 229 of List XIII (Second Week), Sub-clauses (a), (b) and (c) of the proposed clause (1) of article 258, be relettered as sub-clauses (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :-

> '(a) questions arising from or connected with the vesting in the Union of assets and liabilities of such States related to any of the matters enumerated in the Union List'."

The amendment was negatived.

**Mr. President :** There are two amendments by Prof. Shibban Lal Saksena to the proposed new article 267-A. I shall put the first one to vote--it is really not an amendment but a deletion.

The question is:

"That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed new article 267A be deleted."

The amendment was negatived.

**Mr. President:** I shall put the second one.

The question is:

"That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed new article 267A, for the words 'by order of the President' the words by 'Parliament by law' be substituted."

The amendment was negatived.

**Mr. President :** I shall now put the amendments of Mr. B. Das.

The question is:

"That in amendment No. 301 of List XIII (Second Week), after clause (2) of the proposed new article 267A, the following new clause be added:-

'(3) Where any sums are guaranteed or assured to any Ruler's family members or relations, such sums be treated as part of privy purse and as free of tax'."

The amendment was negatived.

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

"That in amendment No. 301 of List XIII (Second Week), in clause (1) of the proposed new article 267A, after the words 'to any Ruler' the words 'or his family relations' be inserted."

The amendment was negatived.

**Mr. President:** I shall now put the amendment of Prof. Shibban Lal Saksena to the proposed new article 270-A.

The question is:

"That in amendment No. 302 of List XIII (Second Week), in clause (1) of the proposed new article 270A, the words 'and approved by Parliament' be added at the end."

The amendment was negatived.

**Mr. President:** I shall now put Part VI A as amended by the two amendments which have been accepted, namely Nos. 276 and 278.

The question is:

"That proposed Part VIA, as amended, stand part of the Constitution."

The motion was adopted.

Part VIA, as amended, was added to the Constitution.

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**Mr. President :** I will put new article 235-A to vote.

The question is:

"That after article 235, the following new article be inserted, namely:--

Armed forces in States in Part III of the First Schedule.

'235A. (1) Notwithstanding anything contained in Constitution, a State for time being specified in Part III of the First Schedule having any armed for immediately before the commencement of this Constitution may, until Par by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union'."

The motion was adopted.

Article 235-A was added to the Constitution.

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

"That article 236, as amended, stand part of the Constitution."

The motion was adopted.

Article 236, as amended was added to the Constitution.

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

"That new article 274 DDD stand part of the Constitution."

The motion was adopted.

Article 274 DDD was added to the Constitution.

**Mr. President :** I shall now put article 306-B.

The question is:

"That after article 306, the following new article be inserted:-

Temporary

'306B. Notwithstanding anything contained in this Constitution, during a period of t

provisions with respect to States in part III of the First Schedule.

from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution.

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order'."

The motion was adopted.

Article 360-B was added to the Constitution.

**Mr. President :** I shall put article 258 to vote.

The question is:

"That for clause (1) of article 258, the following clause be substituted:--

(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to--

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267-A of this Constitution,

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement".

The motion was adopted.

Article 258 was added to the Constitution.

**Mr. President :** I shall put article 267-A.

The question is:

"That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely:-

Privy Purse sums of Rulers.

'267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse--

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt for all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President."

The motion was adopted.

Article 267-A was added to the Constitution.

**Mr. President :** I shall put article 270-A.

The question is:

"That after article 270, the following new article be inserted:-

'270A. (1) As from the commencement of this Constitution--

Succession to property, assets liabilities and obligations of Indian States.

(a) all assets relating to any of the matters enumerated in the Union List vested immediately before such commencement in any Indian State corresponding to a State for the time being specified in Part III of the First Schedule shall be vested Government of India, and
(b) all liabilities relating to any of the said matters of the Government of any In State corresponding to any State for the time being specified in Part III of the F Schedule shall be the liabilities of the Government of India,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the First Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities and obligations other than the assets and liabilities referred to in clause (1) of this article'."

The motion was adopted.

Article 2790-A was added to the Constitution.

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

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

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**ARTICLE 3 (*reopened*)**

**Mr. President :** We shall now take up those consequential amendments No. 226 etc.

**The Honourable Dr. B. R. Ambedkar :** I would ask Mr. T. T. Krishnamachari to move the amendments on my behalf.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I think it has to be formally put to the House whether they would give permission to re-open all these articles covered by these amendements.

**Mr. President :** These are consequential amendments which arise out of the amendments which we have accepted today, but as these relate to articles which have already been passed, the sanction of the House is required for reopening those articles. Do I take it that the House gives leave to do so?

**Honourable Members :** Yes.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I move the following consequential amendments to certain provisions of the Draft Constitution already agreed to by the Constituent Assembly, I move:

"That for clauses (a) and (b) of the proviso to article 3, the following be substituted:--

'where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State of States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President'."

Amendment No. 227.

**Mr. President :** Shall we not take them one by one? There are three amendments to it.

(Amendment No. 253 was not moved)

**Shri H. R. Guruv Reddy :** In view of the statement already made by the Honourable Sardar Patel, I do not move amendment No. 290.

**Mr. President :** Mr. Pataskar amendment No. 291

**Shri H. V. Pataskar** (Bombay : General) : Sir, I would like to make it clear in the beginning that the amendment which I propose to move does not relate exactly to the matter which has been just now proposed to be introduced by the amendment just now moved. It is with respect to the whole article as it has been re-opened. I hope, as the article has been reopened, this amendment may be taken to be in order.

**The Honourable Shri K. Santhanam :** On a point of order, Sir, I think this is inconsistent with the provisions which we have made. A law will be passed by a majority of the House. 'There is no procedure for taking the votes of a small section of the House. This amendment is out of order.

**Shri H. V. Pataskar :** I do not admit it is out of order on that ground, because it is open to us to make a provision of the nature which I propose to make. The only point which struck me was that it is certainly beyond the scope of the official amendment which has been introduced just now. It will open to the House to amend the provision in the Article as it has been re-opened. It cannot be said to be out of order on that ground. As the whole article is re-opened, I would be entitle to put forward my amendment.

**The Honourable Shri K. Santhanam :** Some states may be clubbed together for representation in the House of the People. We may not be able to identify which member is representing which State. I would not be possible to operate this clause even if it is passed.

**Shri H. V. Pataskar :** That I would explain while moving my amendment, and give my reasons for it. I have made a provision that the subject matter of the Bill shall be decided by a majority of the votes of the persons representing those areas in the House of the People that are affected by the provision of the Bill. There is no objection on that ground.

**Mr. President :** Would it not be a very novel thing?

**Shri H. V. Pataskar :** Novel it would be.

**Mr. President :** Any kind of provision we can make in the Constitution to say that a particular question will be decided.....

**Shri H. V. Pataskar :** I would like to make my submissions before I move my amendment. I think that is necessary.

**Mr. President :** You will state your case.

**Shri H. V. Pataskar :** So far as the amendment of the honourable Member just introduced is concerned, it is good so far as it goes. As article 3 originally stood, it was to be with the consent of the States in Part III of the First Schedule. That is omitted. We had made provision in article 3 that no Bill was to be introduced in either House of Parliament

except on the recommendation of the President and unless previously thereto the President has ascertained the views of the legislatures of the States in Part I, and obtained the consent of the States in Part III if any of those States were to be affected. Now by the proposed official amendment we dispense with the consent of States in Part III and bring them on a level with States in Part I and in both cases only the views of these States are to be ascertained by the President. Now, Sir, this is good as far as it goes. But, my fear is that so far as the actual wording of the article and its object being successfully carried out is concerned, it is likely to be dead letter more or less in the Constitution. That is the view that I take. It is for this reason that I have proposed this amendment.

If we look to the history of a provision of this nature, you will first turn to the Government of India Act of 1919. There, for the first time, even a foreign Government realised that it was necessary to make certain adjustments in the boundaries of the Provinces and to regrant them and therefore a similar provision was made in the Act of 1919 for the purpose. Even then it was found that no action was taken between 1919 and 1935 for the simple reason that all these re-adjustments require some sort of interference with the day-to-day administration of Government with no Government of the day likes. Therefore, though there was this provision from 1919 to 1935 and there were not as many difficulties in the way of re-grouping as there would be now, and hereafter still more, they did not take any action because naturally the administration for the time being was engrossed with the day-to-day administration and they did not want to take this additional burden. Because, even if in a district some places were to be transferred from one district to another, there is always an amount of commotion and nobody in charge of the administration wants that there should be even this little interference with the day-to-day administration. It was for this reason that though there was such a provision in the Act of 1919, nothing was done.

Then came the Act of 1935. Probably realising that the same difficulties will arise even if a provision of this nature is merely made in the constitution when they wanted to remove the anomalies of Sind being linked with Bombay and Orissa being linked with Bihar, they naturally introduced two sections for the purpose in the Government of India Act 1935, and made provision for their being framed prior to the introduction of the Government of India Act of 1935. This is clear enough to my mind, that even hereafter merely by making a provision of this nature, nothing is going to happen. The present section lays down that Parliament may by law make such a change. It is only a minor portion of the whole country which is going to be affected by taking action as is contemplated in paragraph (1) of article 3. The rest will be represented by the majority of the representatives who are not likely to be interested in the matter. Therefore, unless the Government of day, in spite of the fact that it would increase the problems of day to day administration, think it necessary that this should be done, this article would be a dead letter and no action will ever be taken. Because only after crossing the hurdles mentioned in article 3 namely, ascertaining the views of the States concerned etc., and getting the

permission of the President, the Bill has to be introduced in the Parliament and even then there will be difficulties. Suppose there is a question regarding a small area in the south with respect to which the boundaries are to be changed. The members representing other areas not likely to be keen about this, and if the government of the day is not interested in doing this, I am sure that the majority of members will be more inclined to go with the Government and say nothing should be done at present and no action is necessary and the Bill will not be passed. The article therefore will continue to be a dead letter hereafter, as it has continued even since 1919.

I therefore propose this amendment. I do not want that it should be decided only by a particular group. Suppose one province is to be separated from another or one area is to be taken out from one province and added to another. I want the matter to be decided not with the votes of persons representing one of them but with the votes of all persons who are going to be affected by the change. I insist that the matter should be decided with the votes of all of them. If you leave to votes of all the members of the House who are not affected by the changes and leave the article as wide as it stands now, I am sure that this article 3 will be a dead letter for all time to come, and no action will ever be taken under this provision which is similar to the provision contained in the old Act of 1919 and in the Act of 1935. If I may so, there will be more difficulties under the new Constitution and the provisions of article 3.

**Mr. President :** Well, Mr. Pataskar, it is conceivable that a case may arise where the members representing the State or States affected by the proposed law or opposed to the change, but the rest of the House wants it to be passed.

**Shri H. V. Pataskar :** That is not likely.

**Mr. President :** Likely or unlikely, I am putting it to you as a hypothetical question. Suppose a case arises, would you like the few members representing that particular State to defeat the rest of the House?

**Shri H. V. Pataskar :** In the very nature of things it is unlikely. What I expect is that the others are not likely to be much interested. Supposing they are interested, the matter should better be left to those who are concerned with the matter. Only the other day I learnt from the honourable Member Mr. Chaliha that there is a place called Dimapur in Assam and its inclusion in a particular are has started controversy; even for that there is such a terrible sort of agitation. Under such circumstances no administration is likely to make any change. So the hypothetical contingency is not likely to arise. In the next place even if such a contingency arises, it would be better that the matter should be decided with the votes of those that are going to be affected rather than otherwise.

**Mr. President :** The contingency is not very remote. Supposing that

a proposal is that a certain portion be transferred to another and there is no question of creating separate linguistic provinces--that possibility is not remote. It is a possibility that should be considered.

**Shri H. V. Pataskar :** According to my amendment that should be decided by votes of both the States. However that is the object of my amendment and therefore I hope it is not out of order. Therefore my amendment is :

"That in amendment No. 226 of List VII (Second Week), after the proposed words in the proviso to article 3 the following Explanation be added :--

> *'Explanation.*---Any such law shall be deemed to have been passed if a majority of the members of the House of the People representing the State or States affected by the provision of such a Bill support the same'."

Honourable Mr. Santhanam raised the difficulty of ascertaining the representatives whose votes are to decide the matter. My submission is there Will be no difficulty as I have confined this matter to the votes of the members in the House of the People alone and not to Parliament generally or to the votes of the Upper House.

**Mr. President :** I think I will rule this out of order for various reasons. The first is that it is not germane to the amendment which has been moved and it does not fit in with that. The second reason is that the contingency that is contemplated raises very many questions and points which impinge upon many other articles of the Constitution which we have already passed. For example, the amendment wants that the vote of a majority of the Members of the House of People representing the State or States affected by the provision of such a Bill shall prevail. In the first place, it takes away the right of the other House to consider that question. In the second place, the difficulty will be experienced when instead of voting for the law, the majority of members mentioned here are opposed to the law and the majority of the House wants the law to be opposed. So, for these various reasons I think this is out of order.

Then there is no other amendment to this. Anybody wishes to speak?

**Shri Brajeshwar Prasad :** Sir, I rise to oppose this amendment. We gave our permission to reopen this article on the understanding that these are consequential amendments. This is not a consequential amendment to any article which has been passed. We are reopening the whole question once again. The whole attempt seems to me to water down the power of the Parliament. It will make the article practically null and void.

**Mr. President :** I thought it was increasing the power of the Parliament.

**Shri Brajeshwar Prasad :** If the Parliament is to function according to this article and if any such step is taken only after the views of the

Legislatures of the State or of each of the States with respect to the proposal to introduce the Bill are received, the article will never come into operation, it would make it utterly impossible. It was on the definite understanding that this is a consequential amendment that we gave permission to reopen this.

**Mr. President :** In provision (b) as it stands which has been accepted, the consent is required. Here it is only the consultation that is required. Consent is much more than consultation. It enhances the power of the Parliament, it does not reduce it.

**Shri Brajeshwar Prasad :** I agree with this interpretation of this Constitution, but I feel that we should not sail under false colours. Why should we say that we are reopening this because this is a consequential amendment?

**Shri T. T. Krishnamachari :** This is substantially the same as provision (a) in the original article.

**Shri Brajeshwar Prasad :** May be, but why did you say that this is a consequential amendment? The House gave the permission on the understanding that this is a consequential amendment.

**Shri B. Das :** Sir, the amendment moved by my Friend Mr. Pataskar and the objection made by my Friend Brajeshwar Prasad indicate that some of us are not satisfied with the old article 3 or the present draft article 3. It is not a new thing that my Friend Mr. Pataskar points out that it repeats the old Government of India Act provisions. Mr. Pataskar wanted that the areas affected which are to be transferred to another State should have their views preponderate over the view of the whole Assembly of that State. I had some experience in the establishment of the province of Orissa. We followed the old 1920 Government of India Act. We were then in Bihar and Orissa. The Bihar and Orissa Legislative Council unanimously passed that Orissa province should he separated. Then there was a similar resolution in the Assembly of Madras and the great leader of Bihar, Shri Sachchidananda Sinha moved a Resolution on the floor of the former Indian Legislative Assembly that Orissa should be made into a separate province. It is not the creation of a new state that agitates the feelings of the Members of this House or the public at large. It is the adjustment of boundaries that is the issue and that crops up here and there, whether it be Bengal and Bihar or Maharashtra and Gujarat or Andhra and Orissa. It always crops up. The leaders make responsible or irresponsible statements and the public at large get agitated. For myself, I am not very happy with this new article 3 or with Schedule-I that is coming, whereby two of my ancient Orissa States, namely Sareikella and Kharsuan once merged with Orissa and then re-merged into Bihar. We feel those Oriya people will lose their race identity. The whole of Midnapore, three-fourths of which are Oriyas, does not have an Oriya school. Now the people there pass off as Bengalees. Bengalees have raised similar trouble in Purulia District. These are problems and I am touching on the psychological aspect of those fears and apprehensions. Whatever our Drafting Committee

legislates or lays down is not the issue. The hearts of the people speaking different languages, or having ancient ties with one another, are seriously affected and touched in this matter. I am not very happy at my Friend Prof. Ranga laying claim almost to the area in which my village stands. So, Sir, these responsible or irresponsible utterances of responsible leaders or irresponsible political agitators create such state of things, and I do not very much appreciate article 3 which does not give any chance to any people to be amalgamated with their own race by adjustment of boundaries. It will not give my friend Mr. Chaliha any chance to readjust certain boundaries. It will not give anybody any chance. I am only voicing the psychological fear, knowing the conditions, that many of us live in; but we do not know how to rectify it by provisions of article 3.

**Shri Kuladhar Chaliha** (Assam : General) : Mr. President, Sir, I am neither satisfied with the amendment, nor with the article enacted. In fact, if you know the history of the present position of the Eastern frontiers you would not pass an article like this. I should like the President to have absolute power to determine, to increase or decrease any State if he like to do so. At present the Eastern boundary of Assam, for instance the Mac Mahon line is quite nebulous. You do not know where the boundary is. You can push it further and further and nobody knows where it will end. If the permission of Parliament is to be got and on its recommendation the President is to act, that will take a long time. He has to fix the boundary immediately. Now, we do not know where the boundary lies, either in the Eastern or Northern frontier. There was RIMA, which was said to be last port of the British territory, but the Chinese took away the flag and a British column had to be sent to put the flag there again. That is said to be our boundary, but nobody knows if the boundary was ever fixed. Now, there should be some power or some provision which would empower the President to fix boundary is. Now, there is the Balipara frontier and nobody knows where its boundary exactly is. Nobody knows the Naga boundary and where the Burmese territory begins. As such, the article as it is, and also the amendment suggested, I am not satisfied with. The President must have some power to fix the boundaries and if possible, the Drafting Committee should make the necessary provisions whereby the boundaries could be fixed wherever they are nebulous, where you do not know the boundary, where the MacMohan line ends, where General Hertz's fort or HERTZ line is, and so on.

**Mr. President :** I may point out that this article has nothing to do with boundaries of foreign States. It relates to boundaries within India. Why bring in the Chinese and all that?

**Shri Kuladhar Chaliha :** All right, Sir.

**Mr. President :** Mr. Brajeshwar Prasad, there is no question of sailing under false colours. The whole substance of the amendment adopted this morning is that the States should be brought in line with the Provinces. Here there is one point where the Indian States in Part III are treated separately from the States in Part I and the amendment is

to put them all together. So it is really in pursuance of that, and not a case of sailing under false colours.

**Shri Brajeshwar Prasad :** I am sorry, Sir, I had not understood the implications.

**Mr. President :** Does anyone wish to say anything?

**Shri T. T. Krishnamachari :** Not after your explanation.

**Mr. President :** Then I put 226 to vote.

The question is :

"That for clauses (a) and (b) of the proviso to article 3, the following be substituted:--

'where the proposal contained in the Bill affects the boundaries of any State or State for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State or States the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President'."

The amendment was adopted.

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

"That for the Explanation to clause (2) of article 47, the following Explanation be substituted :--

> *'Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

Sir, this is a purely consequential amendment and the words introduced here are the words 'Rajpramukh' and 'Uprajpramukh'. I hope there will be no difficulty in passing this.

**Shri K. Chengalaraya Reddy :** I may point out that "Uprajpramukh" has not been defined yet.

**Shri T. T. Krishnamachari :** We have not yet tabled our definition of Rajpramukh yet. We will take the hint given by my friend and include the definition of Uprajpramukh.

**Mr. President:** Then I put it to vote.

The question is:

"That for the Explanation to clause (2) of article 47, the following Explanation be substituted:-

*'Explanation,*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

The amendment was adopted.

ARTICLE 55 *(reopened)*

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

"That for the Explanation to clause (4) of article 55, the following Explanation be substituted:-

*'Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

**Mr. President :** Does anyone wish to say anything about it?

**The Honourable Shri K. Santhanam :** I think the word "President" may be left out, because you cannot expect the President to contest for the Vice-Presidentship.

**Mr. President :** Mr. Krishnamachari?

**Shri T. T. Krishnamachari :** Sir, I do not know. We will examine the matter.

**Shri A. Thanu Pillai** (United State of Travancore & Cochin) : A President in office can stand for re-election and therefore the term 'President' should be in the article.

**Shri T. T. Krishnamachari :** Sir, we will examine it. It can be put to vote now.

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

"That for the Explanation to clause (4) of article 55, the following Explanation be substituted:-

*'Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

The amendment was adopted.

ARTICLE 67 *(reopened)*

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

"That clause (9) of article 67 be omitted."

This clause (9) reads as follows:-

"When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article."

Sir, this will no longer be necessary and a contingency like this will be adequately provided for in article 3-B because I think there will be no necessity for providing for small States in the present state of the Sates, which are in Part III. So clause (9) of article 67 may be omitted.

**Mr. President :** Does anyone wish to say anything about it?

The question is:

"That clause (9) of article 67 be omitted."

The amendment was adopted.

ARTICLE 83 (*reopened*)

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

"That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:-

'he is a Minister either for the Union or for such State'."

Actually these sub-clauses (a) and (b) are fairly lengthy and this amendment, it is considered would serve the purpose.

**Mr. President:** Does anyone wish to say anything about it?

The question is:

"That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:-

'he is a Minister either for the Union or for such State'."

The amendment was adopted.

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

"That in paragraph (iii) of sub-clause (d) of clause (3) of article 92, for the words 'exercises or immediately' the words 'exercises jurisdiction within any area included in the territory of India or which at any time' be substituted."

Sir, this refers to article 92 which incidentally deals with the subject of the annual financial statement and here it is a matter which deals

with pensions payable to judges and this amendment is considered necessary in view of the present circumstances. Therefore, Sir, I move.

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

"That in paragraph (iii) of sub-clause (d) of clause (3) of article 92, for the words 'exercises or immediately' the words 'exercises jurisdiction within any area included in the territory of India or which at any time' be substituted."

The amendment was adopted.

**ARTICLE 100 (*reopened*)**

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

"That clause (2) of article 100 be omitted."

Sir, article 100 deals with restrictions on discussion in Parliament and this particular clause (2) reads thus:

"In this article the reference to a High Court shall be constructed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part."

This is no longer necessary in view of the action taken by this House this morning. Sir, I move.

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

"That clause (2) of article 100 be omitted."

The amendment was adopted.

**ARTICLE 248-B *(reopened)***

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

"That in clause (2) of article 248-B, after the word 'Governor' or Rajpramukh of the State' be inserted."

An explanation for this is hardly necessary.

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

"That in clause (2) of article 248-B, after the word 'Governor' the words 'or Rajpramukh of the State' be inserted."

The amendment was adopted.

**ARTICLE 263 *(reopened)***

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

"That in clause (2) of article 263, after the word 'Governor' the words 'or Rajpramukh' be inserted."

This clause deals with the custody of the Consolidated Fund of the States, and this change is necessary in view of the House having passed Part VI-A.

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

"That in clause (2) of article 263, after the word 'Governor' the words 'or Rajpramukh' be inserted."

The amendment was adopted.

**SEVENTH SCHEDULE *(reopened)***

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

"That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:-

'43-A. Courts of wards for the estates of Rulers of Indian States'."

Sir, in the present set-up of the States, and in view of the fact that there are a number of Rulers, who are no longer Rulers in the real sense but have only estates, imposes a particular liability on the Central Government in regard to the administration of those estates, should that be necessary by virtue of the minority of those who own the estates or some incapacity for one reason or another of such persons, and the provision that is now being put in, is analogous to entry 25 of List II by which the provinces hitherto have been exercising jurisdiction over estates of zamindars and owners of other big estates where minority or other factors had supervened. The same provision is now sought to be put in with regard to the estates of India Rulers. This power has necessarily to be exercised by the Government of India and it cannot be entrusted for various reasons to the Governments of the States concerned.

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

"That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:--

'43A. Courts of Wards for the estates or Rulers of Indian States'."

The amendment was adopted.

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

"That in List II of the Seventh Schedule, to entry 25 the following words and figures be added:-

'subject to the provisions of entry 43-A of List I'."

This is consequential as a result of the House accepting my previous amendment. This is necessary as it indicates precisely the powers of the States in regard to entry 25. Sir, I move.

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

"That in List II of the Seventh Schedule, to entry 25 the following words and figures be added:-

'subject to the provisions of entry 43 A of List I'."

The amendment was adopted.

**ARTICLE 270 (*reopened*)**

**Shri T. T. Krishnamachari :** Sir, there are two other articles. One is 270 for which, I hope, the permission of the House will be given to reopen that article. There is another article of a non-controversial nature 67-A. I suggest that these two articles be taken up.

**Mr. President :** Let us take up 270 now.

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

"That for article 270, the following article be substituted:-

| | |
|---|---|
| Succession to property, assets, liabilities and obligations. | 270. (a) All property and assets vested in His Majesty for the purposes of t Government of the Dominion of India and all property and assets vested in Majesty for the purposes of the Government of each Governor's Province sh from the commencement of this Constitution, vest respectively in the gover of India and the Government of each corresponding State, and |

(b) all liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's province shall, as from the commencement of the Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the provinces of West Bengal, West Punjab and East Punjab."

**Mr. President :** I think this is also an independent article which you wish to move.

**Shri T. T. Krishnamachari :** It forms part of the Chapter. I said that permission may be given for redrafting this also.

**Mr. President :** I had better ask for that permission. It is sought to amend article 270 which was adopted at a previous session of the Assembly. Do the Members give permission to amend that article?

**Honourable Members :** Yes.

**Mr. President :** It has been moved. You can proceed.

**Shri T. T. Krishnamachari :** The reason why this amendment is sought to be moved is merely because our legal advisers have told us that the article as it has been approved by the House originally is defective in character. Sir, the original article, if the House would permit me for purposes of clarification, reads thus:-

"As from the commencement of this Constitution, the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors' Provinces as regards all property, assets, liabilities and obligations subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab."

The reason for the suggested change is this : The technical term that was used in the past was that all properties and assets were vested in His Majesty both in regard to properties that were administered by the Government of India and by the Governments of the provinces. But in respect of the liabilities and obligations of the Governments concerned the language used is slightly different. It has been found that so far as this position is concerned it must be clarified. I should like to tell Honourable Members of this House, who I know react rather adversely to any reference to His Majesty, that it is a matter in which we have no escape. If formerly the legal phraseology was that all assets and property of the Governments, whether of the Centre or of the Provinces, were vested in His Majesty, we have to use the same words in order to re-vest those properties and assets in the Government of India to be and the Governments of the States that are to be created by reason of this Constitution. Honourable Members will therefore understand that this is a matter in which our legal advisers have been categorical and we have no other option except to amend the article in the manner suggested by me. I hope the honourable Members of the House will find no difficulty in accepting the article as amended by me as it will make the position crystal clear and above any legal defect which it was stated the original article 270 did suffer from.

**Mr. President :** Does any Member wish to say anything on this? Then I will put this new article 270 to vote.

The question is:

"That for article 270, the following article be substituted:-

| | |
|---|---|
| Succession to property, assets, liabilities and obligations. | '270. (a) All property and assets vested in His Majesty for the purposes o Government of the Dominion of India and all property and assets vested majesty for the purposes of the Government of each Governor's Province as from the commencement of this Constitution, vest respectively in the Government of India and the Government of each corresponding State, a |

(b) all liabilities and obligations of the Government of Dominion of India and of the Government of each Governor's Province shall, as from the commencement of this Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the provinces of West Bengal, East Bengal, West Punjab and East Punjab'."

The motion was adopted.

Article 270 was added to the Constitution.

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**NEW ARTICLE 67 A.**

**Shri T. T. Krishnamachari :** May I move article 67 A, Sir,

**The President :** Yes.

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

"That after article 67, the following article be inserted:-

| | |
|---|---|
| Special representation to States in part II and territories other than States. | '67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the H of the People of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but no included within any State on a basis or in a manner other than that provide that clause'." |

I would ask honourable Members to look at the wording of clause (5) of article 67, sub-clauses (b) and (c), which imposes certain limits within which representation could be given in respect of territorial constituencies from which Members of the House of the People are to be elected. There is, however, a clause in article 67 clause (7), which reads thus:-

"Parliament may, by law, provide for the representation in the House of the People of territories other than States."

Though it would not mean that while Parliament may by law provide for representation of these areas, it would certainly not mean that Parliament can depart from the scheme outlined in clause (5), sub-clauses (b) and (c).

The reason for proposing this amendment is that while Parliament might have to provide for representation in the House of the People of territories other than the States, it is also likely that in the case of Part

II States some of them may not satisfy the conditions laid down by sub-clause (b) and (c) of clause (5) of article 67. It may be argued that these areas coming under Part II of First Schedule could be grouped together for purposes of providing representation in the House of the People, but it may not be always possible. I have no desire to go into the details of the provocation for this amendment, but we do visualise that a contingency might occur where we might have to provide special representation for certain areas which might be either in Part II of First Schedule or be territories other than States, and the present set-up of article 67 would provide difficulties in the way of our providing these areas with representation in the House of the People. I therefore ask the House to accept--though it is a tall order--my word for it and accept the necessity for an amendment of this sort. I might anticipate some of the amendments that are sought to be moved, namely, that this concession should be extended to representation in the Council of States. I do not think that clause (4) which is the operative clause in article 67 bars entirely the liberty of Parliament in respect of provision of representation in the Council of States. I think that the matter is now being examined in the light of the set-up of Schedule 3 B which we propose to introduce in which the arithmetical proportions will be calculated and seats would be mentioned according to the various States as precisely as possible, that there will be some lee-way left therein for additional representation, should Parliament so decide. I therefore suggest to my honourable Friends in this House who want to bring in the Council of States to leave it at that. We are examining the position and if it is necessary we shall introduce a suitable amendment, but I do not think that it is necessary at this Stage. For that matter most of those areas, particularly those that are covered by Part II, have a greater desire to be adequately represented in the House of the People than in the Council of States, and I think that for the time being the contingencies which we envisage at the moment would be amply covered by a provision of the nature that I have now moved rather than any extension of this particular provision to the Council of States as well. I, therefore, request honourable Members not to press their amendments which seek to include the Council of States within the scope of the suggested article that is before the House.

Sir, I move.

**Prof. Shibban Lal Saksena :** I beg to move:

"That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67 A, after the words 'House of the People' the words 'and the Council of States' be inserted."

Sir, the article as modified by my amendment would read thus:-

> "Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the House of the People and the Council of States of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause."

Sir, my Friend Mr. Krishnamachari has explained the purpose of this clause. In fact the House will remember when we were dealing with the question of Delhi Province, the Honourable the Prime Minister suggested that Delhi might, if it does not have a separate Legislature, be given additional representation in the House of Parliament. I think that it is only proper, if that pledge is to be honoured, then representation has to be provided not only in the House of the people but also in the Upper House. Besides Delhi, there are so many other Centrally administered areas. We are taking in more and more of the States under Central administration. Chandranagore will soon come into the Union; similarly we have got Tipperah and the other States on the Eastern border of India which are likely to integrate with the Union. If the idea is to give representation to those areas in the House of the people, there is no reason why they should not be represented in the Council of States. I would have much appreciated and it would have been much simpler if we had provided for a least one seat for each of the Centrally Administered areas in the Upper House as well.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to support the article as has been moved by my honourable Friend Shri T. T. Krishnamachari. My honourable Friend Professor Shibban Lal Saksena has perhaps completely misunderstood the meaning of representation in the Upper Chamber. Representation in the Upper Chamber is provided for a constituent unit-for those States which combine in order to form a federation. Here we are providing for representation for States in part II which are not, technically speaking, constituent units. Constituent units are those States which are mentioned in parts I and III of the Schedule. Article 67A provides for representations of those territories which have been placed in Part II territories like Andaman and Nicobar Islands, territories like Ajmer-Merwara, Coorg and panth Piploda. We cannot confer upon these territories the status of constituent units. Therefore, there can be no meaning in providing representation for these territories in the Upper Chamber of the Federal Parliament.

**The Honourable Shri K. Santhanam :** Mr. President, Sir, this matter was considered at the time of the Constitution of the House of the People and the omission of Part II was deliberate. We did not want to create small pocket constituencies for the House of the People.

So far as the Council of the States is concerned, article 67(4) provides that the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe. Therefore, while provision was made for the representation of States in Part II in the Council of States, they were left out in the representation in the House of the People for the reason that either they have got enough population or not. If they have got enough population, they will get representation on their rights. But where they have not enough population, it was intended that they should be grouped in the near-by constituencies. There is no difficulty in grouping Ajmer-Merwara or Coorg with the neighbouring constituencies so that those people also will take part in the election of the House of the People. Though, for the

sake of convenience, each State in Part I and Part III may be taken roughly for demarcation in the constituencies of the House of the People, there is no statutory obligation that every State should be divided into exclusive territorial constituencies for the House of the People. There may be border areas of two States in Part I and Part III grouped together in the constituencies of the people.

Therefore, we are unnecessarily marring the Constitution by bringing in an article by which representation will be given to small areas. It is possible that in the course of integration or for other reasons, we may have to create a large number of centrally Administered areas. Suppose in the reconstitution of the linguistic provinces many areas have to be left out as Centrally Administered areas, if we are to create a constituency for each of these areas, then we will be creating a large number of pocket constituencies for the House of the People. So, I think it is a wholly unnecessary provision. The purpose can be achieved constitutionally by other means and I do not think representation in the House of the People which is based on a scientific basis should be marred by a provision like this. I do not say that will be misused, but in a Constitution the test is whether a provision *can be* misused, not whether it *will be* misused and this is a provision which can be misused. So, I suggest it may be dropped.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I quite agree with Mr. Santhanam that article 67 was very carefully worded and it was intended at that time that there should be no mitigation of the conditions which are covered by clause 5, sub-clauses (b) and (c). I did tell honourable Members of this House that we had a specific purpose in view in bringing this amendment and it would be very wise for me to go beyond telling them that the Drafting Committee and the Ministries concerned were fully satisfied that an amendment of this nature was necessary. Therefore, I would ask my honourable Friend to withdraw his objection. At the same time I dare say that he is in a better position to realise than myself that since the initiative in any matter like this would ordinarily come from Government, it is unlikely that the wishes of this august House in regard to fixing representation in the House of the People would not be rigidly adhered to and that Parliament would agree to needless mitigation of the stringent conditions imposed by article 67. Beyond that I am not able to tell my honourable Friend of the purpose of this amendment. I could give him this assurance that this matter has been very carefully considered and it is after that that we have decided to bring this additional article. I do hope that the House will have no objection to accepting the motion moved by me.

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

"That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67 A, after the word 'House of the people' the words 'and the Council of States' be inserted."

The amendment was negatived.

**Mr. President :** I shall now put article 67A. The question is :

"That after article 67, the following article be inserted :-

| | |
|---|---|
| **Special representation to States in Part II and territories other than States.** | '67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the of the People of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but nc included within any State on a basis or in a manner other than that provide that clause.' " |

The motion was adopted

Article 67-A was added to the Constitution.

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## PROGRAMME *re* THIRD READING

**Shri T. T. Krishnamachari :** May I suggest that article 264A, 296 and 299 be taken up tomorrow?

**Mr. President :** Those are controversial matters and we may better take them up tomorrow. We cannot take up any other article. So we shall rise now.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : With regard to the amendments which have been passed today, I confess with many others that we have not been able to follow the debate at all. These amendments were sent to us at half past ten last night. I had to be awakened from my sleep. And from morning we are working here with the result we have had no time to consider these amendments. I do not object to the procedure because some short-cut must be arrived at. I am only suggesting that the Drafting Committee should again consider them, and if there are any further changes to be made consequent upon the discovery of any irregularities I think those amendments should again come up.

**Mr. President :** Which amendments are you referring to?

**Mr. Naziruddin Ahmad :** The amendments which have been accepted. We have had no time to consider them.

**Mr. President :** But we have accepted so many amendments.

**Mr. Naziruddin Ahmad :** Yes. And I am suggesting that they may again be reconsidered by the Drafting Committee, and if there are further irregularities or inconsistencies they should be brought up at a later stage. We are being fed with amendments to satiety. It is impossible to proceed with them for anyone who would like to follow them and consider them.

Then with regard tomorrow's business we do not know what things are coming up. At nine or ten P.M. today we shall be given some new drafts and we will be expected to consider them tomorrow morning. I do not know what to do with such amendments. I therefore, respectfully ask you, Sir, to consider this and give us some idea as to whether new drafts are coming on and, if so, what time we would be given to send amendments to the new Drafts.

**Mr. President :** So far as tomorrow is concerned, I think there are these three articles, namely articles 264A, 296 and 299, which have been before the House--two of them for a long time and the third one also for a little while. Tomorrow if there is anything fresh coming, that will come after these three articles.

**Shri T. T. Krishnamachari :** May I mention that the Drafting Committee is engaged in going through the lacunae in the articles already passed and the consequential amendments that may have to be made, and it is likely that we might have to table some amendments tomorrow. My honourable Friend is so fully posted with all the details regarding the articles of the Constitution that he would not find it impossible to readjust himself and see that these amendments that we are likely to table tonight are necessary. They will be only consequential amendments. I would only offer my apology on behalf of the Drafting Committee for giving honourable Members such short notice, the only reason being that we are hard pressed for time and we would like this Union to close as early as possible.

**Mr. President :** Tomorrow we are going to take up these three articles first.

**Shri T. T. Krishnamachari :** And then other articles

**Mr. President :** So far as I know, there are only one or two matters now which we have to consider. There is first the Preamble which has not been dealt with--I am just mentioning the things which I have noted that have to be considered--then we have Schedule I which defines the States, then these three articles which have just been mentioned. There is also another article, I understand, which is going to be brought up--article 280A relating to financial emergency. And there is a third article which may come up relating to States, particularly relating to Kashmir article 306A. Then we have Schedule III-B which deals with the allocation of seats for the Council of States. Apart from these I think there may be consequently amendments. Are there any more?

**Shri T. T. Krishnamachari :** As I said before, there are some consequential amendments.

**Mr. President :** The others may be consequential which will arise out of the amendments we have already accepted.

**Shri R. K. Sidhva :** May I know whether Schedule I and the Preamble will be taken up in this session? There was some complication

about it. So I want to know whether Schedule I will be taken up before some formalities are observed.

**Mr. President :** They have to come up during this session because we have to complete the Second Reading. If necessary we can amend it in the Third Reading, if there is any change in the Schedule.

**Shri R. K. Sidhva :** Schedule I is very important and it may take one or two days, Therefore, unless the Drafting committee is ready in pursuance of the Working Committee's resolution, there is no use our wasting time now and again spending time at the time of the Third Reading.

**Mr. President :** But then we cannot complete the Second Reading without having all the articles and Schedules.

**Shri H. V. Kamath** (C. P. & Berar : General) : Why not meet for the first two days during the next session and complete the Second Reading, and after an interval of one day start the Third Reading?

**Mr. President :** I might just mention to honourable Members that we were considering the procedure to be followed at the time of the Third Reading, and some amendments to the rules will be coming up before the House on Saturday. It has been said that apart from merely verbal amendments and renumbering and replacements of articles, it may be discovered in the course of the examination which is going to take place of each article, that some changes are required, and we shall have to amend particular articles to that extent. If we hold up the second reading for that purpose, then there will be difficulty in having the Third Reading in the next session--and we must have the Third Reading then. Therefore we are suggesting that such amendments as are more or less of a consequential nature but which are not merely verbal may be taken up at the Third Reading stage and, under certain restricted conditions, amendments to these amendments. When these amendments have been disposed of, we proceed to a general discussion of the Constitution as a whole and we pass it at the Third Reading. So we are taking powers under the rules to deal with such consequential changes which may be found to be necessary. It may be that we do not find any consequential changes necessary. That would be a very happy state of affairs. But it is possible that we may and therefore we are taking precaution in that way.

**Shri H. V. Kamath :** Are Members of the House, as distinct from the Members of the Drafting Committee, at liberty to send amendments at the time of the Third Reading?

**Mr. President :** No.

**Mr. Naziruddin Ahmad :** Our rules provide for that. If the Drafting Committee has got such enormous powers to make changes.....

**Mr. President :** They cannot make any changes unless they are accepted by the House.

**Mr. Naziruddin Ahmad :** Some formal changes may be necessary. It is definitely provided in the rules.

**Mr. President :** I do not think it will be possible to open the door very wide. If there are any suggestions which honourable Members have to make and which really affect the substance of the provisions. I have no doubt that the Drafting Committee will give due thought to those things and that they will be considered.

**Mr. Naziruddin Ahmad :** I am only suggesting that the final draft of the Drafting Committee should be circulated to us well in time for a thorough consideration.

**Mr. President :** I was thinking of the time table also. I do not think it would be possible to get the Constitution, as it is now passed at the Second Reading, ready for the press before the 31st of this month. The whole thing has to be very carefully considered. Every article--every word--has to be scrutinised. It takes time. And so the Drafting committee will not be in a position to get the thing ready, say, before the 31st of this month. Then it will take about a week to print. We shall try to circulate as soon as possible, say by the 4th or 5th but it would not be possible earlier, we are trying to cut down the time as much as possible, but there are physical difficulties.

**Shri H. V. Kamath :** When do you propose to summon the next session Sir?

**Mr. President :** I propose to summon the Assembly from the 14th of November to 25th or 26th, because the session of the Legislative Assembly begins on the 28th November and that has already been summoned. So we have to finish this Third Reading before that and it is proposed to give two or three days for consideration of all such matters and consequential amendments that may be found necessary. I hope it will not be necessary to give two days but we are keeping even three days for that purpose and we shall have eight or nine days for general discussion. These eight days. I propose to devote to the general discussion and the last day will be taken up in the formality of actually passing the whole thing. It is suggested that the Constitution that is finally passed should be signed by every Member of this House.

**Honourable Members :** Yes, Sir,

**Mr. President :** That will be a historical document and it is desirable that every Member who has been associated with the making of this Constitution puts down his name on the copy which would be kept on record and that might take a day. So I am reserving one day for that purpose, and the remaining six or seven days will be available for general discussion.

**Prof. Shibban Lal Saksena :** What about the Constitution in Hindi ?

**Mr. President :** The Constituent Assembly has passed a provision that all Bills not only in the Centre but also in the provinces must be passed in the English language for the next fifteen years and so we shall pass this and you have already authorised me to get an authorised translation in the various languages. So far as Hindi is concerned, you have put upon me the responsibility of certifying to its correctness; and as regards the translations in other major languages, they will also be prepared. I am taking steps already to get these translations ready. Hindi I propose to publish before the Commencement of the Constitution and the others also, but I am not so sure about the others.

**Shri H. V. Kamath :** Are we going to have a formal ceremony on the midnight of the 25th-26th of January ?

**Mr. President :** I have not thought of any formal ceremony at midnight or midday. But it has been suggested that we should all sign the copy of the Constitution. That is all that we have so far been thinking of.

**Shri H. V. Kamath :** January 26, I am thinking of that day, Sir.

**Mr. President :** We shall decide at the time when we meet next. There is one other matter which has not been discussed up to now, but I do not know, probably the Members may feel interested in that and that is the question of the National Anthem. The National Flag was adopted by the Constituent Assembly; it was not part of the Constitution but it was adopted by the Constituent Assembly. Similarly probably the National Anthem, also will have to be adopted by the Constitution Assembly, but by a Resolution; but we have not yet taken steps in that direction. The Government have already adopted a particular song as the National Anthem, but the Constituent Assembly has not yet accepted that. So we have not taken any steps in that direction yet; I do not know what to do, but we may have to consider that point also.

**Shri H. V. Kamath :** We may take that up in the Third Reading in the next session.

**Mr. President :** I do not know if the House as a whole will be able to fix upon the National Anthem. If all of us joined in singing here it will not be an Anthem (six); it will be something very different; any way, that has to be done by some expert committee and I have not yet decided what to do about it, but if the House so desires, we may think of a Committee for that purpose.

**An honourable Member :** Compose a new National Anthem

**Shri Sures Chandra Majumdar** (West Bengal : General) : Formerly it was agreed in one of the meetings of the Steering Committee that it would not form part of the Constitution but will be passed in the form of

a Resolution just after the Third Reading.

**Mr. President :** This is what I said.

**Shri Sures Chandra Majumdar :** Now you are thinking of referring it to a Committee or something like a committee for the purpose of selecting what will be the National Anthem, and this House will consider the report of that Committee and adopt any of the two songs as the National Anthem; and that would be during the life-time of the Constituent Assembly, I suppose ?

**Mr. President :** During the Third Reading period, that is my idea.

**Shri B. Das :** Some of us do not like Jana Gana Mana. We would very much like that *Vande Mataram* should be the national song which has inspired us all for the last fifty or sixty years. In any case when the matter comes, we would like to express our views.

**Mr. President :** That is of course your opinion. I have said that I am thinking of having a Committee for the purpose of selecting the best song.

**An honourable Member :** Will the committee propose a new song ?

**Mr. President :** The Committee will be free to compose even a new one.

**Prof. Shibban Lal Saksena :** Is the Committee to be appointed quickly ?

**Mr. President :** It will have to be done now and as I said, I have not thought about it in concrete terms. Therefore, I am not in a position to make any announcement now.

**The Honourable Shri K. Santhanam :** Mr. President, Sir, my impression is that in other countries they generally do not adopt the National Anthem as part of the Constitution and they call upon expert musicians to create it and even offer prizes. Now that we have a provisional National Anthem. I wonder whether it will be wise or expedient to come to a definite decision now. I think it would be well if we leave it to Parliament to enact by law after taking all the necessary steps.

**Mr. President :** That is also one point of view. As I have said, I have not thought over the matter in concrete terms yet.

**Shri Sita Ram S. Jajoo** (Madhyabharat) : Will the Members from Vindhya Pradesh and Bhopal be present for the Third Reading ?

**Mr. President :** I hope so and we are trying to get them; and if they do not come, we cannot help it.

We shall adjourn till tomorrow ten o'clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 14th October, 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

**Friday, the 14th October 1949**

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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.

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## DRAFT CONSTITUTION-*(Contd.)*

### Article 296

**Mr. President :** We shall now take up article 296 ; amendment No. 15. We have got a large number of amendments. Some of the amendments are amendments to the amendment to be moved on behalf of the Drafting Committee. Some are amendments to other amendments which are to be moved by other Members. Many of them overlap. Therefore, I think Members will themselves exercise a certain amount of discretion in not insisting upon amendments which are only overlapping and which are covered by other amendments.

**Shri H. V. Kamath** (C. P. & Berar : General) : We shall abide by your ruling, Sir.

**Mr. President :** I do not want to give any ruling if I can help it.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, I move:

"That with reference to amendment No. 3163 of the List of amendments for article 296 the following article be substituted:-

| | |
|---|---|
| Claims of Scheduled Castes and scheduled tribes to services and posts. | '296. The claims of the members of the Scheduled Castes and the scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of a State'." |

**Sardar Bhopinder Singh Man** (East Punjab : Sikh): On a point of order, Sir...

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : I had a point of order. I raised a point of order on this article. If you ask me.....

**Mr. President :** I shall hear both of you.

**Sardar Bhopinder Singh Man :** I submit, Mr. President, that unless a special resolution is moved, the present House is not competent to go back upon its own decisions. This very article has already been agreed to by this House.

**Mr. President :** This article 296?

**Sardar Bhopinder Singh Man :** The principle underlying this, the main principle on which this is based has been agreed to in very clear and emphatic terms. I shall make it clear. In the report submitted by the Honourable Sardar Patel as Chairman of the Advisory Committee on Minorities, Fundamental Rights, etc., presented to this House on 27th August 1947, clearly the minorities were defined on the one hand; and secondly, four points were discussed one by one distinctly, separately and quite clearly. The four points were : first, representation in the legislatures, joint *versus* separate electorate; secondly, reservation of seats for the minorities in the Cabinet; third, reservation for the minorities in the public services; and fourth administrative machinery to ensure the protection of minority rights.

This report was submitted to the House and was later agreed to by this House. In this appendix, as adopted by the Constituent Assembly during the August 1947 session, it was agreed in regard to representation of minorities in the Cabinet as well as recruitment to the services--it is paragraph 9--it is said that due share will be given to the minorities in the all India services and provincial services and the claims of the minorities shall be kept in view in making appointments to these services, consistently with the efficiency of administration. Not only that. They make it further clear in emphatic and clear terms. They say, appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.

Having agreed to that, actually the Drafting Committee moved a special article 299 in which the rights of all the minorities were granted. Not only that. A later report was submitted to this House by the Advisory Committee on the subject of political safeguards to minorities on May 11, 1949. In this report the earlier decisions were reiterated and confirmed and not denied. Only in so far as the first item was concerned, that is safeguards in the legislatures were concerned, they were abrogated. So far as the other rights were concerned, they were allowed to remain intact. What had been conceded or passed by this House is now being taken away. I submit Sir, that this is a substantial change and unless a special resolution is brought in this House, this House cannot go back upon its earlier decisions.

**Shri R. K. Sidhva** (C. P. & Berar : General) : Mr. President, Sir, I have not been able to follow the point of order raised by my honourable Friend.....

**Mr. President :** Will you please allow Mr. Naziruddin Ahmad also to state his point?

**Mr. Naziruddin Ahmad :** Mr. President, Sir, I raised this point of order some time ago when this clause was moved by Dr. Ambedkar. The point of order is this. I refer to the proceedings of this House dated 28th May last. It appears that there was a Minorities Advisory Committee which appointed a Special Sub-Committee to consider the question of the Minorities. I find that the members of the Special Sub-Committee were :

The Honourable Shri Jawaharlal Nehru,

The Honourable Dr. Rajendra Prasad,

Shri K. M. Munshi, and

The Honourable Dr. B. R. Ambedkar.

This Sub-Committee reported, amongst others, that there should be reservation of seats in the Legislatures for the minorities and also that so far as all-India and provincial services were concerned, there should be no reservation but the claims of all minorities shall be kept in view in making appointments to the services consistently with the considerations of efficiency and administration.

Now this was accepted by the House in its August Session 1947. This was later on partly reopened on the strength of a letter by Honourable Sardar Patel dated 11th May 1949 to reopen, not the consideration for the minorities about the services, but only the reservations in the Legislatures. I submit that Sardar Patel sent a report that the system of reservations for the minorities, other than Scheduled Castes, in the Legislatures be abolished. This Resolution was accepted by this House on the 26th May 1949 at the instance of Sardar Patel. That is also to the same effect. It is absolutely clear on a perusal of the original report, the letter of Sardar Patel, the Resolution moved by him and the speeches in the House--that they all attempted reconsideration only of the reservations for the minorities in the Legislatures. I may add that this was done with the fullest concurrence of the Muslim members of this House. I was one of those who thought that the reservation in the Legislatures would not be good for the minorities themselves; but with regard to the consideration of their cases in making appointments, subject to efficiency, that was not reopened. On the last occasion when I mentioned this, Dr. Ambedkar and a few others thought that I had completely misunderstood the situation. Mr. T. T. Krishnamachari went so far as to say (referring to me) that "if you cannot understand this thing in two days, you will never understand even in two months." This is the elevated style in which I was addressed. But I submit and I assert again that, whoever may be mistaken. I am not mistaken as to what was then done.

I respectfully ask you, Sir, being one of the distinguished members of the Sub Committee and being present in the House when this Resolution was accepted just to tell us whether this was one of the matters which was re-opened Sardar Patel with his genius for constitutionalism said in paragraph 8 of his letter that the Committee are fully alive to the fact that "decisions once taken should not be changed lightly". So a strong-minded man like him re-opened the matter with considerable amount of caution and cogent reasoning. I therefore submit that with regard to the consideration of services and the appointment of Special Officer, they were embodied in articles 296 and 299.

**Shri L. Krishnaswami Bharathi** (Madras : General) : Is the honourable Member raising a point of order or making a speech ?

**Mr. President :** He is raising a point of order and explaining it.

**Mr. Naziruddin Ahmad :** If it is not apparent to any Member, the point of order is this, that we have in accordance with the decisions of the Minorities Committee come to certain decisions. Those decisions were only partially modified at the instance of Sardar Patel. This modification did not in the least affect the paragraph relating to consideration in the services for the minorities. As the matter was partly re-opened with so much formality, it follows that the rest remains without any amendment or

change. I ask the House and specially you, Sir, to consider whether this matter can be so summarily reopened in this manner. The decision remains and I do not know how to get rid of that Resolution. That is my point of order.

**Mr. President :** We have to keep two things apart--the question of the point or order and the merits of the question. For the moment, I am concerned only with the point of order and the point that has been made by the two honourable Members comes to this. This House on a previous occasion took certain decisions which are sought to be reversed by the proposition which is now going to be moved. The only rule which deals with reopening of decisions is Rule No. 32 of our Rules, and that lays down that no question which has once been decided by the Assembly shall be reopened except with the consent of at least one-fourth of the Members present and voting. So the only restriction on reopening the decision which has once been taken is that at least one-fourth of the Members present and voting should vote in favour of reopening the decision. I think I had better put that question to the House and then if one-fourth of the members present and voting are in favour of reopening, the reopening will be perfectly in order.

As regards the merits of the case I do not think I should express any opinion at this stage or at any stage. It is for the House to decide. We are concerned at the moment only with the point of order, and my ruling is if one-fourth of the Members present and voting are in favour of reopening, the question can be reopened.

**Shri R. K. Sidhva :** My Point was articles 299 and 296 were never passed in the House.

**Mr. President :** He is referring to previous decisions--not to 299 and 296. There was a previous decision once taken by the House on the Report of the Advisory Committee on Minorities.

**Sardar Bhopinder Singh Man :** Sir, I wanted your ruling on whether the present resolution means the reversal of the old decision.

**Mr. President :** If the House agrees to reverse the old decision, it will be a reversal; otherwise, the old decision will stand; but for the present I am concerned only with the question of whether we can take into consideration the question of reversing the old decision.

**The Honourable Shri K. Santhanam** (Madras: General) : Sir, the clause of a Bill is quite different from a Resolution.

**Mr. President :** You need not argue the point. I would like to know from the House what its opinion is. The question is :

"Is the House in favour of reopening the question ?"

**Honourable Members :** Yes.

The motion was adopted.

**Mr. President :** So there is no bar to the reopening of the whole question. Now

this can be discussed on its merits. Dr. Ambedkar has moved it and there are several Amendments to this proposition. I shall take them one by one. No. 16- Sardar Hukam Singh.

**Sardar Hukam Singh** (East Punjab : Sikh) : Mr. President Sir, I beg to move :

"That with reference to amendment No. 3163 of the List of amendments, (Vol. II), for article 296, the following be substituted :-

> '296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Parts I & III of the First Schedule.

*Explanation.*--Among others Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognized as minority communities'."

And then there is the alternative amendment as well, but I do not propose to move it. I leave it here.

Sir, as has already been pointed out, the original draft that was put before this House was different, and radically different I would say, from the one that is being proposed now. It read like this:

> "296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule."

My object is very clear. What I want is to restore the original proposal that had already been accepted by this House. I cannot understand why the Drafting Committee has thought it fit to bring about this change. So far as that article stood in its original form, it was considered as a safeguard for the minorities, and I must say that it was only a solemn affirmation of *bona fides* on behalf of the majority, and a mental satisfaction to the minority. Other wise it had not very much value. That right was not justiciable in any court of law and it could not be enforced anywhere else as well. It had no binding force. But in spite of that, it is being taken away now. I must, at the same time, make myself clear that so far as I can think out, it was no blot on, our secularism and it did not soil our nationalism as well. The minorities have always been advised to repose full confidence in the majority. Article 296 as originally framed, in my opinion, was that complete reposal of confidence by the minorities in the majority and nothing beyond that. The only thing that the members of the minority could do at any time, in cases of violation was that the attention of the majority could be drawn to the fact, that there was some pledge or an undertaking ; and that is also being removed.

Sir, before I proceed further, I must make an appeal to the honourable Members on two points here. It is very unfortunate that the Sikhs for the present cannot persuade themselves to have implicit faith in the party in power. They have reasons for that, for they think that the past is a record of repudiated promises and broken pledges. Suppose, for the sake of argument, that I am wrong, that this is incorrect, and that the present leaders can be trusted to do justice to everybody ; then is there any guarantee that the present leaders will continue for all time to come ? Are there

not indications, even now apparent, that men with different ideals and aims might come to power very soon ? This House should take a detached view and not consider the fears of the minorities as necessarily a disparagement of the present party or of its leaders.

Then my second point is that the honourable Members should place themselves in the position of the minorities and then try to appreciate those fears that they have expressed from time to time.

Sir, I might be accused of communalism when I sound this discordant note. But I hold that this nationalism is an argument for vested interests. Even the aggressiveness of the majority would pass off as nationalism, while the helplessness of the minority might be dubbed as communalism. It is very easy for the majority to preach nationalism to the minorities ; but it is very difficult to act up to it. The original draft of articles 296 ad 299 was a result of the recommendations of the Minorities Committee, dated the 8th August 1947, as accepted by the Constituent Assembly on 27/28th August of that year, and there were four definite provisions, four definite clauses for those safeguards. The first was joint electorates with reservation of seats. This was embodied in 292. Then as regards Cabinet it was provided that there would be no reservation, but a Schedule would be provided as Instrument of instruction, that was schedule 4 ; and then the claims of minorities to be kept in view in appointments to services, that was section 296 ; and then a Commission for minorities, that was embodied in article 299.

As for the Sikhs, Sir, I must make a special mention, because I think they are very unfortunate in this respect. When the question of safeguards for minorities was decided in 1947, the question as regards the Sikhs was kept, pending as it was said that the result of the partition was not known very clearly then. I may say that before that date, the "Award" had been given. The Sikhs were leaving the West Punjab under circumstances which are well known to everybody here. They had willingly suffered themselves to be vivisected and they elected to remain with India. They were marching on foot, leaving behind everything that they loved. They were not coming alone. They had saved and brought seven districts to the Indian Dominion. The full significance of leaving open the question of Sikh minority on 28th August cannot fully be understood when we look at those events. If the Sikhs were not to be treated in some special way, where was the need for postponing the consideration of that question then ? If the Sikhs were to be given reservation on population basis, just as any other minority had been given, what was to be awaited after August ? What numbers migrated to India was not material at all. But it was considered that might be too great a blow at that time to bear for this unfortunate community. So the question was kept pending and the Sikhs thought that they would get special consideration on account of their sufferings.

Then came the next stage for the Minorities Sub-Committee to make a report and that is dated 23rd November 1948. That time was considered opportune for telling them that nothing special could be done for them, perhaps because more than a year had elapsed since that calamity came. But even then there was one satisfaction offered to the Sikhs. Though special safeguards were denied, pious platitudes were offered instead. The Sub-Committee observed:

> "It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the Partition of the Punjab. The holocaust in

West Punjab has deprived them of many valuable lives and great material wealth, Moreover while in this respect the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our mind that the question remitted to us for consideration must be settled on different grounds."

Then comes the third stage. The report is placed before the Minorities Committee and the resolution adopted is that the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.

I have to apologise to the members of the other minorities. They had their reservation. But, as soon as the Sikhs came in, they had to give up that as well. The Committee recommended that statutory reservation of seats should be abolished. I want to place more emphasis on that, because it is clearly the recommendation of the Sub-Committee as well as the resolution of Minorities Committee that the statutory reservation of seats in Legislatures should be abolished. There is nothing beyond it. This recommendation was accepted on 26th May 1949.

Now, the position was that there was reservation in legislatures under article 292. That has gone now. Article 292 stands amended in that sense.

Then there was the Fourth Schedule of Instrument of Instructions. That has also gone, as decided by us on 11th October. But the remaining two clauses embodied in articles 296 and 299 which we have just decided to reopen, reflect the decision of the Constituent Assembly. So far as I can see there is absolutely no reasons for that change that is intended to be brought about now.

The second point is that the Minorities Committee never recommended any change in these two articles. My third point is that the minorities themselves never agreed to give up these safeguards at any time. It was given out now and then that the safeguards would only be taken back if the minorities themselves thought and were convinced that it is to their own interests. But I submit here that so far as these two articles 296 and 299 are concerned the minorities themselves never agreed to give up these safeguards at any time. The Minorities Committee observed in their report that the Committee are fully alive to the fact that decisions once reached should not be changed lightly. Then I ask, why is this change being brought about so lightly and so casually ? So my prayer is that these amendments that have now been brought forward by Dr. Ambedkar must be rejected and my amendment may be accepted and the original safeguards restored.

There is one very important factor that has gained currency during the last three or four days. It concerns the Sikhs alone. It has been given out that the Sikh representatives on the Minorities Committee gave an undertaking in writing that they would not put forward any further demands for any safeguard in the Constitution if,--that was a very big if--their backward classes the Mazhabis, Ramdasis, Kabirpanthis and Sikligars were recognised and calculated as Scheduled Castes. That may be true. In May last, as I have said, the position was that these two articles 296 and 299 had been accepted by the Constituent Assembly. The reservation was there also, but they agreed on that date that they would give it up. The Instrument of Instructions is gone. So far as I have been able to ascertain from the proceedings of the Minorities Sub-Committee, I do not find any mention anywhere that 296 and 299 were referred to or that the minorities were asked to give up this as a whole. The Minorities Committee

decided to abolish reservation only in the legislature. I must point out here that there is no reservation in articles 296 and 299. The Minorities Committee did not discuss anything else. Clauses (3) and (4) of the safeguards contained in articles 296 and 299 were never discussed. They had already been passed.

Now, Sir, I appeal to you to see how the representatives of the Sikhs know that they would be altered at the last moment ? If I do desire to retain those decisions, I am not asking for any further safeguards for the Sikh Community. I am only raising my voice against those safeguards being taken away from us, safeguards which had already been given. And, if any body is going back on the undertaking or on his word, then it is the Drafting power and not the Sikhs.

Then there is another point that is also very relevant so far as this question is concerned. Supposing for the sake of argument we grant that the Sikh representatives agreed to forego every safeguard, is it to be understood that they did so because they were very keen to have their backward classes included in the Scheduled Castes ? Is then their anxiety for that to be exploited and the opportunity utilised to get them to give up all other safeguards ? I do not believe it. But suppose that was also true, I do realise this also that there was much opposition from the Scheduled Castes against such inclusion and Sardar Patel had to secure this to the Sikhs with great difficulty. The Sikhs are thankful to him. But what has happened to that concession secured at the sacrifice of all other demands, as is alleged ? In the first places restriction was placed that this concession was confined to East Punjab only. It was not extended to the Patiala Union. How strange! Was there any justification for this discrimination on the basis of religion ? If reservation was denied to religious minorities, and the Scheduled Castes were to get it for their backwardness then is there any jurisdiction to deny this concession to similar backward sections suffering from identical disabilities simply because they profess the Sikh religion ? Would this be secularism ? This much-coveted demand secured at such a heavy price and given so grudgingly and reservedly has become uncertain. Schedule X which was to enumerate the Scheduled Castes is deleted and article 300A empowers the President after consultation with the Governor or the Ruler to specify the castes or races to be Scheduled Castes. Sir, it will be realised that again the Sikhs shall have to strive and strive hard to persuade the Governor to advise the President to include these castes in the list of Scheduled Castes. My anxiety is that the Sikhs are left with nothing now. They have no further safeguards. What shall they offer to the Governor to advise the President to secure these safeguards ? So, my submission is that even if there was any undertaking, that should be no consideration because what was secured in lieu of that has already gone.

The Sikhs are told, when they remind the congress of their past pledges in 1929, 1946 and again in 1947 that circumstances have changed. The Sikhs were recognised as one of the three main communities in the Cabinet Mission Plan of which this Constituent Assembly is the creature. The only changed circumstances is that the Muslims have got Pakistan. Does it stand to reason that because the Muslims have secured Pakistan, therefore the Sikhs have ceased to be a minority ? Is this a logical conclusion ? I will be failing in my duty if I do not point out what our feelings are. Pakistan resorted to crude and positive violence to eliminate their minorities. We are using a subtle, indirect and peaceful way of resolving the same question. True to our traditions, we are of course non-violent. I appeal to the House to go slow. I request the majority to win the confidence of the minorities by positive actions and not by mere slogans. This change in article 296 has caused consternation in the minds of the minorities affected thereby. I request that the whole draft be allowed to remain as in

my amendment.

It has also been given out that our leaders consider that our original draft of 296 would disfigure the whole Constitution. Sir, I fail to understand that. If the mention of Anglo-Indian and Scheduled Castes or Schedule Tribes does not disfigure this Constitution to any extent, the mention of Sikhs surely would not further disfigure it. But if in spite of my appeals, this House is not inclined to accept any amendments for restoring the old draft, then my last appeal is for the acceptance of another amendment, which is No. 256.

"That with reference to amendment No. 23 of List II (Second Week), the following clauses added to article 296 :-

> (2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in, favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State'."

The Centre may be aware of every detail of everything occurring in the States; yet some liberty shall have to be left to the man on the spot. If for the smooth working of the administration and for creating cordial relation between the different communities, the State decides on some adjustment in the services, then there should be no bar under the Constitution. Some dignitaries think that there is no such bar at present, but my fears are that article 10 would be a bar for any option or adjustment--when it says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to office under the State. I might have understood that it would not bar such an option if such clause (3) of article 10 had not specifically provided that:-

> 'Nothing in this article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the under the State."

My amendment No. 256 runs on the same lines as this clause (3). Why I did not move it at the time that article 10 was being considered here is that because 296 was already there, there was no need then, but now because 296 is going to be altered, therefore I feel that this option must be left and it should be made clear that if a State wants to make any adjustments so far as the different communities are concerned, it will be free to make that.

I have seen certain reports in the Press that the East Punjab Government have been advised by the legal advisers of the Government of India that they cannot consider the claims of any section in the services, and that has increased my fears, and I am now convinced that unless we leave some option or choice to the States, it would not be possible for them to make any adjustment even if they wanted to do. I make my appeal to the House again. I am not asking for any reservations in this Constitution. I am not disfiguring it. I claim only for an indication of the goodwill of the majority. If that is also denied, it may prove the last straw on the camel's back so far as the confidence of the minorities is concerned.

**Mr. President :** There are seven or eight amendments which purport to substitute their own proposals for this article. I would first take up those amendments which propose to make substitutions and then we can take up the other amendments. The

next amendment which purports to substitute is No. 23 which stands in the name of Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar :** I do not propose to move it.

**Mr. President :** Then No. 24.

**The Honourable Dr. B. R. Ambedkar :** Not being moved.

**Mr. President :** Then No. 25 by Sardar Bhopinder Singh Man.

**Sardar Bhopinder Singh Man :** It is in relation to No. 23. Since 23 is not moved, I cannot move it.

**Mr. President :** It is practically the same with some slight change, allow it if you want to move it.

**Sardar Bhopinder Singh Man :** I am not moving it, Sir.

(Amendments Nos. 26 and 27 were not moved.)

**Mr. President :** No. 183 by Mr. Brajeshwar Prasad.

**Shri R. K. Sidhva :** What about the other amendments?

**Mr. President :** I will take them up later on.

**Shri Brajeshwar Prasad :** (Bihar : General): Sir, I move:

"That in amendment No. 15 (with your permission, Sir, I want to say No. 15 in stead of No. 23) of List II (Second Week), for the proposed article 296, the following be substituted:-

> '296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.
>
> (2) Parliament may by law prescribed the conditions under which the President may, if he deems necessary appoint members of the Scheduled Tribes and Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.
>
> (3) The provisions of clause (2) of this article shall apply in relation to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.
>
> (4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time'."

**The Honourable Shri K. Santhanam :** (2) and (3) are inconsistent with (1).

**Shri Brajeshwar Prasad :** No. Let me explain how it is not inconsistent. If it is

inconsistent, the Chair will give its ruling.

**Mr. President :** He has raised the point. I have to consider it.

**Shri Brajeshwar Prasad :** Let me first explain. If he has raised a point of Order, I will explain whether it is consistent or not. Clause (1) says that there shall be only one consideration before the Public Service Commission, namely, the efficiency of administration and the merit of the individual candidate. The Public Service Commission shall not take into consideration the claims of the minority communities. The Public Service Commission shall not be swayed by any other consideration at the time of making appointments. As a matter of political expediency. I have vested powers into the hands of the President and the President alone to appoint persons of the Scheduled Tribes and the Scheduled Castes. The Public Service Commission must be free from political entanglements. I do not know how (2) and (3) are inconsistent with (1). I await your ruling before I proceed with my speech.

**Mr. President :** The way in which it has been put is making it inconsistent. You can make it consistent by putting in the word "provided".

**Shri Brajeshwar Prasad :** Of course, I am not a draftsman, Sir, nor am I an able lawyer like Mr. Santhanam.

**Mr President :** However, I would not overrule your amendment.

**Shri Brajeshwar Prasad :** As far as clause (4) is concerned, the purpose is to make the whole article very flexible, so that with the growth of education and with the economic improvement in the standard of living, Parliament shall have the power to do away with this article at any time it likes. I am opposed to amendment No. 15 as it has been moved by the Drafting Committee, because I do not want that any other extraneous considerations should be brought in at the time of making appointments. I am afraid that if the claims of all these communities are taken into consideration, the whole fabric of the State will be jeopardized.

I am quite clear in my own mind that there are no minorities in this country, therefore the claims of no minorities can be taken into consideration. There are backward communities. There are people who have been suppressed and oppressed for centuries. It is their claims and their claims alone that, shall be taken into consideration. The burden of making such appointments must fall upon the shoulders of the President and the President alone, I feel that if we introduce, the provision that the claims of the communities like, tribals and Scheduled Castes should be taken into consideration, we shall be burdening the shoulders of the members of the Public Service Commission with a task for which they are not equal. What are the claims of the minority communities? What are the claims of the Scheduled Castes and Scheduled Tribes? Can any man endowed with ordinary intelligence and common sense reconcile the irreconcilable claims of these communities? The claim has been made that we demand parity. Another section demands that we should have representation in the services in proportion to our population. A third demand has also been made on the floor of this House that because we have been suppressed and oppressed for centuries, therefore the members of the Castes Hindu community must be made to make penance. If we are going to make penance for the sins that we have done against these people, then we shall have to hand over the entire machinery of the State into the hands of the Tribals and the Scheduled Castes. Are these claims

going to be considered by the Public Service Commission? I think that it is wrong to blame any community for a historical wrong. History alone is responsible for all the wrongs that have been inflicted upon the Scheduled Castes and the Tribals. It is the Age--the Time spirit which alone can be held responsible.

**Shri H. V. Kamath :** Who makes history?

**Shri Brajeshwar Prasad :** Let me explain. History is made by the wrongdoer and the oppressed. It was wrong on the part of the wronged to submit to oppression. If objection is raised that they were not in a position to organise, we also will say that it was due to lack of political consciousness, due to lack or social sense that these things were perpetrated. It was the institution, it was society itself that was responsible. It was the time spirit and the time spirit alone that was responsible for the wrong done to the Scheduled Castes and the Tribals. The Castes Hindus are not responsible for any wrong. We have also suffered, because Caste Hindus have also been exploited by people living in this country and wrong have been committed and perpetrated upon us. For centuries, India was under foreign subjection. It was subject to foreign intervention and Foreign oppressions from times immemorial. The Castes Hindus have never flourished. It is wrongs, it is atrocious to throw all blame and responsibility on the Caste Hindus, they have been victims of circumstances. I cannot accept the proposition that the Caste Hindus have perpetrated any wrong on anybody.

I would like also to emphasise that this article ought to have been placed in the Directive Principles of the State policy. It is merely a pious declaration. If it is merely a pious declaration, it should have been placed in the Chapter relating to Directive Principles of the State policy.

I think there is another reason why I oppose this article. It is that we have done the utmost that we could do for raising the economic, moral and the material condition of these people. We have passed the Chapter relating to Fundamental Rights. We have passed article 110. We have made provision for reservation of seats in the Central and Provincial legislatures. We have laid down provision for adult franchise. We have made the basis of a secular State. What more do you want? Do you want to disintegrate the State ?

I am quite clear in my own mind that if we do not take a bold stand at this moment and clearly lay down the principle that the basis of a secular State shall not be allowed to be corrupted by any other consideration, the, future of this country is dark. I hold the opinion that those persons who are clamouring for these seats, for reservation, for consideration, represent a handful of people, constituting the cream of the Harijan society. They constitute the politically powerful group among the Tribals and the Scheduled Castes. I do not think that these claims and demands touch the broad classes of people within the Scheduled Castes and Tribals. Job-hunting does not affect the problems that confront us as far as the question of Scheduled Castes and Tribes is concerned. It is by as simulating ourselves and by integrating all the communities in one nation that there can be any peace and progress in this country. I do not want that the politics of the Muslim League should be re-enacted again on the political arena. The whole purpose of my amendment is to strengthen the foundations of the State. It has been the central theme of the speeches that have delivered here in this Assembly. I have moved my amendment so that the interests of the State may be protected.

(Amendments Nos. 280 and 309 were not moved.)

**Mr. President:** These are the amendments which seek to substitute the proposition moved by Dr. Ambedkar. I would like to dispose of these amendments first. One will be accepted and I will take the amendments on that and leave the rest out. As a matter of fact, only two have been moved--amendments Nos. 16 and 183. I will take Sardar Hukam Singh's amendment 256. Separately.

**Shri Krishna Chandra Sharma :** (United Provinces: General): Will there be any general discussion on the causes ?

**Mr. President :** I will have it, but I am clearing the ground for the amendment so that we may not get confused. There are a large number of amendment as a substitution to this article. I will put Sardar Hukam Singh's amendment No. 16 first to the House.

The question is:

"That with reference to amendment No. 3163 of the List of Amendments, (Volume II), for article 296, the following be substituted :-

| | |
|---|---|
| Claims of minority communities to services and posts. | '296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State for the time being specified in Parts I & III of the First Schedule'." |

*'Explanation.*--Among other Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognised as minority communities."

The amendment was negatived.

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

"That in amendment No. 23 of List II (Second Week), for the proposed article 296, the following be substituted:--

'296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.

(2) Parliament may by law prescribe the conditions under which the President may, if he deems necessary, appoint members of the Scheduled Tribes and the Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.

(3) The provisions of clause (2) of this article shall apply in relation to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.

(4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time'."

The amendment was negatived.

**Mr. President :** We have now only amendment No. 15 and I will take the amendments to that amendment.

**Shri Guptanath Singh :** (Bihar : General): Sir, I move:

"That in amendment No. 15 above, in the proposed article 296, for the words 'The claims of the members of the Scheduled Castes and the Scheduled Tribes' the words `The claims of the members of the Scheduled Castes, the Scheduled Tribes and such other castes who are educationally and socially backward' be substituted."

Before making my observations on the amendment, I should like to make it clear at the very outset that I am dead against all sorts of mischievous methods of communalism, caste-ism and such other "isms".

**Shri R. K. Sidhva:** And yet you move an amendment for the backward classes?

**Shri Guptanath Singh :** Yes, Mr. Sidhva. But have patience. This communalism has proved to be a curse to the country. It has become a national nuisance. We have reaped the cruel consequences of this kind of thing. Still, we are going to continue such things. I want that this demon of distinction and differentiation between man and man should not be allowed to flourish further in free India. But the present structure of society is such that we have been forced and our leaders have been forced to accept the principle of protection and reservation. I know we have done it in no happy mood. We desire that these things should be abolished for ever. But some of the sections of Indian society--our Harijan friends, our Adibasi brethren--have been oppressed for centuries and they have been tyrannised for ages that is why they are demanding these reservations. That is well and good. They should get the reservations and as much reservation as may be possible to make them equal to other sections of society and bring them on the same level. Then and then alone these distinctions and differentiations between man and man can be demolished.

But there are other sections in the country, whose conditions are not better than the conditions of these friends, the Harijans and the Adibasis. In some parts of the country their conditions are worse than some of our Harijan and Adibasi Friends. I wish to bring to your notice that even among the Brahmins, who claim to belong to the highest rank of humanity, there are untouchables. You will be surprised to know that even among Brahmins there are untouchables and they are regarded inferior even to other non-Brahmins castes. What is the meaning of this? This is utter nonsense. Some men are regarded as superior and some are regarded to be inferior. In human society such distinction and discriminations should not be maintained. But our society is maintaining them. It is a matter of misfortune for our society. Therefore, some of these friends demand reservation, protection, safeguards and securities.

I know, Sir, and you also know that protection and control are sources of corruption. I will cite you two instances. The Central Government were pleased to award some scholarships to persons belonging to the Scheduled Castes and Scheduled Tribes as well as to socially and educationally backward people, and among those backward people one caste is called 'Kisans'. You see, the general meaning of the word 'kisan' is farmer, and a farmer maybe any man, whether he is a Brahmin or a Kayasth or somebody else. But this term has been used in the United Provinces in a restricted sense. A man belonging to a farming class and who is very backward is called a kisan. You will be surprised to know, Sir, that some of the students belonging to very advanced classes applied for scholarships on the ground that their forefathers

were kisans and even today they are cultivators, and therefore they think they should get the scholarships.

Similarly, once some Brahmins applied to the Harijan fund for scholarship claiming themselves to be Harijans. Thus controls and reservations beget corruption and should not be encouraged. But as society is bigoted we must reap the consequences. The present structure of our society begets or creates these things and a kind of distrust, doubt and fear has been created in the minds of the oppressed classes. They fear that they will not get their share in the administrative services and therefore they are demanding it. Though they have been assured their rights in the Fundamental Rights and in the general directive principles, they are still persisting in demanding reservation.

I want to bring to your notice how the words "educationally and socially backward" came into the Constitution. Article 10, sub-clause (3) reads:

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State are not adequately represented in tile services under the State."

So though we have granted them every thing, there is still distrust in the minds of the people.

I want to cite an instance. In a neighbouring province of Bihar a very brilliant student personally known to me, who had passed M. Com. from the Benares Hindu University, applied for a post. He appeared before the Public Service Commission in his province recently perhaps the members of the Public Service Commission did not know that the wretched fellow belonged to a very backward class. He had stood first throughout his career. A month after his appointment a letter came from the government of that province informing him that his services had been terminated. He wrote to the Government and his department to know the case and suggesting that if he was guilty he should be prosecuted and tried Government refused to give any information regarding his case. This should be a matter of shame for the Government of that province.

Similarly during the British regime in our glorious Bihar one gentleman belonging to a very backward farming or cultivating class was rejected as a deputy collector. Simply because he belonged to a very backward community.... (Interruption). Have patience and hear me Mr. Sidhva. You had your chance to speak. You will be glad to know that this gentleman is the principal of a first class degree college in Bihar. The selection committee rejected him as a deputy collector but he is a brilliant scholar and efficient educational administrator.

I want to bring to your notice one more instance.....

**Mr. President :** Is it any use giving instances of this kind ? They must be occurring all over.

**Shri Guptanath Singh :** All right Sir, I would not give. I want Sir, that those classes who are the backbone of Indian society agricultural, pastoral or artisan classes--though they are not counted as Scheduled Castes or Tribes should be given some opportunities to serve in government services. You have already accepted the

proposal to appoint a commission to study and investigate their conditions. If you insert words to the effect that those wretched people will be given some chance it would be better for the country. They will prove to be most honest and efficient national servants.

When I tabled this amendment one day it was accepted by the drafting committee some days after--Dr. Ambedkar was pleased to include my suggested words in his own amendment No. 23. He realised the lacuna and accepted my amendment substantially. After that Mr. Munshi also accepted the principle contained in my amendment. But I do not know why they kept mum today when you asked them to move their subsequent amendments. They are masters and they can do is they please. I would appeal to them to consider the appropriateness of these words. They should include these words also in this article.

I hope they will consider the points I have raised and prove to the agricultural and pastoral classes, whose condition is worse than that of the Harijans and Adibasis, that they are going to to do something for them and assure them that they would get their opportunities to serve the country. I hope, the caravan of communalism will now be stopped, the cobra of casteism will be killed and immediate steps will be taken to make this glorious land of free India heaven for the humanity suffering from inequality for several centuries.

(Amendments Nos. 18 to 22, 28, 29, 30, 31 and 32 were not moved).

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

"That in amendment No. 23 above, in the proposed article 296, for the words 'shall be taken into consideration, consistently with the maintenance of efficiency of administration,' the words 'shall, consistently with the maintenance of efficiency of administration, be taken into consideration' be substituted."

Sir, as you observed this is a purely formal amendment but I think that it is a more correct construction of the proposed sentence in the article and I would recommend it earnestly to the Drafting Committee for what it is worth. But, Sir, may I by your leave make some observations on the amendment moved today by Dr. Ambedkar ?

**Mr. President :** Yes.

**Shri H. V. Kamath :** Today, Sir, we have taken another step forward in the building of our common Indian nationhood. Over two years ago this Assembly resolved that so far as the legislatures of this country were concerned, the minority communities should have reservation so far as their seats in these bodies were concerned, but in view of the fact that great events, perhaps tragic in some respects but events fraught with destiny occurred soon thereafter. Sardar Vallabhabhai Patel, a little over two months ago moved in this House, and this House accepted his proposition, that so far as the Muslims and Sikhs were concerned, reservation in legislatures for them should go. That was a wise decision taking us one step forward in our march to nationhood. Today again we are taking another decision which marks another stride in our onward march, and that is that we propose to abolish reservation for the minority communities, the Muslims and Sikhs so far as reservation for them in the services of the State is concerned. The only exception that we made on that day, two months ago when Sardar Patel moved his proposition in the House is again the only exception that we make today, that is, with regard to the Scheduled Castes and

Tribes. Members and even friends outside may dispute the wisdom of this course, but practical politics and statesmanship is guided not always by absolute ideal considerations; our policy and our course are often guided by expediency and the exigencies of the prevailing situation. The situation today dictates to us this course.

My honourable Friend, Mr. Brajeshwar Prasad referred to the plight of the Scheduled Castes and Tribes and remarked in passing that history alone is responsible for the condition of the Harijans today, and that the Caste Hindus cannot be held responsible I for one do not propose to go into this intricate question as to who is responsible and who is not responsible. I do not want of apportion blame. After all if Mr. Brajeshwar Prasad says that history is responsible and later on said after examining further causes that the time spirit was responsible, I venture to suggest that the divine force or whatever supreme force operates in this universe was responsible; the clan vital or the evolutionary force as you may call it, is responsible for what is happening in the world. He said that Caste Hindus were oppressed by foreign exploiters, but we see that these foreign exploiters have been vanquished by another force and that force has been attacked by another third or fourth force. As some English cynic has said : "In this world there is one flea which is preyed upon by another bigger flea and that bigger flea is again preyed upon by a third flea". One is never quite sure about what is going on in this universe. Some grand process is unravelling itself and I do not propose to go into the vexed question of who oppressed whom and how it all came about.

I only wish to say this much, Sir, that with the passing of this article today the only class of people of this country who might be lightly, apprehensive will be as my honourable Friend Mr. Guptanath Singh observed, those who are called the backward class of citizens. I do not wish to say who is backward and who is not backward, who are pastoral classes and who are agricultural classes or which other class is backward, but we have used that very term in the Constitution--backward classes, socially and educationally backward classes. They perhaps will be somewhat apprehensive about their future, as to what their share will be as regards the services in the State, but I wish to dispel their misapprehension by referring to the Fundamental Rights in article 10 in Chapter 3 of the Constitution Clause (3) of article 10 provides :

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State."

This is not a more directive principle of state policy; this is in Chapter III on Fundamental Rights. When this is guaranteed to them, no backward class of citizens need be apprehensive. If there is no representation for them in the services they can take the Government to task on that account. I think this would be an adequate safeguard for them so far as their share in the services is concerned. I hope that this article 10 guarantees that right to them, and so they need have no dispute or quarrel with the article before the House today.

Before I close. I only wish to express the hope that, before ten years have expired from the commencement of the Constitution, in this country of ours which has had an ancient history, this country of ours which is ancient, but ever young, there will be not merely no backward classes, socially and educationally backward classes left, but that all the classes will come up to a decent normal human level, and also that we shall do away with this stigma of any caste being scheduled. This was a creation of the British regime which happily has passed away. We have taken many strides forward in

removing or doing away with the numerous evils that were associated with the British regime. This is one of the few that still remain. I hope, Sir, that were long, this stigma too will disappear from our body politic, and we shall all stand before the world as one single Indian community.

(Amendments 184, 255 and 257 were not moved.)

**Mr. President :** There is no other amendment that I can see.

**Shri R. K. Sidhva :** There is amendment No. 36.

**Mr. President :** That is for the deletion of clause (2). There is no clause (2) in this article at all.

**Shri R. K. Sidhva :** Mr. Guptanath Singh has in his amendment referred to backward classes.

**Mr. President :** In the proposition which is now before the House, there is no clause (2). Therefore this does not arise. Amendment No. 24 has not been moved.

**Shri R. K. Sidbva :** Amendment No. 24 has not been moved. But, Mr. Guptanath Singh has moved amendment No. 28.

**Mr. President :** This does not fit in with Mr. Guptanath's amendment.

**Shri R. K. Sidhva :** I have only to change the number from 24 to 28.

**Mr. President :** Where is clause (2) here?

**Shri R. K. Sidhva :** The Drafting Committee has abruptly this morning brought in a new amendment. I am glad that the clause (2) has been dropped. When an amendment has been brought in for bringing in the word 'backward classes', this should be allowed.

**Mr. President :** This amendment has been there from long before. If you want to speak on the article I shall give you an opportunity.

**Shri R. K. Sidhva :** May I say a few words, Sir ?

**Mr. President :** Yes, I shall first see if there is any other amendment. I do not think there is any other amendment. The amendments and the original proposition are now open to discussion.

**Shri R. K. Sidhva :** Sir, I am very glad that the Honourable Dr. Ambedkar has moved amendment No. 15 and the other amendments relating to backward classes have been dropped. My amendment, as just now stated, related to the deletion of the clause relating to backward classes.

Sir, I have been trying to understand what is the definition of backward classes. In article 301, we have stated that those who are socially and educationally backward

would be known as backward classes. Today, in this country, 88 per cent. of the people are illiterate. They do not know even the A B C or the alphabet of their own mother tongue. Only 12 per cent. of the people are literate in this country. Socially also they are backward. Am I to understand that 88 per cent. of the people are backward ? Article 301, definitely states that those who are socially and educationally backward will come under that article. How can we then say that the whole country, 88 per cent. of the people are to be known as backward classes ? My honourable Friend, Mr. Guptanath Singh, went to the length of saying that the peasant belongs to the backward class. He mentioned the illustration of the Brahmin as backward class. I know of an illustration and I shall give it. This was all created for the purpose of getting position and power and nothing else. Some ten years ago, a person wanted to get into the services as a Subordinate judge. He belonged to Pushkar Brahmin community. He set up a theory that the Pushkar Brahmins belonged to the backward classes. He had merely to take the signatures of 500 persons and present it to the chief Judge. The Judge was guided by the signatures and as there was no Pushkar Brahmin in the service as Judge, he appointed him.

I may also tell the House that thirty years ago, the Parsees were considered as a backward class by the Bombay Government. You know Sir, that we are a far advanced community. Thirty years ago, 80 per cent. of us were educated; today 99 per cent. are educated. Still, thirty years ago, the Bombay Government declared that the Parsees were a backward class. It is only those people, who want to get into the services that use their influence and class themselves as a backward class. This is what was happening in the British regime. Some people who wanted to get into the services used their influence and classified themselves as backward classes, whereas really the masses of the people who are really the backbone of the country, they are not given any representation in the services. *(Interruption).*

**Shri Guptanath Singh :** You talk much but do not know the masses; I know the minds of the masses.

**Shri R. K. Sidhva :** I do not want to argue with you. What I was saying was that there has been injustice done to a small section of our own people. I know there has been favouritism going on and let me tell you favouritism will go on for ever unless a real Ram Rajya comes into being. Some sort of favouritism will prevail even in the best of Government. So far as the Scheduled Classes are concerned, I have never conceded that the Scheduled Castes are a community. I have considered them as a class of people whom really great injustice has been done in the past by the Hindu community. Therefore, we want to do something to see that they come up to standard of their own brethren. If they were to classify themselves into a separate community, I would oppose it. I do not consider them as separate. So far as the Scheduled Tribes are concerned, they are not untouchables. For instance. there are the Bhils; they are not untouchable. They are only backward. They have also been brought under Scheduled Tribes. These people require attention at the hands of the special officer that is to be appointed.

I do feel that our article 301 is a real stigma on our Constitution. I wish article 301 should go: I do not want backward classes at all to be mentioned in our Constitution. It is a slur upon our intelligence. For those who are educationally backward, we have provided in the Directive policy that within ten years every man, woman or child should be made literate. When educationally every person is advanced, who will call them backward ? There will be no backward classes. Socially, they become advanced.

If a man is educated, I have seen he improves his position in society and social affairs. Therefore, the fundamental thing is education and we have provided for that in the Directive Policy. I would have wished it to have come in the Fundamental Rights. Within ten years, there shall not be a single person who shall be illiterate. Of course, there are certain difficulties in the way. I am sure our present Government are going to see that every man is made literate within a period of ten years, and we shall be proud that every person can read in his own mother tongue.

I therefore, oppose the amendment proposed by Mr. Guptanath Singh. It has no meaning. It has meaning only when we want to favour some body and therefore we want to classify them as backward classes. The article as moved by Dr. Ambedkar is sufficient for our purposes. When a time limit is not mentioned, I am quite sure that within a short period these Scheduled Classes will go and they will come up to the level of the other people and we shall see that there is no mention of these Scheduled Classes in our Constitution hereafter. With these words, I strongly support the proposition and I oppose any kind of reservation or even the mention to reserve posts in services in the Constitution. We have done away with reservation in the legislatures. With what face shall we say that there should be reservation in the services ?

It looks so awkward. Our leader, Sardar Patel, made it very clear the other day when he brought the question of representation in the Legislatures, and today my Friend Sardar Hukam Singh has put in Parsees also that they want special rights. Sir, my community has never asked for special rights in any Legislature or in the services. They have come by merits and I can assure you whatever number they are in the Government of India--there are some Parsees in services of the Government of India-they have come by merit and not by favour. The majority community realise it and we leave it to them. We know they can appreciate it. Merit alone should count in our future Constitution and nothing else. I place great stress upon this. This method has been started by the British Government of favouring one community or the other. Sir, we have given our President the power to classify who are the backward classes. Mushroom association in the name of backward class will be formed and the President will be put in an awkward position; many communities will try to influence them. I am sorry that this clause is there but I only expect that article 301 Will remain a dead article in this Constitution and shall never be operated upon. With these words I strongly support the original proposition and oppose all amendments.

**The Honourable Sardar Vallabhbhai J. Patel** (Bombay : General) : Sir I had no intention to speak on this article, but when I heard that a definite insinuation was made in this House that because the Congress Party has a majority in this House, therefore it does not care for the promises given to the Sikhs and they are breaking the promises given them I have to speak. I am very sorry to hear this charge from the Sikhs or a representative of the Sikhs. Sardar Hukam Singh made this point. At another place on another occasion I had made it clear to him and yet he seems to have raised the same question. Now I wish only to answer that charge for the other things I do not think I need go into discussion or say anything about it. But when it is alleged that Congress is breaking its promises given to the Sikhs, one after another, I wish to understand the position.

We are--he alleges--breaking the promises--broke the promise given in 1929, one in 1946 and another in 1947. I do not know what promises he refers to. If he refers to 1929 and then again to the Partition of India and Pakistan, I wish to point out to him that there was not a single Sikh voice against the Partition; on the other hand they are

probably in the forefront in demanding partition of the Punjab. After the butchery and the bloodshed that took place in Rawalpindi and Multan, the Sikhs were terribly upset and naturally distressed and they had considerable sympathy from the Congress. At that time there were other tragedies happening in other parts of the country and then came the conflagration in Lahore, Amritsar and other parts of the Punjab. It was at that time with the concurrence of the Sikhs,--unanimously, with one voice they agreed,--we agreed to the Partition of India. Now to turn round and charge us with a breach of faith is a charge which I cannot understand and it is not right for the Sikh community--a brave community like the Sikhs--to fling these charges at us. Who were we to agree to the Partition of India and partition of the Punjab if the Sikhs were opposed ? We could never have done that. Because they also said that it was best in, the interest of India that we should agree to partition on condition that the Punjab was partitioned--that we agreed to it. Now that is about 1929 promise.

Then again he says about 1946. If he refers to the Minorities Committee recommendations, I can understand it. I propose to explain it in detail as to what has taken place. But I do not know what he means by 1946 promise. If I can have any concrete expression of a promise given by Congress Leaders, I might, and if so I do not think there is any one Congressman who will go against that promise. I have not however understood the psychology of the Sikh leaders--some of them-who often charge everybody with breach of faith, and always complain of minorities being ill-treated.

Look at the army. Are they not very heavily over-weighted ? What have we done ? We are under their protection and we trust them and not a single army officer is disloyal to us. Why do you create this feeling for nothing? What is it that you want ?

When the Minorities Committee in the Advisory Committee passed its first decisions, I was appointed Chairman and I took all the minorities with me and the decisions of the Minorities Committee and the Advisory Committee were almost unaimous. This House appreciated the work of these Committees and congratulated me on that. Time went on and the minorities themselves began to feel that we should reconsider our decision and, headed by the great patriotic Christian leader, they brought in a Resolution that they want to give up the reservations. And what reservations?--Not this Petty reservation of minorities in the services-but the big reservations in the Assemblies, both in the Centre and in the provinces.

They agreed to have joint electorates and to have nothing to do with this communal separatism. When they desired that, I called a meeting of the minorities Committee and the Advisory Committee. At their instance decisions were taken. The Sikh stand has always been that "if all minorities agreed, we are also agreeable. Who do not want any special arrangement. We do not want any advantage. We are able to stand on our own legs". That was their stand throughout, in the Congress and outside the Congress.

When this resolution was brought, and this question was about to be considered, the Sikh representatives of the Punjab came to me and they said that so far as the Scheduled Caste Sikhs are concerned, they should be treated separately and given the same advantage that was being given to the Hindu Scheduled Castes. The Scheduled Castes objected to a man that these are not Scheduled Castes, and if they are Scheduled Castes, then they are not Sikhs. Therefore, they said, "you cannot give them separate treatment. There are forcible conversions being made from the

Scheduled Castes to the Sikhs for this purpose". That was their grievance. On the other side, the Sikhs said that they had converted so many and it was not by force. "They have come to our fold", they said, "and if you do not recognise these concessions, then they will all go back to the Scheduled Caste Hindus and we will lose".

Now, it was against our conviction to recognise a separate Sikh caste as untouchables or Scheduled Castes, because untouchability is not recognised in the Sikh religion. A Scheduled Caste Sikh community has never been in the past recognised. But as the Sikhs began to make a grievance continuously against the Congress and against us, I persuaded the Scheduled Caste people with great difficulty to agree to this for the sake of peace. I persuaded the other members of the Advisory Committee on the condition, which is in writing by the representatives of the Sikhs, that they will raise no other question hereafter.

Then in the Advisory Committee, when this question came, Sardar Ujjal Singh raised the question, "What about the Services" ? I said, "Your representatives have given in writing that no other question hereafter is to be raised" Giani Kartar Singh was also in the Advisory Committee, and he got up and said, "No, we will settle it in the Provinces. It is not to be raised here."

What is the use of charging the Congress with having broken promises ? Do not break the promises that you have given, and do not charge others with breach of promises. If you now say, as Sardar Hukam Singh says, that these people were anxious to serve an advantage for the Scheduled Caste Sikhs and they may have agreed to this, but it is a mistake, then if it is a mistake, reconsider your position, and I shall reconsider mine. Take away that concession and remove it, and you get your pound of flesh, if you want it.

What is it that you get in the Services? Even at present, what do the Sikhs do ? What do other communities do ? So far as the Services are concerned, for all major posts or all posts which go by competitive examinations there is no reservation on communal grounds. They go to the Public Service Commission. You are quarrelling or asking for the minor posts--Chaprasis and clerks. Is it the Sikh position now that we have not got enough Sikh Chaprasis and clerks ? Are you going to raise the community in that manner ? If that is so, tell me, and If you leave what you have got for the Scheduled Castes, I shall persuade the Constituent Assembly to give you what you want, but you will repent afterwards.

You say, in PEPSU it is not the arrangement. But this is not the House to hear that complaint. If there is any such complaint, send it to us. We shall consider about it. But do not go behind, your pledged words and charge people with breach of promises or pledges. We are not the people to pledges. Every sympathy and every consideration will be shown to the Sikh community because it is located in a particular area ; it is a small community, and yet it is brave, virile and it can stand on its own against anybody. Do not break that spirit by continuously saying, "We are injured, we are helpless, we are in a minority, we are hopeless, we cannot do anything."

That kind of psychology will injure the community itself and not others, and injuring the community means injuring the nation. It is not as a representative of the majority community that I give this advice, but as a well-wisher of the Sikh community, I advise you not to create this atmosphere by saying continually, "we are

badly treated, badly treated". If you do, then it is the Sikh community that will be hurt.

When the Advisory Committee took this decision to give up reservation, we clearly understood the position and all communities clearly understood it. When the decision of the Advisory Committee came before this House for its acceptance, I made it clear that this Constitution of India, of free India, of a secular State will not hereafter be disfigured by any provision on a communal basis. It was accepted with acclamation.

It is said that if you make any arrangements in the Provinces, then the provisions of the Constituent Assembly with regard to fundamental rights will come in the way. Let me tell you, nothing comes in the way where arrangements are made by mutual agreement, and without mental reservations. That provision in the fundamental rights is provided for an individual who is injured. But if you make domestic arrangements in the Punjab between community and community for the small posts, then who is going to question that ? But first create an atmosphere for adjustment of such things in your Province. It is the continued atmosphere of quarrel between two communities that has created distrust among them, and that creates difficulties. You will have our support and sympathy continuously in that Province because that Province has suffered most. It is injured and the wounds have not yet healed. It is for us all, and for you particularly, to help us in healing the wounds. Therefore, let us make a united effort to raise the morale of that Province, the strength of that Province, which really is at the top of India, where the border is. Then you will have no complaint at all.

After all, what is the Sikh community backward in ? Is it backward in trade ? Is it backward in industry, or commerce or in anything ? Why do you consider yourselves to be backward ? Therefore, forget that psychology. If there is any injustice done, then come to us, we will see that no injustice is done.

Sardar Hukam Singh said, "We trust the present leaders. What about the future ?" I say, you must have the courage to trust the future and not the present leaders. What will happen when the present leaders are gone ? Will Sardar Hukam Singh be living here ? Why raise this issue ? We must trust that if the present leaders go, we will have better leaders in the future. If we have trust in the future of our country, we may trust that in the future our country will produce leaders who will make a name in the history of the world. We have shown it today. We will do it in the future. That is India. India produced a Mahatma in a State where slavery was rampant. He went to a country where people would not walk on the foot-path, where people could not travel even in the III class with safety, where we were all treated as untouchables even now we are treated as untouchables there. There he made a name and fame all over the world, and presented a new weapon to the world. Then he came here. Here he raised the Sikhs, the Muslims, the Hindus, Scheduled Castes, everybody. He gave us freedom. Do you think that we are going to raise the morale of our country or the reputation of our country or the fame of our country by breaking promises ? No. We have all agreed that we must trust each other.

I know that the atmosphere so far as the Muslims are concerned is not quite as happy as it should be. But there are reasons for that. The Congress is not responsible for this. If there had been no Partition, perhaps we would have been able to settle our differences. But there was Partition. This Partition by agreement brought about subsequent events. But, since Partition, whatever is being done on the other side is

having a reaction here for which we have to struggle day and night.

You do not know the immense difficulties of a secular Slate being governed peacefully in such conditions. Now, the world is in such a condition that we cannot take any independent action of our own accord. Even though there is injustice done, we have to wait, pause, ponder and consider, because there is an Organisation known as the U.N.O., who day and night watch the situation all the world over and try to see how peace could be maintained. I do not wish to say anything about the work of the U.N.O., because I know nothing about it. But the other part of the country known as Pakistan misses no opportunity of defaming and blackmailing us all over the world, whether there is occasion for it or no occasion for it. So we have to be specially careful. They break promises and charge us with breach of faith and yet we cannot solve it without reference to the other countries or without any regard for its reaction in other countries.

Therefore we have to be very careful. Do not add to our difficulties by creating internal difficulties in which there will be disputes between the communities. Help us and it will be to your advantage and it will be to the advantage of the whole country. You will have no cause for regret if you drop the claims for minor provisions for small minorities in regard mainly to service questions. Fight over issues beneficial to the whole country. Let us do that. Let us prepare the ground for that. You have big interests involved in two provinces. Though the problems in Bengal are different, as in the Punjab they have also certain problems. These problems can be settled not by the Centre, but by the provinces themselves. So, for God's sake, those who are interested in the well-being of the country should create a different atmosphere and not an atmosphere of distrust and discord.

My only point in coming to reply here was to meet the charge that has bean levelled against the Congress. I am sorry to hear it. Neither I nor any congressman has done anything here in the Centre to give cause to the Sikh Community to distrust us. We shall never give cause for that in spite of what you may do. Therefore for the last time in this Constituent Assembly, as responsible members of Parliament, I appeal to you. By all means ask for what you want or what you like. But do not blame other people for your own faults, I desire now to give you this undertaking that if you still feel that the advantage that was taken from us is not worth it you throw it away and, if you think this is better, I will give It to you. You consider the matter amongst yourselves, amongst the Sikh community and decide. But do not try to have it both ways. One section first comes and gets certain advantages and gives promises to a certain section of the community and thereafter another section comes and charges us with not having given it certain other advantages which it is anxious to have. That is not the way to do things. You may unite and decide what you want. It is not our fault if you have not done, so. After all, what is it that you want ? You want an insignificant thing, but granting it would mean putting a blot on the Constitution. We agreed about certain things on that day and everybody was pleased with it. Therefore be satisfied with what you have done and there will be no cause for regret. *(Applause).*

**Mr. president :** Is it necessary to continue the discussion ?

**Honourable Members :** No, no.

**Shri H. V. Pataskar** (Bombay : General) : I move that the question be now put.

**Sardar Hukam Singh :** I want to submit to you most respectfully that I do not find anywhere in the Constitution anything that we have secured at so high a price.

**Shri Mahavir Tyagi** (United Provinces : General) : Sir, may I appeal to you that this general discussion on this important article has not been full. It is for you to see whether you should accept the closure motion or not.

**Mr. President :** I see that and I am prepared to accept it.

**The Honourable Dr. B. R. Ambedkar :** I have nothing to add to what has already been said.

**Mr. President :** I will now put amendment No. 17 of Shri Guptanath Singh to vote.

**Shri Guptanath Singh :** I beg leave to withdraw it. The amendment was, by leave of the Assembly, withdrawn.

**Mr. President :** Then we come to the amendment of Mr. Kamath.

**Shri H. V. Kamath :** Sir, I leave it to the good sense of the Drafting Committee.

**Mr. President :** It is a verbal amendment and it can be left to the Drafting Committee. Now I will put amendment No. 256 of Sardar Hukam Singh to vote.

The question is :

"That with reference to amendment No. 23 of List II (Second Week), the following clause be added to article 296 :-

> '(2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State'."

The amendment was negatived.

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

"That with reference to amendment No. 3163 of the List of Amendments, for article 296 the following article be substituted :-

| | |
|---|---|
| Claims of Scheduled castes Scheduled Tribes to services and Posts. | '296. The Claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State'." |

The amendment was adopted.

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

"That article 296, as amended, stand part of the Constitution."

The motion was adopted.

Article 296, as amended, was added to the Constitution.

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**Article 299**

**Shri K. M. Munshi** (Bombay : General) : Sir, I move--

"That with reference to amendment No. 63 above, for article 299, the following be substituted :-

Special Officer for Scheduled Castes Scheduled Tribes, etc.

'299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community'."

I need not say anything more on this amendment. The Special Officer is intended to look after the political safeguards that have already been given by other articles in the Constitution. I therefore, move the amendment.

**Mr. President :** I will first take up the, amendments to this particular amendment which has been moved by Mr. Munshi.

(Amendment No. 78 was not moved.)

**Shri R. K. Sidhva :** Sir, I move :

"That in amendment No. 64 above, in clause (3) of the proposed article 299 the words 'to such other backward classes.....

Backward classes have gone. Mr. Munshi has put it only the Scheduled Castes and Scheduled Tribes. If this is so, I do not want to move my amendment.

**Mr. President :** Clause (3) of Mr. Munshi's amendment says--

"In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report, etc."

**Shri R. K. Sidhva :** Then I move my amendment, Sir.

....."as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and" be deleted.

Sir, I do not want to speak at length because I have touched upon this point in my previous amendment. I know there is the article 301 which specifies backward classes. I am not quite sure that it will be easy for the President to find out who are the backward classes. I do feel that this backward classes article will remain a dead article, because I know that people who will come in the name of the backward classes will come only for their own personal position and personal aggrandisement to insert themselves as backward classes to win their own personal ends I know people would come in the name of the backward classes only to get a few posts, leaving the poor masses of that community in the lurch. I am therefore strongly opposed to the inclusion of the term 'backward classes'. Article 301 says "investigate the conditions of socially and educationally backward classes". Now, What does that mean ? 80 per cent. of our people are illiterate. Are they all backward ? Sometimes people who are illiterate have a far better sense of argument than the literate people.

Therefore, Sir, I contend that there is no such class as a backward class. The Britishers wanted to dub many as backward classes and then play them up to the whole world and say that India consists of so many backward classes and so they do not deserve freedom. I do not want this term "backward classes" perpetuated in our Constitution. The sooner we do away with this, the better for our country, the better for our position in the world. Beyond the Scheduled Castes and the Scheduled Tribes, I do not want any kind of reservation for anybody. If there is any class which feels that their interests have not been justly represented in the services, they should go to the proper authorities and find the remedy. After hearing Sardar Patel, I do not think there will be any injustice to any class people who really deserve some kind of sympathy and justice. If there is any injustice,, then our leaders are there who will look after their interests. With these few words, I commend my amendment for the acceptance of the House.

(Amendments Nos. 80, 258 and 284 were not moved.)

**Shri H. V. Kamath :** What about amendment No. 65 ?

**Mr. President :** I was just coming to that. So far we have taken up the amendments to amendment No. 64 moved by Mr. Munshi, which is an amendment to No. 63 which again relates to No. 43. No. 43 was sought to be replaced by No. 63, which again is replaced by No. 64. Therefore I first took up the amendments to amendment No. 64. Now, if any Member is keen on moving any of the other amendments, I will see whether it fits in with No. 64 or not. If it fits in, I will allow that, otherwise not. I will just call the amendment numbers and if Members wish to move any of their amendments, they can say so.

No. 44, by Mr. Lakshminarayan Sahu and Mr. Chaliha.

**Shri Kuladhar Chaliha** (Assam : General) : Sir, I move.

"That in amendment No. 63, above at the end of clause (2) of the proposed article 299, the words 'for its

approval, modification or addition' be added."

**Mr. President :** What amendment are you moving ?

**Shri Kuladhar Chaliha :** I am moving No. 71.

**Mr. President :** All right.

**Shri Kuladhar Chaliha :** Sir, the article merely says that such reports shall be laid before each House of the Parliament. We should positively mention there what the powers of the Parliament are in this regard. As such, these additional words will make the clause a little clearer than it is. My own experience is that many such reports are laid before the House, but very few people take care either to look into it or give effect to it. So in, order to be more specific, I have added these words. I trust the Drafting Committee and Dr. Ambedkar will see that it is changed. I commend my amendment to the acceptance of the House.

**Mr. President :** Does any Member wish to move any amendment ? Sardar Bhopindar Singh Man, you wanted to move some amendments.

**Sardar Bhopinder Singh Man :** Nos. 67 and 69 relate to the amendment that was to be moved by Mr. Munshi, No. 63.

Sir, I move :

"That in amendment No. 63 above in clause (1) of the proposed article 299, after the words 'by the President' the words 'and a Special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be' be added."

"That in amendment No. 63 above, in clause (2) of the proposed article 299, after the words 'under this Constitution and' the words 'their representation in different legislatures and services of the country' be inserted."

"That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words 'Muslim Christians, and Sikhs' be added."

My first amendment states that the Minority Officers as originally proposed to be appointed in the States should be permitted to continue, I feel that a Minority Officer appointed at the Centre will be at too distant a place to investigate and see the daily working of the Constitution. If Minority Officers are not there, this safeguard contained in article 299 will not be effective. After all, it is the daily life and daily administration and governance that count more than anything. I request that Minority Officers in the States should continue and there should not be merely one officer appointed at the Centre.

My other two amendments state that there should be Minority Officers to investigate, not only the safeguards contained in the Constitution, but also to look into matters pertaining to all minorities and see how they have fared so far as representation in legislatures is concerned or securing of services in the administrative machinery is concerned. There seems to be some confusion about minorities. Certain friends say that because the Minorities Advisory Committee resolved that there will be no political reservations in the legislatures, there will henceforward be no minorities in

the country. I takes my breath away how a paper resolution can do away with minorities, and that too, in so short an interval as just a year or so.

The position of this Constituent Assembly, as I understand from its previous decisions, is that they agreed that this country has got minorities. They classified these minorities into three groups--Group A, Group B and Group C. Not only that. I hold here another pamphlet published by the Ministry of Information and Broadcasting. They corroborate the same view and say the basis of these minorities is their religion. They mention the Minorities in the Indian Union as the Muslims, the Sikhs, the Christians, the Parsis and the Anglo-Indians. Now, to argue basically against this contention is to go behind their own words.

A happy sort of atmosphere has been brought about and the minorities henceforward repose their confidence in the good sense of the majority--not that they are wiped out altogether from our country. We march forward in the hope that no injustice will be done, but from that it should not be argued that henceforward the minorities cease to exist. After all, safeguards are just the instruments of securing the due share of minorities in the governance and administrative machinery of the country. If we are assured that no injustice will be done so far as governance or administrative machinery is concerned, naturally we will not ask for any political safeguards in the Assemblies or elsewhere.

It is a very daring experiment. I wish it success wholeheartedly. I am quite sure that it will succeed. It should succeed. I shall be very happy indeed if the fears of the minority communities are ultimately proved to be false. But to enable the experiment to succeed, I say that the cases of all the minorities should be reviewed and Minority Officers should be appointed for all the Minorities. After all, you are not giving anything. You are not giving any quota or any share or reserving anything. You only say that these Minority Officers will be reviewing the case of these minorities and scheduled castes. I take your word.

You are taking a great responsibility upon your shoulders. You promise that you will give us no cause for anxiety. Then may I ask Dr. Ambedkar why he feels shy of reviewing the cases of all the minorities ? I am quite sure you will be very just, you will be very fair and that the minorities will get their due share. Then, where is the harm if all these cases are reviewed periodically and brought before the Assembly and the Parliament ? It would give us a constitutional opportunity of reviewing our position. I shudder to think of the alternative, which will be only to raise some sort of agitation and din it into your ears that an injustice has been done to us. Instead of resorting to certain unconstitutional methods, this provides a constitutional door. I believe there will be no injustice whatever, but that is no reason why these constitutional doors should be closed.

In all earnestness I plead before you--kindly do not abrogate these articles, kindly do not re-open what has already been conceded. I shall be failing in my duty if I do not represent to you that the abrogation of these articles 296 and last of all of 299 will have very widespread and serious repercussions so far as my community is concerned. You are taking away that mental assurance that you have all along given to us. You had said, "Do not worry, there will be somebody all the time observing the working of the Constitution". Now you take that away. You say, "Justice or Injustice, case or no case, your case will not be reviewed." I think it will be injurious to that psychological atmosphere and mental assurance that you had given. I think by taking away this

machinery by which the working of the Constitution so far as minorities are concerned will be observed, you are taking away our last hope of securing a hearing and of approaching the Parliament in a constitutional manner and getting our cases periodically reviewed. I believe, Sir, it will not be disfiguring the Constitution, as the popular slogan goes.

In the end I must refer to a certain assurance which is said to have been given by some representatives of my community. It has created a certain impression, and I beg to differ from Sardar Patel and to say that it has created a false impression. Actually, so far as the assurance is concerned, (I do not controvert the facts) I have asked those representatives about the assurance and I have got a copy with me containing the assurance. I have to remove the misunderstanding because it is creating a false impression in my community and elsewhere and hence there is the charge that the Sikhs are going back upon the undertaking they had given. In view of the fact that articles 296 and 299 had been agreed to by the House as recommended by the Advisory Committee, and the draft wording of which has been the same for the last one year and in addition to that they have agreed that Scheduled Castes will be included, the Sikh representatives said that henceforward they were not asking for any further assurances. But having got that assurance, if you now turn back and reopen the case in this House and thereby recede on articles 296 and 299, certainly our pledges cannot be thrown at our face to the effect that we are going back on them! Let me read the actual wording of the agreement. If there is anything else that should be in it, let that be produced, so that all this false impression can be removed. It runs :

"We, the Sikh Members of the East Punjab Assembly, beg to refer to there port of the Sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report....."

You agreed to certain recommendations made by Minorities Advisory Committee, which are clear and emphatic and so far as the sharing in the services is concerned, it is said that it will be conceded and a specific article relating to it will be incorporated in the draft Constitution. You also say that a Minority Officer for all the Minority Communities will be appointed. You conceded it and we gave the assurance that we will not be asking any further safeguards in addition to what already had been conceded.

**Shri R. K. Sidhva :** What order ? What was conceded ?

**Sardar Bhopinder Singh Man :** What you conceded and you have not yet abrogated. You conceded it in August 1947.

**Shri R. K. Sidhva :** There were subsequent developments.

**Sardar Bhopinder Singh Man :** I shall refer to that too. After this there was another report of the Advisory Committee dated 11th May 1949. If my friend were to read it carefully, not a single reference is there so far as these two resolutions are concerned. So far as the reservation in the Assembly is concerned, that has been taken away. So far as the other decisions, as regards the services and the Minority Officer for reviewing the cases of the minority communities are concerned, they stand and here I request my friend to produce a single sentence or line in the subsequent report submitted by the Advisory Committee and as approved by this House to show

that in any case article 296 and article 299 have been abrogated.

**Shri R. K. Sidhva :** I have been a Member of the Minorities Committee from the very inception and I have no recollection of this question having come up so prominently as my friend relates it now.

**Sardar Bhopinder Singh Man :** It is not my fault if my friend misses the point. But unfortunately, it is there incorporated in black and white. For me it is a very important point. You ....

**Mr. President :** What is the document you have been reading from ? You referred to some sort of pledge.

**Sardar Bhopinder Singh Man :** I was referring to certain assurances which were said to have been given by Sikh Members that henceforward they would not be opening any case and would not be bringing forward any matter or any other safeguards and I say this, in spite of Sardar Patel's speech. As a matter of fact this has gone into the press as if there was some such assurance to give up all the minority rights.

**Mr. President :** Have you got that document with you ?

**Sardar Bhopinder Singh Man :** I have.

**Mr. President :** Than read it out.

**Sardar Bhopinder Singh Man :** I have read it.

**Mr. President :** I did not quite follow. If you read out that whole document to which Sardar Patel was referring...

**Sardar Bhopinder Singh Man :** I have this copy with me. If there is any other document, then I stand corrected with regard to what I have read.

**Mr. President :** I think you had better read it out so that Sardar Patel or anyone else can have a chance of finding out whether this is the document.

**Sardar Bhopinder Singh Man :** I have said I have no direct knowledge of that document. With regard to the document that those Sikh representatives gave, I have ascertained from them that this is the document containing the assurances that they gave.

**Mr. President :** Let us have the document.

**Sardar Bhopinder Singh Man :** Yes, the document reads as follows:

"We, the Sikh Members of the East Punjab Assembly, beg to refer to the report of the sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report :-

1. The Sikh Backward Classes, namely, Mazhbis, Kabirpanthis, Ramdasias, Bawrias, Sareras and Sikligars,

should be placed at par with the Scheduled Castes in the matter of their political rights. This can be done by--

(a) including these classes in the Scheduled Castes enumerated in the Draft Constitution; or

(b) by abolishing the reservation of seats for all minorities including the Scheduled Castes in East Punjab; or

(c) reserving seats for the said Sikh Backward Classes out of the quota of seats reserved for Sikhs. The estimated population strength of these classes among the Sikhs is roughly ten per cent ; these classes would get ten per cent. of the quota of Sikh seats.

2. In the matter of language, script and culture, either zonal arrangement should be provided in the Constitution, or, settled immediately by executive action.

3. Sikh minorities outside East Punjab should receive similar treatment as has been or might be granted to other minorities in the matter of political rights.

We would, respectfully suggest that for the elucidation of our case we should be given a hearing before the final decision is taken. We may and that we have no other communal safeguards to ask for so far as provision in the Constitution is concerned and that satisfaction along the lines suggested will go a long way to win over the Sikh masses for the national Cause."

**Shri R. K. Sidhva :** Who has signed it ?

**Sardar Bhopinder Singh Man :** The Sikh members and Sikh representatives signed it. The question is that we have to win over the confidence of the minorities. I do repeat here that it is going back upon certain things which you conceded yourself.

**Shri R. K. Sidhva :** There is nothing in the, article to say that we are going back.

**Mr. President :** Let me have a copy of the document. I shall have it ascertained from Sardar Patel whether it is the representatives' document or whether there is any other document and then I shall communicate it to you.

**Sardar Bhopinder Singh Man :** Mr. Sidhva knows perfectly well that in the light of the President's decision today that it is a reopening of the case....

**Mr. President :** So far as the question of reopening is concerned the case was put on the basis that a decision has already been taken and I said that even if decision has been taken it can be reopened. By reopening I did not mean going back on anything that has been done. Reopening only meant that objection was taken on the ground that a certain decision had been taken and this decision which we are going to take now would be inconsistent with that; and I held that even if it was so, it can be taken up, if 25 per cent. of the Members were in favour of reconsidering the question.

**Shri H. V. Kamath :** Sir, I move:

"That in amendment No. 63, at the end of clause (2) of the proposed article 299, the words 'for such action as Parliament may deem necessary' be inserted."

It is likely that when the report is presented to the President by the Special Officer appointed under this article, Parliament may consider it necessary or even essential

that in view of the advance or the progress registered by the Scheduled Castes and Tribes it would be in the best interests of the country to abolish totally the distinction called Scheduled Castes or Tribes and there will be one big unified Hindu community. If this action were to be necessary, it cannot be left to the President alone. It is Parliament which has been invested with power in this Constitution to take the decision. Constitutional safeguards have been guaranteed to the Scheduled Castes and Tribes under this Constitution and it is only Parliament that can take a fundamental decision of this nature. Therefore, I desire that the report presented to Parliament should not be taken up for action by the President but the action taken shall be by the Parliament and not the President.--

There is another amendment No. 75 which was in respect of amendment No. 63. But unfortunately that amendment has been substituted by amendment No. 64 just moved by Mr. Munshi. But my amendment would apply in a modified form to this amendment as well. In that amendment (No. 63) with regard to the explanation in that article.....

**Mr. President :** There is no explanation in amendment No. 63.

**Shri H. V. Kamath :** Instead of explanation we have got clause (3) in amendment No. 64. That amendment proposes reservation to the Anglo-Indian community as such. A specific reference to the Anglo-Indian Community is, in my humble judgment out of place. We have provided safeguards for the Scheduled Castes and Tribes.....

**Mr. President :** As, a matter of fact I think that the substance of No. 75 has been taken in clause (3). Clause (3) of amendment No. 64 does not include the Anglo-Indian community now.

**Shri H. V. Kamath :** It does, Sir. The last words are "the Anglo-Indian community" and I want that to be deleted.

**Mr. President :** Yes, I see.

**Shri H. V. Kamath :** The reference to Scheduled Castes and Tribes is construed as meaning also such backward classes as the President may by order specify after receiving the report of the Commission. The Anglo-Indian community is neither a backward class nor a Scheduled Caste. I do not know how it can be lumped together with these two classes- Scheduled Castes and backward communities. The only safeguard that will be provided to the Anglo-Indian community is representation in the House of the People and State Legislatures through nomination, in case the President or the Governor thinks that that community is not adequately represented in those legislatures, and that too for a period of ten years, After that the safeguard automatically lapses.

As regards the safeguard given to the Anglo-Indian community regarding reservation in the services, the Anglo-Indian community, not being a backward community at all, is even today, over-represented in some services, far in excess of its proportion to the population. Therefore I feel that in this clause (3) reference to the Anglo-Indian community is absolutely unnecessary. The Anglo-Indian community is not at all a religious community: it is at best, or at worst, a racial community and it has a racial basis. I think we should not give encouragement to racial communities in this country. If at all they want to join any minority they should join the Christian

community in India. They have no right to exist as a separate Anglo-Indian community. I hope that necessary changes will be made in clause (3) of this article.

**Shri Brajeshwar Prasad :** Sir, I move:

"That in amendment No. 63 of List II (Second Week), for the proposed article 299. the following be substituted :--

'299. (1) There shall be special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.

(2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.

(3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.

(4) The salaries, allowances and pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.

(5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify and as to the sums that should be separately allotted in the annual budget of the Union Government and of each State Government for the purpose; and the President shall cause all such recommendations to be laid before Parliament.

(6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.

(7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special Officer for the Union.

(8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.

(9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.

(10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons

(a) Doctors

(b) Scientists

(c) Sociologists and

(d) Anthropologists

(11) Parliament shall have the power to repeal or amend any or all of the Provisions of this Article."

**Sardar Hukam Shigh :** Sir, I move....

**Shri R. K. Sidhva :** Sir, this amendment was lost on a previous occasion. The inclusion of Christians, Sikhs and Parsees has been turned down.

**Mr. President :** This amendment relates to article 299. How could it have been lost, as article 299 has not been considered at all ? A similar amendment has been lost with reference to article 296 and not 299.

**Shri R. K. Sidhva :** Here the Christians, the Sikhs and Parsees are mentioned. The principle has been rejected by the House in a previous article.

**Sardar Hukam Singh :** Mr. President, Sir, I beg to move :-

"That in amendment No. 63 above, in the explanation to clause (2) of the proposed article 299, after the word 'means' the words 'the Muslims, the Christians, the Sikhs, the Parsees, the Anglo-Indians' be inserted."

Sir, I would not go over the ground that has already been covered....

**Shri K. M. Munshi :** May I rise to point of Order? The words of my amendment No. 64 only refer to "all matters relating to the safeguards", that is only where safeguards are provided by the Constitution. No safeguards have been provided for the Muslims, Christians, Sikhs and Parsees. The only safeguards in the Constitution so far accepted are with regard to Anglo-Indians and the Scheduled Castes and Scheduled Tribes. Therefore, Sir, my submission is that there are no safeguards for the other communities and this amendment is out of order.

**Sardar Hukam Singh :** Under the Constitution there are safeguards.

**Shri K. M. Munshi :** There are no safeguards for these communities.

**Sardar Hukam Singh :** Under article 23 there are safeguards for minorities. That is also included in the Constitution.

**Shri K. M. Munshi :** Article 23 is fundamental, cultural right for which the safeguard is the Supreme Court and not the Special Officer.

**Mr. President :** The Special Officer may be called upon to report as to how that has worked. You can go to the Federal Court or to the Supreme Court and get its decision whether a particular article of the Constitution has been broken, but then the officer may also report whether a particular article in the Constitution has been given effect to and so that is what Sardar Hukam Singh wants.

**Shri K. M. Munshi :** Sir, that is not a safeguard. It is not, with great respect, a safeguard. 'Safeguard' means a political safeguard for a community which has been provided, but fundamental right belongs to every citizen and if his right is infringed the only remedy that he has is to go to the Supreme Court. Supposing an officer is

invested with the power to investigate into it, it has no value.

**Mr. President :** It has a certain value for administration purposes and the, Government can take note of the report of an officer that a particular right which has been conferred is not being observed or is not being respected. The Administration can take note of that and can deal with that.

**Sardar Hukam Singh :** If the violation is not taken to the Federal Court, then, would it not be the duty of the Government to see whether the minorities are being fairly treated or not or whether they are getting the justice or not ?

I am not afraid of the answer. I cannot go over the ground already covered and I would submit only one or two things. Even if my request and my amendment under 296 has been rejected, then it is all the more necessary that under 299 the Special Officer should be invested with the powers and authority to go into details of the safeguards and rights of all minorities and it should not be restricted to these Scheduled Castes and Scheduled Tribes alone. We have been told here that we should trust our leaders and we should trust the future. This is all right and everything conceded. Granting that everybody is honest the Government wants to do justice to every community, what then unless the Government know whether anything amiss has been done, whether any unfair treatment has been meted out, whether any pledges have been violated or whether fair treatment is being meted out to everybody ? Unless the Government has some source of knowing it, how will it be in a position to redress the wrongs ? Therefore, my submission is that even if it was considered that it was not necessary to include these minorities and to specify them under 296, it is very essential that the officer if he is to be appointed ought to go into these things to find out and report on the working of the Constitution so far as all the minorities are concerned, and it should not be restricted to one or two- classes only.

I take this opportunity of answering one thing that has already been said I put a question, but that has nor been answered. I request the Honourable Mr. Munshi to answer that. I was told by the Honourable Sardar that if the Sikhs are sorry, then they can return what they have got and they can have the safeguards if they want. That was my complaint. I should like to know what they have got. We are told that four backward classes have been included. Where are they included in any Schedule ? That is, what I want to know. There was a schedule and we had to sacrifice everything for getting those four backward classes included in that Schedule. This Schedule is absolutely gone now. Under article 300A, it is left to the President to consult the Governor and then to specify who would be the Scheduled Castes. I have paid the price, as I am told I have sacrificed everything that I had, but I have got nothing in the Constitution. This is my complaint and that shall be answered.

(Amendment No. 80 was not moved.)

**Mr. President :** These are all the amendments we have got. Does any Member wish to say anything ?

**Honourable Members :** No, Sir.

**Shri K. M. Munshi :** Sir, I have very few words to say in reply. As regards the amendment of my honourable Friend, Mr. Chaliha, he will see that the Special Officer's report is a kind of expert's report which comes before the, Parliament. The Parliament

certainly will gave a right to discuss it. Any member can raise a debate on it, but surely a report of an expert, who has collected facts, cannot be modified or added to by a legislature. It only contains the materials placed before the Parliament for its decision and therefore, I submit, Sir, that amendment No. 71 is really inappropriate.

With regard to amendment No. 80 of honourable Mr. Kamath, I am really surprised that he wants the deletion of the words "and also to the Anglo-Indian community". By sections 297 and 298 the Constitution has given specific safeguards to the Anglo-Indian community and the whole object of this article 299 is to see that the working of such of the political safeguards given to some of the communities as have been accepted by the Constitution should be properly investigated into and placed before the Parliament. If the Anglo-Indian community has certain safeguards, then it is the function of this officer to scrutinize their working.

Then as regards amendment No. 74 where the honourable Sardar Hukam Singh wants to introduce the Muslims, the Christians, the Sikhs and the Parsees in addition to Anglo-Indians, I am of opinion, Sir, with great respect that the safeguards contemplated by article 299 are not fundamental rights which are attached to very citizen. They are only 'safeguards', safeguards meaning political safeguards for the protection of certain well defined sections of the citizens. Otherwise, it would involve the special officer going into the working of all the fundamental rights given by the Constitution. So far as I understand my amendment, it only means that the Scheduled Castes, the Scheduled Tribes, the Anglo-Indian community and the backward classes who are under the fundamental right article 10, given specific safeguards, and the officer should examine whether they have been properly worked or not. That being this thing, it is not possible for me to accept the words "Muslims, Christians, Sikhs" etc. mentioned in amendment No. 74.

Sir, I have only one word more to say with regard to Sardar Bhopinder Singh Man's amendment No. 67.

**Shri H. V. Kamath :** What about amendment 72 ?

**Shri K. M. Munshi :** As regards amendment No. 72, it is not necessary to put in the words suggested, *viz.*, "for such action as Parliament may deem necessary". Once the report is before the Parliament, as I stated already, a debate can be raised on it and a resolution can be moved. It is implied; it is not necessary to add these words.

Sardar Bhopinder Singh Man by his amendment No. 67, wants that there should be a special officer in each State. Well, if the special officer envisaged in this article requires assistance of other officers, they will be appointed. But there is no need for appointing a separate officer for each State. That would only complicate matters. The object is to see whether the whole thing is worked on one principle throughout the country. We do not want separate officers in each State as permanent guardians. The honourable the Mover of the amendment has also introduced the word 'minorities' in it. We have removed the word 'minorities' from Article 296 and it is entirely inappropriate in 299. In passing, he tried to reply to what Sardar Patel had already said on the safeguards for Sikhs. I do not want to repeat what Sardar Patel said. I shall deal with only one point to which he referred and which I think I should refer. I was a member of the Committee appointed for the purpose of looking into the Sikh question. From the beginning of the Advisory Committee and the Minorities Committee, I had something or other to do with all the stages of the negotiations. I

can assure the House that at the time when the Advisory Committee met on the last occasion, there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes who are economically and socially backward, and the Scheduled Castes and Tribes who have a special claim of their own, no other minority should be recognised in the Constitution. The honourable Member read some statements made by certain Sikhs. Unfortunately, in the short time. at my disposal. I have not been able to reclaim the different documents; but of one thing I can assure the House. When the matter came up before the Advisory Committee, the Sikh members withdrew every sort of claim for any safeguards whatever in consideration of the Sikh scheduled classes being placed among the Scheduled Castes and given the privileges, which the latter were entitled to. Any cry raised now that they did not do so is an after- thought.

I do not want to say anything more about it and the kind of allegations which have been made are entirely unwarranted. Even with regard to the Muslim community, the debate centered round the question of representation. But it was understood that even so far as they were concerned also, the claims as regards service were given up. They were not expressly mentioned in the report. The basis of that decision was that we should not recognize in the Constitution any religious minority of this nature. That was the basis. I submit it is too late to go back upon this.

**Sardar Hukam Singh :** My question has not been answered. Have these four Sikh classes been included in the Scheduled Castes ?

**The Honourable Dr. B. R. Ambedkar :** Of course, they will be.

**Shri K. M. Munshi :** The President is empowered to issue, under article 300-A, a list of Scheduled Castes. In that. these Scheduled Castes will find a place.

**Sardar Hukam Singh :** Where is the guarantee that the President will include these people in that list ? We have given up all safeguards to secure this in the Constitution. That has not been done.

**Shri K. M. Munshi :** The President has that power. The President is sure to keep to the pledge which has been given. This decision finds a place in the Advisory Committee's Report that the Sikh Scheduled Castes will form part of the Scheduled Castes and provided with the safeguards under article 296 which we have already passed. There is no question of going back upon that pledge, you may take it from me. I repeat the Sikh Scheduled Castes will be included in the list of Scheduled Castes and Scheduled Tribes in the Punjab.

**Mr. President:** I will now put the amendments to vote, one by one. Although these amendments have been moved with reference to amendment No. 63, they would fit in with amendment No. 64 and therefore they have been allowed to be moved. If any one is accepted, we shall put it in the right place.

The question is:

"That in amendment No. 63 above, in clause (1) of the proposed article 299, after the words 'by the President' the words 'and a special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be

be added."

The amendment was negatived.

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

"That in amendment No. 63, above, in clause (2) of the proposed article 299, after the words 'under this constitution and' the words 'their representation in different legislatures and services of the country, be inserted."

The amendment was negatived.

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

"That in amendment No. 63 above, at the end of clause (2) of the proposed article 299, the words 'for its approval, modification or addition' be added."

The amendment was negatived.

**President :** The question is:

"That in amendment No. 63 above, at the end of clause (2) of the proposed article 299, the words 'for such action as Parliament may deem necessary' be inserted."

The amendment was negatived.

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

"That in amendment No. 63 above, in the Explanation to clause (2) of the proposed article 299, after the word 'means' the words 'the Muslim, the Christians, the Sikhs, the Parsees, the Anglo-Indians' be inserted."

The amendment was negatived.

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

"That in amendment No. 63 above, in the Explanation to the proposed article 299, for the words 'and includes the Anglo- Indian community' the words 'and includes such community or communities as the President may then specify' be substituted."

The amendment was negatived.

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

"That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words 'Muslim, Christians, and Sikhs' be added."

The amendment was negatived.

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

"That in amendment No. 64 above, in clause (3) of the proposed article 299, the words 'to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of

article 301 of this Constitution by order specify and' be deleted."

The amendment was negatived.

**Mr. President:** Amendment No. 80. It was not moved by Mr. Munavalli. I think it is covered by the other amendment. I had better put it to vote.

The question is:

"That in amendment No. 64 above, in clause (3) of the proposed article 299, the words 'and also to the Anglo-Indian community' be deleted."

The amendment was negatived.

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

"That in amendment No. 63 of List II (Second Week), for the proposed article 299, the following be substituted :-

> '299. (1) There shall be a special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
>
> (2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.
>
> (3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.
>
> (4) The salaries, allowances and pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.
>
> (5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President way on receipt of the report of a commission appointed tinder clause (1) of Article 301 of this Constitution by order specify and as to the sums that should be separately allotted in the annual budget of the Union Government and of each State Government for he purpose; and the President shall cause all such recommendations to be laid before Parliament.
>
> (6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.
>
> (7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special officer for the Union.
>
> (8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.

(9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.

(10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons:--

(a) Doctors

(b) Scientists

(c) Sociologists and

(d) Anthropologists

(11) Parliament shall have the power to repeal or amend any or all of the provisions of this Article'."

The amendment was negatived.

**Mr. President :** I think these are all the amendments. I put article 299 (amendment No. 64), as moved by Mr. Munshi.

The question is:

"That with reference to amendment No 63 above, for article 299, the following be substituted:--

| | |
|---|---|
| Special Officer for Scheduled Castes, Scheduled Tribes etc. | '299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President. |

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguard, at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community'."

The motion was adopted.

Article 299, as amended, was added to the Constitution.

**Mr. President :** We shall adjourn now. We sit again at four o'clock

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

*The Assembly met after Lunch at Four of the Clock. Mr. President*

*(The Honourable Dr. Rajendra Prasad) in the Chair.*

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## STATEMENT RE: REPORT OF MINORITIES ADVISORY COMMITTEE.

**Mr. President :** Before we take up the other articles which are on the Order paper today I desire to make one statement. When articles 296 and 299 were under discussion this morning, the Honourable Sardar Patel referred to a written document. One honourable Member, Sardar Bhopinder Singh Man, read out portions of a document which he thought was the document to which reference was being made by the Honourable Sardar Patel. As I had some doubts, I thought it would not be right to let only a part of the document go on the record and I requested the honourable Member to read out the whole of the document which he had in his hand which he kindly did. Since then I have made enquiries and I find that that is not the document to which the Honourable Sardar Patel referred in his speech. I desire to read out the document which Sardar Patel had in mind so that the other document having gone on record, this might also go on record and any misunderstanding which might have been created on account of that document may be cleared.

**Sardar Sochet Singh** (Patiala & East Punjab States Union) : Is it possible to circulate copies of this Document ?

**Mr. President :** Of course, but I shall read it now. This document is dated the 10th May 1949. The Advisory Committee meeting was held on the 11th May and evidently the decision that was taken in the Advisory Committee was in pursuance of this document. It is signed by three. Members, the honourable Sardar Ujjal Singh, the honourable Sardar Jogindar Singh Mann and Sardar Gurbachan Singh Bajwa. I will now read out the whole document.

"A meeting of the Sikh Members of the East Punjab Legislative Assembly and of the Constituent Assembly was held in Delhi on the 10th May. The following members attended:-

1. Sardar Kapoor Singh
2. Gyani Kartar Singh
3. Sardar Swaran Singh
4. Sardar Ishar Singh Majhail
5. Sardar Ujjal Singh
6. Sardar Joginder Singh Mann
7. Bhai Piara Singh
8. Sardar Inder Singh
9. Sardar Gurbachan Singh Bajwa
10. Sardar Dalip Singh Kang
11. Sardar Ajit Singh

12. Sardar Shiv Saran Singh

13. Sardar Narottam Singh

14. Sant Narinder Singh

15. Sardar Hukam Singh

16. Sardar Tara Singh

17. Sardar Rattan Singh Moga

18. Sardar Rattan Singh Logarh

19. Sardar Gurbachan Singh, Ferozepore

20. Sardar Sajan Singh Mirjandpuri

21. Sardar Jagjit Singh Mann

22. Sardar Sardul Singh.

Sardar Kapoor Singh, Speaker, East Punjab Legislative Assembly, presided. The following proposals were unanimously adopted in regard to the safeguards for Sikh Minorities to be provided in the Constitution. These proposals have also the support of almost all the Members who could not be present at the meeting.

1. The Sikh Backward Classes, *viz*., Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other Political concessions in the East Punjab and PEPSU as may be provided for the Scheduled Castes. For this purpose, either these Classes may be included in the Schedule Of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them on population basis out of the quota reserved for Sikhs.

2. In the East Punjab, seats should be reserved for Sikhs according to their population with right to contest additional seats.

3. In Provinces other than the East Punjab and the Centre, the Sikh Minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and when adequate numbers are not returned by election, their strength should he made good by nomination.

4. The Sikhs will be prepared to give up reservation in the East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population.

In case these proposals are not accepted, the whole question of safeguards for Sikh Minorities may be referred to arbitration in accordance with the assurances given by the Congress.

(Sd.) Ujjal Singh

(Sd.) Joginder Singh Mann

(Sd.) Gurbachan Singh Bajwa.

Dated the 10th May 1949.

I do not desire to make any comment. If both the documents are read together, Members will be able to draw their own inferences.

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### *Article 48*

**Mr. President :** We shall now take up the various articles which are mentioned in the Order paper today beginning with article 48. These are all in the nature of amendments to articles which have already been accepted. Wherever necessary, I suppose the formal permission of the House will be taken altering the decisions previously taken. Article 48.

**Shri T. T. Krisnamachari** (Madras : General) : Mr. President, Sir, from Article 48 till practically the end of article 303 of the First Schedule, all of them, excepting 273A and 302 AA. require reopening of articles that have been passed already and I therefore submit that the permission of the House for reopening these articles might be taken, if the Chair so wishes.

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

"That the House give leave for reopening these decisions.

The motion was adopted.

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

"That in clause (3) of article 48, for the words 'The President shall have an official residence' the words 'The President shall be entitled without payment of rent to the use of his official residences' be substituted."

Sir, I see that my Friend Mr. Sidhva has an amendment to my amendment. But I would invite his attention to the amendment this House has accepted yesterday in respect of Part VIA--the amendment moved by any friend the Honourable Santhanam--which reads like this :

"Unless he has his own residence in the capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances.....etc."

Subsequently the article relating to the Governors had to be brought into line with this provision. This was accepted by the House yesterday. That is my reason for bringing forward this amendment. I do hope Mr. Sidhva will not, therefore, press his amendment, in view of the fact that we are merely following the line indicated by the House in accepting the Honourable Mr. Santhanam's amendment of yesterday, in respect of Part VIA.

**Shri R. K. Sidhra :** Sir, the Honourable Shri Santhanam's amendment related to Rajpramukhs; but my amendment says that as far as the President is concerned he will be entitled to use the Government House as his official residence without any rent. So I do not know how Mr. Santhanam's amendment will meet this purpose.

**Shri T. T. Krishnamachari :** I would ask my Friend Mr. Sidhva to read the

amendment once again. It says--

"The President shall be entitled without payment of rent to the use of his official residences."

Actually Mr. Sidhva has missed the point. The words used are "official residences." The President may have more than one official residence. The Governor-General has a residence--in Delhi and another in Simla. Therefore, these words are used and the expert-advice is that this will fill in the bill completely, and so I feel no change is required. I would therefore, request Mr. Sidhva not to press his amendment.

**Prof. Shibban Lal Saksena** (United Provinces: General): Sir, Mr. Sidhva wants to say that the Government House will be used only for the residence of the President. But the future Parliament may like to put it to some other use also.

**Shri R. K. Sidhva :** I thought I need not press my amendment, but from what Prof. Shibban Lal has said. I feel that I must press it. He suggested that the Government House may be utilised for some other purpose. It may be utilised by a wandering Sanyasi as Prof. Shibban Lal desires. I do not want any doubt to be left, and so I want the words "Government House" to be specifically mentioned, as I have done in my amendment. It may be utilised for other purposes also, as we have used it for the exhibition. But it should be laid down that the Government House should be utilised for the residence of the President.

**Mr. President :** But Government House is not excluded for the residence of the President, by Mr. Krishnamachari's amendment. Need we have any discussion about this matter?

**Shri H. V. Kamath :** Mr. President, Sir, the other day I opposed the provision regarding residences without payment of rent for Supreme Court Judges, but Dr. Ambedkar in reply pointed out that articles already passed by this House have provided residences for the Governors and the President without payment of rent, and his answer to me was that at that time I did not object to the provision of residences to the Governors and President without payment of rent. Now it seems some doubt has arisen in his mind whether those earlier articles would be open to any other interpretation, that they may be interpreted as meaning residence on payment of rent, and not without payment of rent. His argument the other day was that as regards judges, those who come from places far off from the capital should not be put to the trouble of searching for houses in Delhi. That was the point that he made out the other day. On the same argument, I would suggest to him that it would not be improper or unwise to provide the Ministers also with residences without payment of rent. After all, when you provide the supreme judiciary with rent-free residences, and the Executive Head also a similar rent-free residence, I think it would be a wise and reasonable course to provide these other dignitaries with like residence--I mean the Ministers as well. I hope the House will agree with me that there must be this constitutional provision.

**Mr. President :** That question does not arise in connection with the amendment before the House.

**Shri H. V. Kamath :** Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have dome doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the

President, without payment of rent. We should, proceeding logically, provide rent-free accommodation to Ministers also.

**The Honourable Dr. B. R. Ambedkar :** Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be not proper to remove the Ministers from the purview and jurisdiction of Parliament.

**Mr. President:** I would like to put it to vote.

The question is:

"That in clause (3) of article 48, for the Words 'The President shall have an official residence, the words 'The President shall be entitled to the use of the Government House without payment of rent' be substituted."

The amendment was negatived.

**Mr. President :** Then I put the amendment moved by Shri T. T. Krishnamachari.

The question is:

"That in clause (3) of article 48, for the words 'The President shall have an official residence' the words 'The President shall be entitled without payment of rent to the use of his official residences' be substituted."

The amendment was adopted.

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**Shri T. T. Krishnamachari :** Sir, I move amendment No. 360.

"That clause (5a) of article 62 be omitted."

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule III A and also the Schedule which deals with Instructions to Governors. The clause in question reads thus: "(5a) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule III A." Actually, since Schedule III A is not moved, this clause becomes superfluous. Therefore I have

moved for its omission.

**Shri H. V. Kamath:** Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear.

That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified I hope Dr. Ambedkar will do so, and not leave it vague as at present.

**The Honourable Dr. B. R. Ambedkar :** Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question. I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliament democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench Division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his

Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

**Shri H. V. Kamath :** If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tentamount to a violation of the Constitution and will he be liable to impeachment ?

**The Honourable Dr. B. R. Ambedkar :** There is not the slightest doubt about it.

**The Honourable Shri K. Santhanam** (Madras: General): I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers. When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

**The Honourable Dr. B. R. Ambedkar :** I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or whether he was free to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

**Shri H. V. Kamath :** Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision?

**The Honourable Dr. B. R. Ambedkar :** We cannot discuss this question in this way.

**Mr. Naziruddin Ahmad :** We have now opened up a very debatable proposition, namely, whether the Ministry and the President would be bound to follow the decision of Parliament. The ruling on the British Constitution on this point will not really be relevant. The British Constitution has long-established conventions. There is no statutory enactment. The powers of the King and of the Executive are well-known through the centuries. But ours is going to be a statutory constitution. So I think we should have some provision to make the point clear. Otherwise it may one day lead to an impasse. The precedent of the British Parliament in the King's Bench Division will not at all help us. So far as the Canadian precedent is concerned, that is also is based upon conventions and understandings established for a long services of years. So far we have established no precedent at all to fall back upon. But as this is reopen a dead subject I do not think we need proceed further with this discussion. But we cannot take the opinion of Dr. Ambedkar as binding.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Sir, I did not want to interpose in the debate, but I find that the point raised as to the necessity of a provision is entirely without substance. We have provided in article 61(3) that the Council of Ministers shall be collectively responsible to the House of the People. If a

President stands in the way of the Council of Ministers discharging that responsibility to the House he will be guilty of violation of the Constitution and he will be even liable to impeachment. Therefore it is merely a euphemistic way of saying that the President shall be guided by the advice of his Ministers in the exercise of his functions. This Council of Ministers will be collectively responsible to the House of the People, and the House of the People must meet all situations in regard to the budget, in regard to legislation, in regard to every matter connected with the administration of the country. Therefore, if the Council of Ministers is to discharge their responsibility, it will be the duty of the President to see that the Constitution is obeyed and therefore article 61 along with clause (3) of article 62 make quite clear all the incidence of responsible government. Otherwise we will have a detailed list of all the incidence of responsibility; that the Prime Minister is responsible when dissolution of the Parliament is to be effected, what exactly the advice or the occasions when the advice tendered by the Council should be followed by the President, etc. Some such attempt was made in Ireland on account of the distrust of the Crown in those days. In the earlier Irish Constitution, some provisions were inserted stating in detail what are the incidence of responsibility. Now, if you just look at Canada, or Australia, or any other Constitution in which responsible government obtains or some semblance of responsible government obtains, there are no detailed provisions. The German pandits who framed the German Constitution attempted some kind of definition but that resulted in failure as we know as soon as a conflict between the powers of the President and of the Ministry arose, and that led to the collapse of the German Reich. Therefore, under those circumstances, I venture to submit that there is absolutely no necessity for setting out in detail what are the functions and the incidence of responsible government in an article of the Constitution.

**Prof. Shibban Lal Saksena :** Mr. President, Sir, we have framed a Constitution in which we have provided- for even very small details. Our Constitution differs from the Constitution of England in that the English Constitution is based on conventions. Here in a vital matter like this, we have not stated anywhere that the President is bound to call the Leader of the majority party to form the Cabinet and that he is bound to accept the advice of the Ministry. The Schedule providing for an Instrument of Instructions has also been taken away. Dr. Ambedkar has just now explained to us that conventions on this question have developed in other countries. I had hoped when Schedule IV was being deleted, provisions will be made in the Constitution to cover these points. In fact, at one time Dr. Ambedkar told me that we should frame all these details because we were just commencing a big experiment in democracy. Now that we are providing even for small details in the Constitution, I do feel that these fundamental things, that the President shall be bound to call the leader of the majority party to form the Cabinet, and that he will be bound to accept the advice of the Cabinet, should be incorporated in some instrument of instructions or in some articles of the Constitutional.

**Mr. President :** I think we have discussed this matter enough. Mr. Krishnamachari, do you want to say anything ?

**Shri T. T. Krishnamachari :** No. Sir, Dr. Ambedkar has replied.

**Shri H. V. Kamath :** What is your own reaction to the debate. Sir ? The issue was originally raised by you.

**Mr. President :** It is not a question of my reaction. It is for the House to decide.

**Mr. Naziruddin Ahmad :** Permission may be given to reopen the matter.

**The Honourable Shri K. Santhanam :** This is purely consequential.

**Mr. President :** I have to put this amendment to the vote. That is all my reaction.

The question is

"That clause (5a) of article 62 be omitted."

The amendment was adopted.

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

"That clause (6) of article 67 be omitted."

This is a very important clause and I can appreciate the vigilance of my honourable Friend Mr. Shibban Lal Saksena in moving a negative amendment to this amendment. I would at once tell the House that this important clause which deals with election to the House of the People on the basis of adult franchise is not being omitted in any lighthearted manner. I would like to ask the House to refer to article 289-B which reads thus:-

> "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult franchise; that is to say, every citizen, who is not less than twenty one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or I illegal practice, shall be entitled, to be registered as a voter at any such election."

Substantially the whole of clause (6) of article 67 has been produced in 289-B which the Drafting Committee felt was the proper place for putting in the qualifications of voters. Therefore, Sir, clause (6) of article 67 is no longer necessary and that is the provocation for my moving this amendment.

(Prof. Shibban Lal Saksena did not move his amendment.)

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

"That clause (6) of article 67 be omitted.'

The amendment was. adopted.

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

"That for clause (7) of article 67, the following clause be substituted:-

> '(7) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide'."

Sir, the original clause (7) reads thus:

> "Parliament may, by law, provide for the representation in the House of the People of territories other than States."

The House will remember that we passed yesterday a new article 67-A which is more or less an enabling article. It does not wholly take away the need for a clause like clause (7) and it was felt that this clause must be amplified in there manner suggested in my amendment.

**Mr. President :** There is no amendment to this. The question is:

"That for clause (7) of article 67, the following clause be substituted :--

> '(7) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide'."

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The amendment was adopted.

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

"That for the proviso to article 109 the following proviso be substituted:--

'Provided that the said jurisdiction shall not extend to--

> (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been continued in operation after that date;
>
> (ii) a dispute to which any State is a party, if the dispute arises out of any provision of treaty, agreement, covenant, engagement, *sanad,* or other similar instrument which provides that the said jurisdiction shall not extend to such dispute'."

I would request honourable Members to refer to, the Draft Constitution before this article was passed by the House. They will find these two provisos reproduced there word for word. It was felt at the time we moved this Draft Article 109 that in the circumstances in which we were then placed we could not ask the House to pass a proviso like proviso (1) and hence there is no proviso in the article as accepted-by the House covering the case of States in para III as we had for its omission and only the incorporation of proviso (2) in the terms in which it has been then accepted by the House. But now circumstances have, changed and we find that a proviso similar to

proviso (1) of the original draft has to find a place and therefore I have moved this amendment. I hope the House will accept it.

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

"That for the proviso to article 109 the following proviso be substituted:

'Provided that the said jurisdiction shall not extend to--

> (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date;
>
> (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad,* or other similar instrument, which provides that the said jurisdiction shall not extend to such dispute'."

The amendment was adopted.

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**Article 112**

**Shri T. T. Krishnamachari :** May I request you to hold over this article till tomorrow ? There are certain Members in this House who have represented that they would like to examine this article a little further, and if it is not inconvenient, I would request the chair to hold it over till tomorrow.

**Mr. President :** It is held over. We will take up amendment No. 365. Article 119.

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**Shri T. T. Krishnamachari :** In moving amendment No. 365, I would like you to permit me to incorporate in this amendment, amendment No. 388 which I have tabled today. Sir, I move :

"That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added.

> (2) The President may, notwithstanding anything contained in clause (1) of proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may, after such hearing as it thinks fit, report to the President its opinion thereon."

This again happens to be part of article 119 as it originally appeared in the Draft Constitution. Practically word for word, except for the minor variations, I have introduced in my subsequent amendment with regard to the last three lines of this amendment, it appeared in the original article 119. We have now felt that it ought to be restored, though it was not originally put in 119 as it was passed by the House. The intention is more or less self-explanatory. It is a question of empowering the President

to refer a matter like the one mentioned in the amendment to the Supreme Court for its opinion and for the Supreme Court to report to the President its opinion thereon and it varies vitally from the provision of article 119 as it stands now. It is found necessary in circumstances now present in view of the enlargement of the scope of the Constitution by the additions that have since been made.

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

"That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added:-

> '(2) The President may notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may' after such hearing as it thinks fit, report to the President its opinion thereon'."

The amendment was adopted.

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

"That in clause (3) of article 135, for the words 'shall have an official residence' the words 'shall be entitled without payment of rent to the use of his official residences' be substituted."

This refers to the Governor. The amendment to article 48 referred to the President and it has been accepted by the House.

**Shri H. V. Kamath :** In my humble judgment there is a little discrepancy here. We have provided rent-free residences to the President and the Judges of the Supreme Court at the Centre. Similarly, on the same reasoning, should we not provide rent-free residences to the Governor and the High Court Judges? Why do we provide it for the Governor only?

**The Honourable Dr. B. R. Ambedkar :** Logic cannot be employed to make a proposition absurd.

**Mr. President :** The question does not arise here. The question is:

"That in clause (3) of article 135, for the words 'shall have an official residence' the words 'shall be entitled without payment of rent to the use of his official residences' be substituted."

The amendment was adopted.

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

"That in clause (3) of article 135, for the words 'the Legislature of the State the word 'Parliament' be substituted."

The appointment of the Governor is now being made by the President. It is therefore felt that it would not be proper to leave-his emoluments to be decided by the legislature of the State as it originally was when we had intended that the Governor

should be elected. This should have been amended earlier, but we found that we could do it only at the last stage. Therefore, I am moving that the emoluments of the Governor shall be determined by Parliament by law.

**Prof. Shibban Lal Saksena :** I am glad that the change is being made. I would only like to know who will pay the salary of the Governor--will it come out of the provincial exchequer or the Central exchequer ?

**Mr. President :** It will be a charge on the provincial revenues.

The question is :

"That in clause (3) of article 135 for the words 'Legislature of the State' the word Parliament be substituted."

The amendment was adopted.

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

"That clause (4) of article 144 be omitted."

Sir, clause (4) is similar to article 62(5) (a) which has been omitted and the reason for moving this is that this House has decided that there should be no Fourth Schedule to this Constitution, and as this clause is entirely dependent on the fact that there should be such a Schedule, it is no longer necessary.

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

"That clause (4) of article 144 be omitted."

The amendment was adopted.

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

"That clause (2) of article 149 be omitted."

Clause (2) of article 149 is much the same as the previous article which the House has accepted, in regard to the House of the People. This clause (2) as it now stands provides for election on the basis of adult suffrage and so on and we find that this has been transposed. Now article 289-B deals with elections to Parliament and with elections to the Legislature of a State. Therefore this clause is not necessary.

**Prof. Shibban Lal Saksena :** I am not moving my typed amendment which reads:

"That amendment 369 of List IV (Second week) be deleted."

**Mr. Naziruddin Ahmad :** Some of the Members including my humble self find it difficult to follow these changes of mind. When clause (2) of article 149 was there, then article 289-B should not have been passed : we should have passed immediately another amendment just to remove mere duplication. So far as the present amendments are concerned they have been circulated to us only today. The Members have had no time to consider them. The result of these hurried and rapid amendments might be that there might be other anomalies requiring further clarifications and corrections. It is difficult to follow them and the way we have been amending our old decisions on the ground of anomalies and duplications shows the danger of adopting them without real consideration.

**Mr. President :** I think all these articles were introduced under a separate part dealing with elections, and so it was considered necessary to remove all those which dealt with elections to this one place.

**Mr. Naziruddin Ahmad :** Why were they not thought of at the time of those amendments ?

**Shri T. T. Krishnamachari :** The explanation that the Chair has given is perfectly right. Actually we thought of a complete chapter and at the time that the chapter was introduced and accepted by the House we did not move for the deletion of this article because it was thought that it could be done at the end of debate in the Second Reading. We felt that various other things would arise and an amendment could be made to deal with these articles at the end. That is why we have brought it up now.

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

"That clause (2) of article 149 be omitted."

The amendment was adopted.

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

"That in clause (4) of article 149 for the words 'Legislature of the State' the word 'Parliament' be substituted."

The reason is this: that the powers that are given to the Legislature of a State under clause (2) have now been given under article 290 to Parliament. It was a question of delimitation of other things and therefore this alteration is necessary. I am sure that my honourable Friend, Mr. Naziruddin Ahmad, would not find fault with us for not having at that time moved for a deletion of these words in substitution for the word "Parliament" because we felt that we could do it later on and therefore we had left it out at that time. It was not that we were unaware of the fact that we were doing something contrary to clause (1) of article 149.

**Shri H. V. Kamath :** There is a little verbal slip committed by the Drafting Committee in this connection. The word "Parliament" ought to substitute the phrase "the Legislature of the State" otherwise if the amendment is accepted as it is, the clause would read as follows:

"With effect from such date as the Parliament may by law determine." The Parliament' is obviously incorrect.

**Shri T. T. Krishnamachari :** I am very grateful to my honourable Friend for drawing our attention to it. May I ask you to treat the amendment that has been moved by me as:

"the Legislature of the State?"

I am very grateful to my honourable Friend.

**Shri H. V. Kamath :** Why not treat it as your amendment further amended by me ?

**Prof. Shibban Lal Saksena :** This is an important amendment. Here it is said:

"Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as the Legislature of the State may by law determine....."

The intention was that when the new census is completed and the constituencies have been readjusted, then the Legislature of the State shall be the proper authority to readjust them. Now the powers have been given to Parliament. I welcome this from the point of view that it shall be somewhat uniform. But I want to know what is the machinery by which this will be done because the population of a province may increase and how with the new Constituencies be readjusted ? I am sure every province would like to be heard before such readjustment and as such there should be some provisions by which Parliament, before making such an amendment, should be able to know the views of the Legislature of the State concerned. Take my own province: the population is six crores and we may have 500 seats. But suppose the population, increases--then the constituencies may have to be changed. Or take another province where the population is small and it increases : will they be able to increase the constituencies according to the population ? We have to provide how the Legislature of a State can be heard before the Parliament takes its decisions.

**Mr. Naziruddin Ahmad :** I would submit only one word in reply to what has been said by Mr. T. T. Krishnamachari. For one of my remarks in the previous amendment, Mr. Krishnamachari says that I am finding fault with them. I am not really finding fault with him but I just explained my difficulty which is shared by a number of Members in the House. Mr. T. T. Krishnamachari is on the other hand finding fault with Members.

**Shri T. T. krishnamachari :** Sir, if I caused any annoyance to my friend I would like to apologise. In regard to my honourable Friend Prof. Shibban Lal Saksena's remarks I would ask him once again to read article 290. So far as the machinery is concerned the intention was that the machinery should be created and probably would be created. But at the moment we cannot say anything more than what is said in article 290 read with clause (4) of article 149.

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

"That in clause (4) of article 149 for the words 'the Legislature of the State' the word 'Parliament' be

substituted."

The amendment was adopted.

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**Shri T. T. Krishnamachari :** Sir, may I request you to hold over amendment No. 371 as it is analogous to amendment No. 364 regarding which you were good enough to accede to my request to hold it over till tomorrow. Sir, I move :

"That to article 230 the following words be added at the end:--

'or any decision made at any international conference, association or other body'."

I think my honourable Friend Mr. Kamath would certainly appreciate this amendment, particularly in view of the fact that he was so keen to elaborate the provisions of the relative entries in List I of Schedule VII. The article as amended would, read :

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament his power to make any law for any State or part thereof for implementing any treaty, agreement of convention with any other country or countries or any decision made at any international conference, association or other body."

I think this makes it perfect and meets with all contingencies that might occur in which Parliament will have to make legislation for implementing international agreements and decisions of international conferences to which this country is or will be a party.

**Shri H. V. Kamath :** I am quite satisfied with the statement made by my Friend Mr. Krishnamachari.

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

"That to article 230, the following words be added at the end:--

'or any decision made at any international conference, association or other body'."

The amendment was adopted.

**Shri T. T. Krishnamachari :** Sir, in respect to amendment No. 373 I would ask your permission to hold this over till tomorrow.

**Shri R. K. Sidhva :** I can understand changing one's mind after some days but this was presented to the House yesterday and so soon the honourable Member has changed his mind.

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

**Mr. Naziruddin Ahmad :** Sir, on a point of order, this is supposed to be a very important clause and it was circulated to us only this morning. We have many other things to do besides attending this House and we require time to consider the

amendments. We cannot just now deal with them on the spur of the moment.

**Mr. President :** Very well, the amendment may be held over.

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

"That sub-clause (c) of clause (1) of article 303 be omitted."

Before I move article 303 I would like, Sir, to have your permission to move an item in clause 303(1) (b) which has been held over. Items (b) and (c) of clause (1) of article 303 were held over and my amendment No. 375 is to ask permission of the House to delete item (c). Item (b) will have to be moved and if you will give me permission I will move it. There is no amendment to this. It relates to the definition of Anglo-Indians. Sir, I move :

"That item (b) of clause 1 of article 303 as it originally stood in the Draft Constitution be adopted."

**Shri H. V. Kamath :** Sir, what will happen to those persons whose progenitors in the male line were of Australian or American descent ? "Anglo" refers to England and not Europe. This is somewhat badly drafted. What about those of American, Australian or Canadian descent ? I do not know how this difficulty will be overcome.

**Shri T. T. Krisnamachari :** This is the definition is the Government of India Act and we have only borrowed it.

**Shri H. V. Kamath :** Can we not rectify a mistake in the Government of India Act ?

**The Honourable Shri K. Santhanam :** The words "European descent" will include persons of Australian and American descent also.

**Shri H. V. Kamath :** Sir, are you satisfied with this draft ? I wonder.

**Mr. President :** Do not put me personal questions. I am satisfied with whatever the House adopts. Item (b) of clause (1) of article 303 was held over on the 16th September.....

**Mr. Naziruddin Ahmad :** We are reminded of it only when the honourable Member read the revised draft form. It was not on the agenda. It shows gross carelessness.

**Mr. President :** Article 303 is on the agenda and no omissions or corrections in that article are now coming before us. I do not think it is any use holding over any further. I have looked over the amendments in the second printed list and I do not find any substantial amendment to this.

The question is :

"That item (b) of clause (1) of article 303 as it originally stood in the Draft Constitution be adopted."

The motion was adopted.

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

"That sub-clause (c) of clause (1) of article 303 be omitted."

This refers to the Indian Christians and there is no reference in the Constitution to Indian Christian as such because the rights that were originally given to them have now been abrogated by the amendments that have been moved. Therefore, Sir, this definition is no longer necessary.

**Mr. Naziruddin Ahmad :** What is this amendment, Sir ?

**Mr. President :** The definition of the word 'Christian' that is given in clause (c) in article 303(1) is to be omitted, because the word 'Christian' does not occur anywhere in the constitution.

That is the amendment.

The question is:

"That sub-clause (c) of clause (1) of article 303 be omitted."

The amendment was adopted.

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

"That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:--

> '(111) Indian State' means any territory which the Government of the Dominion of India recognised as such a State'."

The reference is to page 157 of the Draft Constitution and it has reference to an item that has already been passed. In the original as we have passed already this (111) is split up into two and deals with a definition as respects the period before the commencement of the Constitution and as respects the period after the commencement of the Constitution. That has now been found to be unnecessary and therefore, this definition has been substituted.

**Shri H. V. Kamath :** Sir, is it very necessary to say "the Government of the Dominion of India ?" Is it not enough to say "the Government of India?"

**Mr. President :** There is a confusion. The Government of India means. also the Government of India under the new Constitution, but the Government of the Dominion of India means the Government which was in power before the commencement of the

Constitution. I think it is to avoid that confusion that this amendment is brought in.

**Mr. Naziruddin Ahmad :** It seems to me, Sir, that the word 'Dominion' has been used in reference to the future.

**The Honourable Shri K. Santhanam :** I think that instead of the words "such a State" occurring at the end, the words "an Indian State" would be better.

**Shri T. T. Krishnamachari :** I am advised that if the amendment proposed by Mr Santhanam is accepted the meaning will not be clear. The real fact is this that there is no need for the definition of an Indian State in so far as the Constitution after it comes into operation is concerned. It only has to refer to those States before the commencement of the Constitution. Therefore, it is not necessary to relate the 'Indian State' to the Constitution as such after it comes into operation and that is why we have shortened the definition that was originally accepted by the House into one, instead of two alternatives, and I am advised that the phrase "as such" exactly suits the purpose for which it is intended.

**The Honourable Shri K. Santhanam :** Even in the new Constitution the words 'Indian State' have occurred and will have to be interpreted for the purpose of assets and liabilities. Therefore, we have to say that 'Indian State' means any territory which was recognized as an 'Indian State' by the Dominion of India. This is purely a verbal amendment.

**Shri T. T. Krishnamachari :** In the new Constitution wherever reference is made to an 'Indian State' it is made as a State and its relation to what existed previously is to the corresponding Indian State and the corresponding province. There is no place where the 'Indian State' occurs for the purpose of interpretation as things would exist after the Constitution comes into operation.

**Mr. Naziruddin Ahmad :** May I ask a question as to where in this Constitution the expression 'Indian States' have been used ? We must have an idea of the context in which this term is used in order to define it.

**Mr. President :** Mr. T. T. Krishnamachari has just mentioned two instances.

**Shri T. T. Krishnamachari :** If my honourable Friend wants a ready reference, I would ask him to refer to article 273-A which has now been held over and to 267-A which has been passed. There are a number of other articles as well of this nature.

**The Honourable Shri K. Santhanam :** At least the article 'a' occurring in the words 'such a State' may be dropped.

**Mr. President :** Is there any harm in saying 'recognized as an Indian State' ?

**Shri T. T. Krishnamachari :** That would not be correct, Sir. If we put the words 'Indian State', it must be as 'an Indian State', and it cannot be stated merely as 'Indian State'. Whether we retain the word 'State', or 'Indian State', the article will be necessary whether it is 'a' or 'an'. May I, Sir, read the definition in the Government of India Act?

"Indian State means any territory not being part of British India which His Majesty's Government recognized as being such a State, whether described as a State, an estate, jagir or otherwise."

**Mr. President :** I do not suppose there will be any difficulty about the meaning. It is question of English.

**Shri T. T. Krishnamachari :** We have more or less followed the precedent of the Government of India Act in these matters.

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

"That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:-

'(111) 'Indian State' means any territory which the Government of the Dominion of India record as such a State'."

The amendment was adopted.

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

"That for sub-clause (nn) of clause (1) of article 303, the following sub-clauses be substituted:--

'(nn) 'Rajpramukh' means--

(i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;

(ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and

(iii) in relation to any other State for the time being specified in Part III of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State'."

Sir, the original definition which this amendment seeks to replace referred only to Ruler, I propose to follow upto his amendment with a definition of 'Ruler', which is as follows:

"(nn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of Article 267A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor or such Ruler."

As I said earlier, this splits up the original sub-clause (nn) in article 303 (1). It dearly states who is a Rajpramukh and in so referring to Rajpramukh, also permits the use of the word Nizam for the Ruler of Hyderabad and Maharaja for the Rulers of Jammu and Kashmir and Mysore. It also makes the distinction between Rajpramukh and Ruler clear, in that the Ruler will be a person who will not be a Rajpramukh, but will be a person who had entered into an agreement with the Government of India as is referred to in article 267-A, which was passed by the House yesterday even though he does not happen to have ruling powers. It has been provided that he must be a

person who has been recognised by the President as a Ruler. Provision has also been made that the President should also recognise his successor as such Ruler.

**Shri H. V. Kamath :** Unfortunately, Sir, there are two lacunae in this amendment It omits to define, firstly, Up-Rajpramukh and also Maharajpramukh. I am told that there is one person, the Maharana of Udaipur who is known as the Maharajpramukh. These are not defined in this amendment. These omissions must be filled before it can be good.

**Mr. President :** There is notice of an amendment bringing in the definition of Up-Rajpramukh. That is coming up later. The word Maharajpramukh has never been used.

**An Honourable Member :** He has no powers.

**The Honourable Shri K. Santhanam :** About the definition of Ruler, Sir, the last sentence says, "and includes any person who for the time being is recognised by the President as the successor of such Ruler." If he is the successor of such Ruler, he will automatically be the Ruler. We cannot have a Ruler and a successor at the same time. I think the last portion would lead to confusion. It might suggest that at a time, there can be a Ruler and successor recognised for the same State. I think that is an impossibility. If he is the real successor, he becomes automatically the Ruler. At one time, there can be only one Ruler or successor. There cannot be both.

**Shri T. T. Krishnamachari :** The difficulty in my honourable Friend's Process of thinking is that there is no such thing as automatic succession. Succession has got to be recognised by the President.

**The Honourable Shri K. Santhanam :** What I meant is as soon as somebody is recognised as the successor, he will be the Ruler. Otherwise, there is no meaning in recognising a successor.

**Shri T. T. Krishnamachari :** There is a certain amount of confusion because we shall have Rulers without a State. Only the Rajpramukh is related to a State. The other Rulers will be more or less connected with the estates that they held in the past. The idea really is that the person who succeeds to the estate must be recognised by the President. If he does not recognise him, be does not become the Ruler. There is nothing automatic about it. If the President recognises one person as a Ruler, until there is a vacancy, it is unlikely that he will recognise another as a successor. There must be a vacancy before the successor could be recognised. I see no difficulty in the wording as it is.

**The Honourable Shri K. Santhanam :** May I enquire whether a person who has lost his State by merger in a province continues to be a Ruler or he has become successor ?

**Shri T. T. Krishnamachari :** The whole difficulty is, this is rather intricate. It is baffling. I admit that a person who has lost his State is nevertheless a Ruler, under the definition in (nn), and also for the purpose of Article 267-A.

**The Honourable Shri K. Santhanam :** Why not his son also be Ruler ?

**Shri T. T. Krishnamachari :** Might be.

**The Honourable Dr. B. R. Ambedkar :** If I may say so, this definition of Ruler is intended only for the limited purpose of making payments out of the privy purse. It has no other reference at all.

**The Honourable Shri K. Santhanam :** My point is whether it will be so construed as to mean two people at the same time entitled to the allowances. I want to ensure that at a time there will be only one person who will be entitled under the covenant to receive payment.

**Mr. President :** I think that is just secured by this, because the person recognised as the Ruler alone will be entitled to the payment.

**The Honourable Dr. B. R. Ambedkar :** That would be governed by the provisions regarding recognition. I am sure the President is not going to recognise two or three or four persons. This expression is deliberately used in order to give the power to the President.

**The Honourable Shri K. Santhanam :** He might be called the Ruler or successor.

**Mr. President :** Mr. Santhanam, I think that is quite clear. The idea is to preserve those privileges which have been conferred on the Rulers to those who are recognised as their successors. That is to say, if a person is recognised as the Ruler, only that person who is recognised as his successor will inherit those privileges and not other successors.

I do not suppose any further discussion is necessary. I shall put it to vote.

The question is :

"That for sub-clause (nn) of clause(1) of article 303, the following sub-clauses be substituted:--

'(nn) 'Rajpramukh' means--

(i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;

(ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and

(iii) in relation to any other state for the time being specified in part III of the First Schedule, the person who for the time being is recognised by the president as the Rajpramukh of that state,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State'."

(nnn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 267-A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the

successor of such Ruler.

The amendment was adopted.

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

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:--

'(r) 'railway' does not include--

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'."

Sir, the original definition stood thus:

"A railway does not include a tramway whether wholly within a municipal area or not."

It has now been found that there are railways in certain States which are not railways in the sense that they are accepted to be railways, but they are something in between a railway and a tramway. The definition is so altered as to permit the Parliament by law to recognise what is not to be a railway. This has been necessary because since we framed the original definition, certain things have transpired, in that most of the Indian States have or are about to transfer their railways to the Government of India and the conditions existing in those States have to be taken into account and provided for. That is why this amendment is being introduced.

**Shri R. K. Sidhva :** Sir, tramways are never known as railways. I think it is redundant to say tramway within a municipal area. A tramway is a tramway. Who has brought into the brain of the Drafting Committee that tramway is a railway ? It looks so awkward. I therefore feel, Sir, that sub-paragraph (a) is redundant.

**The Honourable Shri K. Santhanam :** I am afraid my honourable Friend is wrong. Even at the time when the original definition was under discussion, I pointed out that it was wrong to say that a railway does not include a tramway. Because mechanically, there is no difference whatsoever between a railway and a tramway, except it may be that the latter has only one carriage or two carriages. Therefore this amendment is necessary. Otherwise in many places, many lines may be called tramways and there may be disputes. We do not want to have any kind of dispute. Therefore, the present definition is the proper definition to be adopted.

**Mr. Naziruddin Ahmad :** With regard to paragraph (b) I have some difficulty. it was stated by Mr. Krishnamachari in this argument.....

**Shri T. T. Krishnamachari :** May I suggest to the honourable Member to accept the argument of the expert who spoke before me in support of this amendment and ignore anything that I said before.

**Mr. Naziruddin Ahmad :** It is now clear that Mr. T. T. Krishnamachari is merely a

conduit pipe. After all, he has taken the responsibility of explaining the matter. He has explained that the word State really means an Indian State and does not mean a province. In the new state of affairs, a State also includes a province. What is meant probably is a State mentioned in Part III of the first schedule. If that is so, it should be specifically stated. Because otherwise if there are small railways in any Indian province in Part I, they would also be excluded. If it is the intention to exclude Indian States on the ground that they have not come to terms up to this time, we should specifically state that.

**Shri T. T. Krishnamachari :** Right through the Constitution we have used only one word 'State'. Where we wanted to differentiate, we have mentioned them as States in Part I or Part II and so on. So I fail to see the force of Mr. Naziruddin Ahmad's speech.

**Mr. President :** Mr. Krishnamachari did not base his argument on the use of the word State. He did not say that either.

**Mr. Naziruddin Ahmad :** During the argument he mentioned the case of an Indian State. That had misled me.

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

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:--

(r) 'railway' does not include--

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'."

The amendment was adopted.

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**Shri. T. T. Krishnamachari :** May I request you to permit me to move an amendment which has been tabled and has just been circulated. It has not been numbered and it refers to Up- Rajpramukh. I move:-

"That to clause (1) of article 303, the following sub-clause be added:

'(y) 'Up-Rajpramukh' in relation to any State means the person who for the time being is recognised by the President as the Up-Rajpramukh of that State'."

Sir, I am indebted to my honourable Friend the Prime Minister of Mysore for drawing my attention to this defect.

As regards the question raised by Mr. Kamath about Maharajpramukh, I would only like to say that there is no mention in this Constitution of Maharajpramukh although one such person exists. We have not constitutionally recognised the existence of such a person. This definition arises out of the fact that we had to make mention of the

name Up-Rajpramukh in two places in the amendments that were moved yesterday in regard to removal of disqualifications for office. I hope the House will accept my amendment.

**Shri. H. V. Kamath :** There is some little difficulty in this connection. In accordance with the Sanskrit and Hindi philology as well as etymology, the proper spelling should be Up-Rajpramukh; otherwise I have heard British and Other foreign journalists pronouncing it as Aprajpramukh.

**Mr. President :** The spelling will be corrected but I do not think that will prevent the ignorant people from mispronouncing it.

**Shri Jainarain Vyas** (United State of Rajasthan): Sir, I do not agree with the position of Maharajpramukh. He presides over the meetings of the Princes and if he is not recognised as the Constitutional Maharajpramukh, then all the meetings over which he presides will be null and void.

**Mr. President :** Is there anything like the meeting of the Princes as it used to be of the Chamber of Princes ?

**Shri Gokulbhai Daulatram Bhatt** (Bombay States) : *[Sir, there is an article in the Covenant of Rajasthan which says: "If any meeting of the princes is held, it would be presided over by the Maharana of Udaipur as Maharajpramukh, if he be present in the meeting." It has been clearly mentioned therein. It is plain that this implies a question of his dignity. No other administrative power has been vested in him. But to that extent it is there and it deserves consideration. Hence it should be reconsidered.]

**Shri T. T. Krishnamachari :** We have not put in any provision of that nature in Part VI A.

**Mr. President :** Is there any provision for a meeting of the Princes in our Constitution ?

**Shri Gokulbhai Daulatram Bhatt :** Meeting of the Princes of the States that have been merged to form the Rajasthan Union is at present provided for.

**An Honourable Member :** There is a provision in the Covenant.

**Mr. President :** Not in the Constitution.

**Shri Gokulbbai Daulatram Bhatt :** The terms Rajpramukh and Uprajpramukh are there in the Covenant.

**Mr. Naziruddin Abmad :** Covenants are part of the Constitution. They have joined as under the covenants. So we should recognise them. This requires careful consideration.

**Shri H. J. Khandekar** (C. P. & Berar : General) : I think this would be held over.

**The Honourable Shri K. Santhanam :** Here it is only the question of definition.

We do not want a definition unless it is to be used in the Constitution.

**Shri T. T. Krishnamachari :** Sir, this will have to be accepted because an amendment in which this word occurs has already been accepted. If it is a definition of a term which has not found a place in the Constitution, that is a different matter, but my friend's contention is not a bar to the acceptance of this amendment.

**Mr. President :** So there is no question about Up-Rajpramukh. We leave the question of Maharajpramukh for future consideration.

**Shri Gokulbhai Daulatram Bhatt :** I would like it to be made clear lest it way be held that, just as Rajpramukh and Up- rajpramukh are mentioned, so also he should have been specifically mentioned.

**Mr. President :** In our Constitution we have only used the term Uprajpramukh. The qualifying word may not create any difficulty.

**Shri T. T. Krishnamachari :** I have been informed that the allowance of the Maharajpramukh of Udaipur is not as Maharajpramukh but as a Ruler who gets his privy purse under articles 267-A and therefore there is no need for a special title to be mentioned in the Constitution.

**Mr. President :** I am putting this to vote now.

**Shri H. J Khandekar :** What will be the position if the Up-Rajpramukh is a lady? What will be the name ?

**Mr. President :** In that way we have got women Chairman of Committees. That does not create any difficulty so far as English is concerned.

The question is :

"That to clause (1) of article 303, the following sub-clause be added:--

> '(y) 'Up-Rajpramukh' in relation to any State means the person who for the time being is recognised by the President as the Up-Rajpramukh of that state'."

The amendment was adopted.

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**Mr. President :** We then go to the Schedule.

**Shri Yudhishthir Mishra** (Orissa States) : Sir, I suggest that the consideration of the First Schedule may please be held over for tomorrow.

**Shri Brajeshwar Prasad:** Yes, Sir. It may be held over. We got the list at 8 o'clock this morning only.

**Mr. President :** It may be moved, and we will take up the amendments tomorrow

morning.

## FIRST SCHEDULE

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

"That for the First Schedule the following be substituted:--

"FIRST SCHEDULE

(Articles 1 and 4)

The States and the territories of India

PART I.

| Name of States. | Names of corresponding Provinces. |
|---|---|
| 1. Assam | Assam |
| 2. Bengal | West Bengal |
| 3. Bihar | Bihar |
| 4. Bombay | Bombay |
| 5. Koshal-Vidarbh | Central Provinces and Berar |
| 6. Madras | Madras |
| 7. Orissa | Orissa |
| 8. Punjab | East Punjab |
| 9. United Provinces. | United Provinces. |

*Territories of States*

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, and Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal."

**Shri B. Das** (Orissa : General) : We wanted utkal to be the name of ORISSA.

**The Honourable Dr. B. R. Ambedkar :** You may move an amendment.

"The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were bring administered by the Government of that Province under the provisions of the Extra- Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

PART II.

Names of States.

1. Ajmer

2. Bhopal

3. Bilaspur

4. Coorg

5. Cooch-Behar

6. Delhi

7. Himachal Pradesh

8. Kutch

9. Manipur

10. Rampur

11. Tripura

*Territories of States*

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution won comprised in the Chief Commissioner's Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in The Chief Commissioner's Province of the same name.

The territory of each of the other States shall comprise the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately, before the commencement of this Constitution administered as if they were Chief Commissioner's Province of the same name.

PART III.

Names of States.

1. Hyderabad

2. Jammu and Kashmir

3. Madhya Bharat

4. Mysore

5. Patiala & East Punjab States Union

6. Rajasthan

7. Saurashtra

8. Travancore-Cochin

9. Vindhya Pradesh

*Territories of States*

The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian state.

PART IV.

The Andaman and Nicobar Islands."

Sir, I do not think the amendment which I have moved calls for any explanation.

**Shri Jainarain Vyas :** I would like to know if Sirohi State has been put in anywhere.

**The Honourable Dr. B. R. Ambedkar :** Sirohi, I understand is administered under the Extra-Provincial Jurisdiction Act, 1947, partly by Bombay and partly by Rajasthan. That is the reason why it has not been separately mentioned.

**Shri Jainarain Vyas :** But it is neither in Bombay, nor in Rajasthan, at the moment.

**Mr. Naziruddin Ahmad :** I have one or two suggestions to make. With regard to the expression "under section 290-A of the Government of India Act, 1935". I submit an explanation should be added to say that it is the Act, as adapted. And the second suggestion is that in Part II, the names are arranged in the alphabetical order, but I find items 4 and 5 are in an irregular order, and item 4 should come after item 5. That will make it absolutely alphabetical.

**Mr. President :** You mean Coorg and Cooch-Behar, yes, I think so.

**Shri T. T. Krishnamachari :** So far as the first point raised by Mr. Naziruddin Ahmad is concerned, I may point out that it was stated on a previous occasion that the short title of the Government of India Act as adapted, is the Government of India Act, 1935.

**Mr. President :** I think we shall rise now. We shall meet again at ten o'clock tomorrow morning when the amendments will be taken up.

**Shri R. K. Sidhva :** Is the Preamble also to be taken up tomorrow ?

**Mr. President :** Yes, if possible, we shall try to finish it.

**Shri R. K. Sidhva :** Is there any further article or amendment coming up ?

**Mr. President:** There are one or two articles we have left over.

**Seth Govind Das** (C. P. & Berar : General): Will the Preamble be the last thing to be considered ?

**Mr. President:** Yes, that is the usual thing, I suppose. There is another article 264 A on the agenda--which has not been reached.

**Shri R. K. Sidhva:** Sir, everyday new articles are brought in and new amendments and we send in our amendments, but as the original amendments are not moved, our amendments also are not to be moved and they are stopped.

**Mr. President:** I have never stopped amendments in that way. So far as technical difficulties are concerned, I have never allowed them to come in the way of any amendment.

The House now stand adjourned to ten o'clock tomorrow morning.

The Assembly then adjourned till ten of the clock on Saturday the 15th October, 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

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***Saturday, the* 15*th October* 1949**

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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.

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**An honourable Member :** May I know when his session is expected to break ?

**Mr. President :** I think there is at least work for one day more and so we shall have to sit on Monday or Sunday. We shall at the end of the day decide on which day the House should sit. All that I can now say is that we shall have to sit for one day more. It may be tomorrow or the day after just as the House likes.

**Seth Govind Das** (C.P. & Berar: General): I propose that we sit tomorrow and not on Monday.

**Mr. President :** I shall ascertain the wishes of the Members.

**Shrimati Annie Mascarene** (United State of Travancore & Cochin): We Christians desire to have Sunday free.

**Mr. President :** There is objection on the part of Christian Members to sitting on Sunday.

**Honourable Members :** We did sit on a Sunday once.

**Mr. President :** But that does not take away the right of Christian members to object to sitting on Sundays. I shall consult the wishes of the House at the end of the day in this matter.

**Shri K. M. Munshi** (Bombay: General): Sir, with regard to the First Schedule may I submit.....

**Mr. President :** First we shall dispose of the motion for the substitution of rule 38-R standing in the name of Shrimati G. Durgabai.

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## CONSTITUENT ASSEMBLY RULES (AMENDMENT)

## New Rules 38-R and 38-RR.

**Shrimati G. Durgabai** (Madras: General): Mr. President, Sir, I move:

"That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:--

| | |
|---|---|
| Revision of the Constitution by the Drafting Committee and the consideration of the amendment recommended by them. | '38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required. |

(2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other member of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration :

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available three clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

(3) While making any motion referred to in sub- rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.

(4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.

(5) If notice of a proposed amendment has not been given two clear days before the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, any member may object to the moving of the amendment, and such objection shall prevail unless the President in his discretion allows the amendment to be moved.

(6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.

(7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.

(8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub- rule, (2) has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so

recommended as modified by any amendment or amendments adopted by the Assembly be made, as the case may be.

(9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed'."

Sir, with your permission, I will move 38-RR also.

Passing of the Constitution.

"38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved.

(2) The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1).

(3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38 R or this rule relax or suspend any of these rules."

Mr. President, Sir, honourable Members are aware that we have happily come to a stage when we have very nearly completed the Second Reading of this Draft Constitution. Now, we will be soon passing to the stage when we have got to take up the Draft Constitution for the Third Reading, and it will be in all probability in the coming month. Therefore the necessity arises for laying down a procedure for completing the Third Reading of the Draft Constitution and passing the Constitution.

Sir, the main features of these rules, I expect Members would have noted, are that the procedure laid down in these rules enables the drafting Committee to make formal or consequential or necessary amendments to the draft at the time of the Third Reading . Another main feature of these rules is that it would enable the Members of the House to make only formal or consequential amendment to the amendments proposed by the Drafting Committee at the Third Reading stage. Sir, it also gives powers to the President to allow any amendment at his discretion and also to fix a time limit for speeches and some such other powers.

Sir, I have seen a number of amendments, about fifteen to twenty, given notice of by honourable Members of this House. Sir, some of those amendments, when they will be moved, I would deal with them, but the object of those amendments is for the deletion of the clause which would enable the President to fix a time limit for speeches and also to waive the notice of two days and to substitute instead seven days or five days' notice. Sir, we are all aware that we have taken two full years and ten months to make this Constitution. We all know that it has been a great strain on the financial resources of this India and therefore we should not allow any more time to be taken in either making speeches or delaying the passing of this Constitution. With this object of expediting the passing of the Constitution, these rules have enabled the President to take certain powers.

Therefore, Sir, I would appeal to the Members to withdraw their amendments or not to press them, and allow the smooth working of our passing this Constitution. With these observations, I would commend my motion for the acceptance of this House.

Sir, I move.

**Mr. President :** There are several amendments to this. Mr. Naziruddin Ahmed.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim): Mr. President, Sir, I have unfortunately some amendments to propose to these rules. I tried much to reduce the number of my amendments, but I failed to find any way of doing it. Sir, I bed to move:

"That in the proposed new Rules 38-R and 38-RR for the word 'Constitution' wherever it occurs, the words 'Draft Constitution' be substituted."

This is merely formal. I also move:--

"That in sub-rule (1) of the proposed rule 38-R,--

(i) for the words 'considered' the words 'considered and disposed of' be substituted;

(ii) for the word 'amended' the words 'amended by the Assembly' be substituted;

(iii) for the word 'clauses' the words 'articles, clauses and sub-clauses' be substituted; and

(iv) for the words 'to recommend' the words 'to submit a report recommending' be substituted."

"That after sub-rule (1) of the proposed rule 38-R, the following new sub-rule be inserted:--

'(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committee'."

"That in sub-rule (2) of the proposed rule 38-R, for the words 'After the Constitution has been referred to the Drafting Committee the report of the Committee' the words 'The report of the Drafting Committee' be substituted. "

"That in sub-rule (2) of the proposed rule 38-R for the words 'in the Constitution' the words 'to the Constitution' be substituted."

"That in the proviso to sub-rule (2) of the proposed rule 38-R, for the words 'three days' the words 'seven clear days' be substituted."

Sir, I would like to explain the object of my amendments. The first amendment, as I have already submitted, is merely formal. I think it should be accepted on drafting grounds.

With regard to the other amendments, the difficulty is that the official amendments were given to us yesterday and our amendments had to be handed over to the Office before 5 o'clock yesterday and they have been printed and circulated only this morning. I do not therefore think that either the members of the Drafting Committee or the honourable the Lady Member who has proposed these Rules had any real time to go through these amendments and see the object of them. However, I shall do my

best to draw their attention to certain aspects of my amendments.

With regard to amendment No. 2, the purpose of the first part of it is to insert the words "and disposed of" after the word "considered". The passage, with my amendment, will read thus:-

".....the amendments to the Constitution moved have been considered *and disposed of."*

In fact, we are concerned in sub-rule (1) with a stage when the amendments during the Second Reading have not only been considered but actually disposed of. Only after they are disposed of, the draft Constitution goes back to the Drafting Committee. So, this amendment is necessary.

The next amendment is to the effect that after the word "amended" the words "by the Assembly" be inserted. There are two authorities here between which there may be a confusion. The amendments made by the House and the amendments suggested by the Drafting Committee afterwards should be distinguished and that is the object of inserting these words so as to make the text read--

".....the Constitution as amended *by the Assembly"*

in order to distinguish it from the amendments suggested by the Drafting Committee.

A little later on we are going to authorise the Drafting Committee to renumber the "clauses". I submit that the word "clauses," although it appears in the old Rule, would be inapplicable to this Constitution. We have not been describing our articles as clauses but we have been describing them as articles. The expression "clauses", so far as we have been using it, means clauses to the articles. But here the word "clauses" apparently refers to the articles. So I have suggested this amendment so as to make the text read:

" .....re-numbering of the articles, clauses and such- clauses."

That would be grammatical and legally more accurate.

The next amendment--the fourth part of the second amendment--is to insert the words "to submit a report recommending," instead of the words "to recommended". This amendments is very necessary because we have used the word "report" at two places in sub-rule (2). That report is the final report to be made by the Drafting Committee but we have not provision in sub-rule (1) for the submission of any report. We have merely said :

"..... to recommend such formal or consequential or other necessary amendments."

I want to re-word it so as to read:

"..... to submit a report re-commending such formal or consequential or other necessary amendments."

In fact the word "report" must occur here in order to give the full import of the

word "report" in two places in sub- rule (2).

Then, Sir, my next amendment is for the insertion of another sub-rule 1(a), to the effect that:

"The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committees."

This seems to be very necessary. We are after all to consider the Draft Constitution as revised by the Drafting Committee and then to suggest our own amendments. In order to make up our minds as to what amendments are to be made, we should really know what amendments have actually been suggested by the Drafting Committee. We are familiar with the practice of the Drafting Committee in this House that instead of indicating the actual amendments to the Draft Constitution they have been giving us entirely re-written texts of article and it has been extremely difficult for Members to follow what exact changes are introduced. That involves the Members individually into an unnecessarily laborious and meticulous comparison of the articles proposed in the House with the articles in the Draft Constitution. Therefore, it seems to me that the Draft Constitution as prepared finally by the Drafting Committee should indicate the exact changes so as to enable the Members to reivet their attention on those changes and to suggest consequential or formal amendments, if any, thereto. It would make their task easier. It would be very easy to arrange it, namely the changes to be shown by italics or by underlining-side--lining may not be helpful. An omission may be shown by asterisks. These things, will be very simple and will be very useful to Members who may easily see the changes and then submit amendments.

With regard to clause (2), the opening words seem to be absolutely unnecessary and also to a certain extent misleading. It says:

"....After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly."

An important step is omitted here--after the Constitution has been referred to the Drafting Committee there is a report of the Drafting Committee. So we should make it clear that after the report of the Drafting Committee is received the report of the Committee should be presented to the Assembly. Therefore I have suggested the omission of the opening words. Then sub-rule (2) would read like this : "The report of the Drafting Committee shall be presented to the Assembly" and so forth. I have already suggested that the word 'report' should be incorporated in sub-rule (1) in my amendment No. 2 Part (iv).

Then, Sir, I come to the proviso. Here I have a serious complaint to make that the proviso attempts to provide that the Draft constitution as revised by the Drafting committee will be made available to the Members within three clear days' before the date when the Constitution will be taken upon for consideration. Sir, I feel that it will be utterly impracticable for any honourable Member to read the revised Draft Constitution and submit amendments within the extremely short time available. You will be pleased to consider, Sir, that only three clear days have been given within which the Draft Constitution will be made available to the Members, while sub-rule (5) provides that two clear days' notice should be given for our amendments.

Supposing we begin the consideration, of the Constitution on the 14th of

November. The Draft Constitution must be made available on the 10th of November with three clear days notice and we have to submit our amendments on the 11th of November, giving a margin of two clear days. It will thus be clear that we will have only one clear day to read the report prepare amendments and send the same to the Notice Office in course of a single day. This will lead to so many practical absurdities that I submit that this rule in this form cannot be accepted. You will be pleased to consider that for us to attend the Assembly on the 14th, we have to leave our places on the 10th of November and on the 10th of November it is proposed to circulate the Draft Constitution as redrafted by the Drafting Committee. On the 10th of November we will all be on our journey by rail, road or air towards New Delhi. I fail to see how on the 10th of November the copy of the Draft Constitution as revised, will reach us. If they are sent to our home address, we would have left our home by that time and the Members and the revised Draft Constitution will cross each other. If it is to be delivered at our Delhi address on the 10th or 11th, it will be too late for us to prepare amendments and hand them over to the Notice Office with two clear days' notice to office to consider them.

While I sympathise with the Drafting Committee for the high pressure at which they are working, I must at the same time point out that there is a feeling in this House that the Committee is behind time table--hopelessly behind time table from beginning to end. All this congestion of work is due to frequent changes of mind by the Drafting Committee who may certainly have their own reasons to justify the delay. But I wish so submit that the victim of all these unfortunate circumstances should not be the Members. How, I ask the House and particularly you, Sir, is a member to receive copy of the finalised draft on the 10th and to submit their amendments on the 11th ? I therefore suggest that seven days' time be given to us to study the revised Constitution and submit amendments. May I further suggest that along with the final draft of the constitution, we may beforehand be given a comparative list of amendments proposed to each article so that we can study them and get ready to consider them.

I also suggest that before the Draft Constitution is sent to the press, a cyclostyled copy may be prepared and sent to those Members who are anxious to have it. I believe there would be only half a dozen Members who would be interested in it. But I do not mean to say that the privilege need be confined only to those members only. The cyclostyled copies may be sent to all those Members who ask for it. If that is done, I think we can work according to schedule. Otherwise, it will be extremely difficult for Members to get ready and submit amendments within time. In fact, it seems to me absolutely impracticable to do all this within the scheduled time. The main question would be the place and time of delivery of the finalised Constitution, in order to enable Members to play their part in time. I submit that these things should be taken into consideration while accepting these rules.

A further difficulty has been placed by the Drafting Committee on the Members in that they have selected a lady Member to propose all these difficult rules.

**Shri H. V. Kamath :** (C. P. & Berar: General): How is it relevant, Sir?

**Mr. President :** She was not particularly selected; she her self wanted to move them.

**Mr. Naziruddin Ahmad :** The difficulty is that we cannot he hard upon her. After

all some kind of gracefulness is necessary in dealing with a lady Member. The fact is that the Drafting Committee have put forward a lady to fight their cause.

**Shrimati G. Durgabai :** The honourable Member should note that I have moved the motion on my own accord.

**Mr. Naziruddin Ahmad :** I am not prepared to enter into a controversy with the honourable Mover. The amendments are for the benefit of the Drafting Committee. The method followed by the Drafting Committee is like that of the Communists who fight with ladies at the front, so as to make it impossible for the other party to strike.

**Shri H. V. Kamath :** Mr. President, Sir, I am at one with my honourable Friend Shrimati Durgabai that the passage of this Constitution should be expedited. But I would like to join issue with her on one point and that is this. She stated that this constitution-making has been a huge drain upon our financial resources. I know we have spent some money. The House will remember that the Legislative Assembly in 1946 or early in 1947 budgeted one crore of rupees for the Constituent Assembly. Some time during the last session it was suggested in this House or outside that over two crores of rupees had been spent. After I heard this statement, I worked out the figures myself and came to the conclusion that only about sixty to seventy lakhs had been spent so far by this Assembly in constitution-making. I am not referring to the legislative work at all. If you include the sessions of the Legislative Assembly as well then perhaps we have spent more; but that is not part of the budgeted amount for constitution-making; and it is wrong in my humble judgement to lay the blame at the door of the Members of this House, even if a large amount has been spent.

The House will recollect that during the two years from January 1947 to October 1948 this House met only for 35 or 40 days at the most. For some reason or other the Drafting Committee was not ready, and we could not meet at all for more than 40 days in 22 months; if we had worked longer and met at more frequent intervals, we could have seen the Constitution through much earlier. Any way, even today the way expedite the Constitution is not to apply the axe ruthlessly to debates in the House, but to apply it reasonably. The way is to work longer hours, if necessary. We have realised this only too late in the day. Had we worked longer hours in 1947 or 1948, we would by now have seen this Constitution through. I have always favoured a night session; if we work morning, noon and night, I am sure we can finish it in another week or so. It is too late to make this suggestion at the fag-end of the Constitution, when a few more days remain for the Third Reading. I wanted to suggest to my honourable Friend Shrimati Durgabai it was wrong on her part to suggest that this House has been guilty of a huge drain upon our financial resources. This House has not been guilty of it: there are various reasons and circumstances which conspired to bring about this financial expenditure. I would not call it a huge drain at all; we have not exceeded the budgeted amount for Constitution making.

Sir, now I come to the amendments that stand in my name. I have, Sir, six amendments to my credit. Sir, I move:

"That is sub-rule (4) of the proposed rule 38-R, for the words 'which is either formal or consequential upon' the word 'to' be substituted."

If this amendment were accepted by the House, it would read as follows:

"After the motion referred to in sub-rule (2) has been carried, any member may move an amendment to an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move an) amendment."

The point in this amendment is this, that according to the scheme which has been presented to the House by Shrimati Durgabai, the Drafting Committee will take care of the Constitution after the Second Reading and will come before the House for the Third Reading. whenever it may be. I suppose three days is the minimum period so far as the interval between the time when the Draft Constitution would reach the Members and this motion here for the Third Reading is concerned. The Drafting Committee, I freely admit are a team of wise men, experts in their own field and very knowledgeable experts at that, but certainly the House will agree that they are not able, and even they either due to want of time or pressure of other work, even they might overlook certain matters or certain clauses or articles in the Constitution. Therefore certain omissions may remain to be filled, and certain lacunae may remain to be made good; and if Members who concentrate on a particular chapter of the Constitution, if they after a very careful reading of the particular chapter or sub-chapter have discovered some defect, some lacuna, some omission, is it not fair to give an opportunity to them to suggest or modify an amendment, whatever it may be, in the House ?

It may be argued by my honourable Friend Shrimati Durgabai that those Members are at liberty to contact the Drafting Committee before the latter brings up those amendments in the House for the Third Reading, but suppose they are not able to, suppose they arrive the previous day or in the morning of the day when the Constitution comes up in the Assembly for the Third Reading and they have no time to contact the Drafting Committee and to explain their point of view; it is no use sending it by post because one cannot always explain one's point of view on paper, unless one discusses the matter with the Drafting Committee personally. Supposing they were not able to do so, is their case to go by default ? That is why, Sir, I have moved this amendment before the House so as to afford an opportunity to Members who may have discovered, after a careful study, any errors or omissions in any part of the Constitution; and they must be at liberty to move their amendments in the House. You are always here, Sir, to disallow any vexatious or unnecessary amendment, and the House has got the fullest confidence in your judgment and if any Member tries to move an amendment which is not necessary, which is irrelevant, vexatious or frivolous, the Member will as the House knows, always abide by your ruling. There is no point in encroaching upon your rights, your prerogatives, your privileges or your powers. You. Sir, can always disallow any amendment in your discretion and in your judgment. Therefore, there is no need, no necessity for this sub-rule (4) to Rule 38-R.

The next amendment of mine is 8 in this list : I move:

"That in sub-rule (6) of the proposed rule 38-R the words 'and it shall not be necessary for the President to put each of those amendments separately to vote' be deleted."

This arises directly out of the amendment I have just now moved. The sub-rule, as moved by Shrimati Durgabai, provides that all the amendments moved by the Drafting Committee can be put before the House *en bloc* all together to the vote. Now, Sir, if as I have suggested in my first amendment Members are given the right to move their amendments and in the light of that amendment the House decides that a particular amendment recommended by the Drafting Committee must be modified, then a difficulty will arise: all the amendments, if they are not amended by the House, can be

put *en bloc*., or *en masse* to the vote of the House. But suppose, certain amendments have been modified by the House. How is it possible, then, not to put them separately ? Some of the amendments might have been modified in the light of amendments moved by honourable Members and accepted by the House.

**Shri T. T. Krishnamachari :** (Madras : General): May I explain the procedure to my honourable Friend ? The procedure will be like this: in the same way as a Select Committee's report is taken into consideration by the House. The report of the Select Committee will be kept intact and treated as a whole. If Members move an amendment that amendment is carried, then that amendment will be incorporated. Otherwise, the Select Committee's report goes through intact. The procedure envisaged here is the same.

**Shri H. V. Kamath:** I fear this sub-rule does not provide for that contingency. If I have understood the sub-rule a right, it does not provide for that contingency which might arise out of Honourable Members' amendments being accepted by the House and in the light of that, the Drafting Committee's amendments being modified. Sub-rule (6) says that an the amendments recommended by the Drafting Committee shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote. I do not know if my honourable Friend was in the House when I moved my first amendment and explained my point of view before the House. I therein suggested that every Members must be given the right to move amendments of whatever nature, consequential or formal or otherwise necessary to any of the recommendations of the Drafting Committee and if the Drafting Committee's amendments are modified in the light of the acceptance of honourable Members' amendments, then it will be impossible to put the Drafting Committee's amendments *en masse* or *en bloc* to vote. They will have to be taken up group by group, and certain amendments will have to be put separately to the vote those which have been modified by the House. That is the purport of amendment No. 8.

Coming to amendment No. 9. It reads as follows:

"That in sub-rule (8) of the proposed rule 38 R, the words 'shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and' be deleted."

If this amendment were accepted by the House, this sub-rule will read as follows:

"The President shall, at the time appointed by him for the close of the sitting of the Assembly etc., etc.,"

I fear, Sir, I feel rather, that this sub-rule, the first part of it imposing a time limit for consideration by the Assembly of all amendments, is an undue, unwarranted encroachment upon your powers. I am wholeheartedly in favour of cutting short unnecessary discussion and debate and expediting the passage of the Constitution, as I have already stated. But, is it not part of your inherent powers, Sir, and is the House or any part of the House going to usurp your power in this field ? It is your undisputed power to fix any time limit for any debate. Why then make a specific mention in this rule that the President shall allot not more than two days-by the way, 'may' would have been more graceful and dignified? Is not the President supreme so far as the conduct of the business of the House is concerned ? It is up to him to regulate and conduct the business of the House. Why fetter his judgment by saying that he shall

not allot more than two days or three days? Leave it to his discretion. He call certainly allot, if he thinks necessary, more than three or four days. During the First Reading of the Constitution in November 1948, you will remember, Sir, before you fell ill, that you original intended to allot only two days for the First Reading of the Constitution, for the discussion of the motion by Dr. Ambedkar. Later on, you found that the House was keen on considering it further, and so you were good enough to allot another two days for the consideration of that motion. It may be quite probable, the sense of the House might be to ask for some more time. Here you are, Sir, with all powers vested in you to regulate the business. Why make this rule. here and fetter your discretion and judgment and abrogate or at least reduce the powers inherent in the President ? That is so far as the third amendment is concerned. I want to leave the matter to The President as to how many days should be alloted for the consideration and disposal of the amendments. We need not curtail the powers of the President so far as this matter is concerned.

I come to amendment No. 10 which reads as follows :

"That sub-rule (2) of the proposed new rule 38-RR be deleted."

That sub-rule relates to the time limit for speeches during the debate on a motion made under sub-rule (1), of Rule 38-RR. I would invite the attention Of Mrs. Durgabai and the House to rule 34 of the Rules already adopted by the House. Rule 34 of the Rules of the Assembly reads as follows : "In all matters relating to procedure or conduct of business of the Assembly, the decision of the Chairman shall be final" I ask, is this not adequate for our purposes ? Is it necessary to frame or pass another rule, sub-rule (2) here ? This rule 34 of our Rules of the Assembly vests sufficient power in the President to regulate the conduct of the business of the House in whatever way he may choose, and his decision in the matter is always final. Why bring in this minutiae in the rules, that he shall fix a time limit ? This is his inherent power. Why bring in this trifle ? It is mere piffle. That is part of the manner in which he conducts the business of the House. You, Sir, have done it on many occasions, and you will do it again in the interests of expeditious disposal of business. There is no need at all for this sub-rule (2). It has appeared, I fear, by force of habit of some Members of the Drafting Committee or others who want to introduce all sorts of minute details, who want to cumber our rules and our Constitution with all sorts of unnecessary details. I therefore feel that this sub-rule should be deleted.

Coming to amendment No. 11, it reads as follows :

"That sub-rule (3) of the proposed new rule 38RR be deleted."

This amendment has got two aspects. The first aspect I have already touched. This sub-rule, the House will see, reads as follows :

The President may in relation to any proceedings in connection with the passing of the Constitution under Rule 38 R of this rule relax or suspend any of these rules." This is a laughable, and a most unnecessary rule. I have already stated, Sir, that you have got inherent powers to conduct the business of the House, and you can certainly regulate this matter as well. The second aspect is this. We seek to provide for various matters, and then suddenly at the end we come to the last provision and say that notwithstanding any of these rules anything may happen. We have provided for various matters in 38 and 38 RR and at the very end we say that the President may

relax or suspend any of these. Why frame these rules and then say the President may relax these ? Can the President not exercise his discretion ? It is absolutely unnecessary and should be deleted.

My amendment No. 12 is partly consequential upon the amendments I have just now moved--Nos. 10 and 11. I move :

"That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (1)."

Sub-rule (1) of 38 RR refers to the Third Reading of the Constitution and Provides that any Member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved. That is a formal provision and I do not think there is any necessity for embodying it in a new rule 38 RR. It flows from the rules that have been embodied in rule 38 R and it does not merit or deserve a separate place or separate entity as rule 38 RR. All these rules relate to the final passing of the Constitution, and one set of rules to cover all these matters is sufficient. There is no need for two sets of rules.

In the end I shall only say that nobody will dispute the assertion of Shrimati Durgabai that the Constitution must be expedited; but it is wholly wrong to foist the blame for the delay upon the Members of this House. The Members of this House have always been willing and very eager to work for the expeditions disposal of this Constitution. At no time have the members grudged extra hours that they may have been called upon to put in for the discussion of the Constitution. If there be any blame, if there be any guilt, it lies elsewhere and not upon the Members of this House. I do not want to say who the guilty men are but certainly it is erroneous and unjustified to say that any members of this House have been guilty of any inordinate delay in the passage of the Constitution so as to result in a heavy drain upon our financial resources. We have all co-operated to the best of our ability for the speedy passage of this Constitution, and we shall all be happy when shortly we come to the end of our labours.

**Mr. President :** All the amendments have been moved.

**Prof. Shibban Lal Saksena** (United Provinces: General): I have given notice of an amendment.

**Mr. President:** I have not got any notice.

**Prof. Shibban Lal Saksena :** I gave it this morning.

Sir, I beg to move :

"In the proposed new Rule 38R, in clause (1) the following words be added at the end:--

> "But the President shall have power to allow any other amendments to be moved according to his discretion."

In the first rule we have said :

> "When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been

considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required."

Sir, we are still leaving many things in Appendix I which might be completely changed by the time we meet in the Third Reading. It is quite possible that many of the provinces might become two or three provinces. Madras might become Andhra and Tamil Nad and there might also be Karnatak and other provinces and, if that is done, then it will be necessary for the Drafting Committee to move further amendments and Members also should have an opportunity to discuss them. Therefore, it is necessary that the President should have the power to allow any other amendments to be moved in his discretion. We have full confidence in you, Sir, that you will allow only those amendments which are considered necessary because of the changes made between now and the next session. I, therefore, consider that this is a very important amendment and unless it is there, it will not be possible for the President to allow Members even to discuss the redistribution of provinces which may be effected by that time. I, therefore, think that my sister Shrimati Durgabai will accept this amendment and let Members have a right to discuss the new provinces which will be created.

My second amendment is:

"In the proviso to sub-rule (2) of Rule 38R, for the words 'three clear days' the words 'five clear days' be substituted."

My Friend Mr. Naziruddin suggested seven clear days. Three days seems to be almost absurd. You have said that at least two clear days notice should be given for any amendment. Now if we get the new Constitution only three days before the session, then there is only one day during which we have to go through it and table amendments. That is impossible. There must be at least three clear days. It would be much better if we have seven days, but I know the difficulty about time and so I do not want to press for seven days but I do want that at least five days should be given.

You have said, Sir, that the final draft Constitution will go for print by the end of the this month and will be ready in five or six days, so that by the 5th or 6th November the printed copies will be ready and these should be able to reach Members in two or three days time. Probably if they are sent to our Delhi addresses they may come the same day but those who want it at their home address will get in three days. At least they will get three or four clear days. I therefore, think that five days should be mentioned here instead of three days.

I then move:

"In sub-rule (3) of the proposed rule 38R for the words beginning with 'and at this stage' to the end of the sub-rule, the following be substituted :--

'and at this stage the debates shall be controlled by the President according to his discretion'."

The present provision is most unfair. When the Drafting Committee move any amendment the Members should have a right to have a say in the matter. We have given the President the power to allow Members in his discretion to have their say. If

there is some amendment of substance suggested by a member it should be permissible for the President to allow it to be moved. I hope Shrimati Durgabai will accept this amendment.

Then my next amendment is :

In sub-rule (b) of the proposed rule 38R, the words 'and it shall not be necessary for the president to put each of those amendments separately to vote' be deleted.

This has already been moved. I only wish to support it.

It is only proper that we should do so. It will not take much time.

And then I beg to move:

"That at the end of sub-rule (4) of the proposed Rule 38R, the following be added:--

'except by the President according to his discretion'."

As proposed, sub-rule (4) says:

"After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment."

And I suggest the addition of the words--" except by the President according to his discretion." This will allow amendments of substance also, but according to the President's discretion. The amendments may be not only consequential and formal, but there may be amendments of substance also, and therefore the President should be given the power to admit them also. I am not giving the Members any right, but only arming the President with the power to exercise his discretion. I hope this amendment will not be objected to.

And then to the proposed rule 38RR. I have two amendments. It is proposed in sub-rule (2)-" The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1)". That means when all the amendments are disposed of, then when the Third Reading comes a time limit will be imposed. I would very much have liked that no time limit is fixed, but that is not possible. Therefore I have in my amendment suggested:

"That in the proposed rule 38RR, for sub-rule (2) the following be substituted:--

'(2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time, limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 40 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion'."

Sir, I only want that members who want to participate in the debate should be able to have an opportunity to do so. They should be permitted to give their names 36

hours before the motion. You may then, Sir, know the names of the Members who want to participate, and I suggest a minimum time of 40 minutes should be given to each speaker, because he has to make remarks on the whole Constitution. You may, according to your discretion, increase this duration or decrease it, if you find that a particular Member is making an important point or is wasting the time of the House, but everyone who wants to participate in the debate, must be given an opportunity to do so, and if the suggestion that I have made is adopted, then nobody will have any grievance. You will know the number of speakers and you will allot time accordingly and we will have a fairly good debate.

And then I also say in clause (2a):

"The President shall have power to extend the duration of the daily sittings of the Assembly."

Now, we are sitting only for three hours in the morning and two hours in the afternoon, because we have our party meetings and other meetings, but they will all be over by the time we come to the final Third Reading, and there is no reason why we should not sit for longer hours. The House of Commons, as we all know, Sir, sits for nine to ten hours and if we want to finish our Constitution in the time prescribed, then we should extend our sittings, if necessary to eight or even ten hours so that everyone who wants to speak may have an opportunity to do so. I want to arm you with this power to extend the duration of sittings. You will have the number of speakers and then you will be able to calculate the time required, and you may extend the sittings accordingly. I would have wished that the Legislative Assembly Session was held on the 14th and the final reading of the Constitution came up later so that we might have had more time to go through it carefully and seen to omissions and punctuations and other formalities But I hope the Drafting Committee will get busy and do the work for all of us.

Sir, I was not happy at the argument given by Shrimati Durgabai, that we have already wasted a lot of money on this. I think this Constitution is one of the biggest achievements of ours during the last three years. We have solved so many knotty problems, and tile amount of time and money spent I think, is not disproportionate to the achievement. Mr. Kamath told us that we have spent about Rs. 60 to 70 lakhs over this Constitution, and that is not a big amount in three years. It is for the first time in the history of our country that we are giving a free democratic Constitution to ourselves and have integrated all the different parts of the country into one single whole. Therefore, I think the time and money spent on it is not time and money wasted. It is not as if all the work has been done in these sittings. A lot of work has been done in this committee sittings, behind, the scenes, by the Drafting Committee. And I do not want that at the fag-end, we should hustle anything and be open to the charge by people who are opposed to us that we have hustled the Constitution through. So my amendments are necessary and I hope Shrimati Durgabai will accept them.

**Dr. B. Pattabhi Sitaramayya** (Madras : General): Mr. President Sir, we have come to the last stage of our journey. When the railway train goes along the well-laid track, its journey is well regulated. It goes at the maximum speed and then comes to a stop. When coming to the railway station, it is confronted with zig-zag lines, with lines on either side of the alignment, and every junction has to be carefully mapped out in the Station Superintendent's room so that he may be able to regulate the train from the cabin. It is thus that we have to pay particular attention to changes in the

rules which may appear superfluous or unnecessary or formal, but at the same time deserve the attention of every Member of the House towards the last stage.

I this view, I have examined the wording, and coming to paragraph (1), I feel that there is a little change necessary.

It says--

".....and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required."

The presence of both the words "other" and "necessary" gives me a little difficulty. The word "necessary" is deliberately put there. If it is meant to have a plenary meaning, then the word "other" attenuates that meaning. Therefore, I would suggest that if you mean "or necessary amendments", then that necessity must be defined, because it may be ample or it may be circumscribed. If it is suggested that the necessity comprises *all those conditions which might have come into existence since the reference of the Draft to the Drafting Committee*, then, of course, it will have a plenary and ample meaning, and in that view, it is not merely formal or consequential; but the word "other" comes in the way of our giving this amplified meaning to the word "necessary". Therefore, Sir, I would like the President or some Member with authority to explain to us what the word "necessary" means, and if the meaning that I have attached to it is the meaning, well and good; and if that is not the meaning that word is unnecessary; but if that is the meaning, then the word "other" may kindly be dropped.

Of course, I have not given notice of any formal amendment, but this being of a verbal nature, though it has got much significance, I trust that the good lady who has moved the rules will accept it.

**Shri T. T. Krishnamachari :** Mr. President, Sir, in supporting the motion made by my honourable Friend Shrimati Durgabai, I would like to answer one or two criticisms made by my honourable Friend. Mr. Naziruddin Ahmad, who I see is not in the House.

Sir, the idea of the Steering Committee in introducing this amendment to the rule is that the work of this House, in so far as the Third Reading stage is concerned, should be facilitated and expedited, without at the same time putting any unnecessary restriction on the freedom of the debate. Sir, time is a very important factor in the Third Reading stage. As we expect that you will ultimately decide, perhaps, that we meet again on 14th November, we have necessarily to finish by 26th November the third reading of the Constitution, because this House will have to meet elsewhere on 28th November. All these factors have been taken into consideration in trying to fix a programme for the Third Reading stage. The days therefore that are allowed for preliminary work in the nature of approving of formal amendments made by the Drafting Committee, which will be entrusted with the work of revising the Constitution and of making a fair copy of the same, have necessarily to be limited. That is the limitation that is sought to be imposed by the amendment to rule 38R.

I am afraid, in a matter like this, ultimately the decision must remain with you, even though we put it in the rules that only so many days should be allowed, and you have the final discretion in the matter, that discretion is only reinforced by the addition of rule 38 RR and it is for you to decide whether the period will be limited to the extent

mentioned in the rule or to extend it. There is no question of fettering your discretion. But I think we must work to a programme and a plan. The plan that at the moment suggests itself to us is that we should limit the number of days for discussion of the preliminary stage of changes suggested by the Drafting Committee in making a fair copy of the Constitution, and then proceed to what is perhaps very important in the opinion of many Members of the House, namely, the Third Reading speeches.

I have no doubt that this House will be fully represented in the Third Reading stage when this work, which is perhaps the work which I hope will remain permanent for many generations to come, and on which those honourable Members who have been fortunate enough to be associated would like to say something, will be praised. No doubt we have ourselves had in the course of our discussions pointed out the difficulties and have as it were blazed the trail for those who would work the Constitution in the future. Therefore it is very important that as many days as could possibly be provided for will have to be left for discussion at the Third Reading stage. If the number of days allotted for the preliminary stage is extended, it will to that extent impinge on the freedom of discussion at the Third Reading stage in which honourable Members would like to participate. So, my honourable Friends Mr. Kamath and Prof. Shibban Lal should remember this point when they want to extend the number of days for discussion of the preliminary stage.

One point made by Mr. Kamath, in spite of the fact that with your permission I intervened and explained when he was speaking, I am still unable to comprehend. As I told him, what we contemplate here is that, if you are good enough to commit the whole thing to the Drafting Committee to make a fair copy and make the necessary consequential amendments and also the other necessary amendments, we expect to bring out in book form the Constitution and the amendments and append to it a report which will seek to give an explanation, either in the body of the report or in the appendix, of all the changes made, minor or otherwise, so that the House could straightaway put its finger on the amendments made. If they feel that these amendments are such that they cannot accept them or some of them, they can move amendments, provided however that you feel that they are necessary, that they are not merely of a drafting nature or of an alternative nature, where the amendments suggested by the Drafting Committee would be enough for the purpose. It will be for you to allow the amendments to be moved.

But the procedure that we have envisaged is that the whole thing will be taken up together as a whole as the Draft Constitution has been taken up, and Members will be perfectly entitled to move amendments subject to the exercise of your discretion. Then if those amendments are accepted or rejected, the consequences will follow. If no amendments are moved, the suggestion of the Drafting Committee will go through without any amendment. In such a case, if Members of this House consider that particular changes suggested by the Drafting Committee and incorporated in the fair copy of the Constitution should be accepted and do not move any amendment to the contrary, naturally there is no use multiplying the procedure by making every change made by the Drafting Committee the subject-matter of a vote and a decision by the House.

Sir, in regard to the matter mentioned by our respected leader Dr. Pattabhi Sitaramayya I must apologise to the House, as a Member who took part in the drafting of this particular amendment, that we have not fully examined the consequences of the word 'other'. I must say that I feel that the Doctor's interpretation is a correct

interpretation. The idea that we had in mind in putting in the words 'necessary amendments' was to enable you to permit 'necessary amendments' should you consider them necessary in the fair copy that the Drafting Committee will be presenting to the House. I would earnestly suggest to you and to the House to accept the proposal made by my honourable Friend Dr. Pattabhi Sitaramayya and omit the word 'other' before the words 'necessary amendments' in clause (1) of Rule 38R.

So far as the other amendments moved are concerned, I do not propose to enter into their merits. I think hey will be dealt with by my honourable Friend Shrimati Durgabai. But I may say that excepting so far as perhaps amendment No. 2 of Mr. Naziruddin Ahmad is concerned where my Friend has amplified the word 'clause' to mean articles, clauses and sub-clauses, nothing else need be accepted. This amendment does improve the wording. The other amendment suggested by Dr. Pattabhi Sitaramayya may also be accepted. There does not seem to be need for accepting the other amendments suggested by Mr. Naziruddin Ahmad, by Mr. Kamath and by Professor Saksena. But it is for the mover to accept or reject the suggestion I have made. I do feel that the House will recognise the necessity for providing a blue-print for getting through with our Third Reading stage in which we will have to provide for the maximum freedom possible for Members to suggest amendments necessary and also to make their own contribution to the debate in this House at the final stage so that the largest possible number of members could participate. The whole scheme of this rule has been framed with that view.

Now I would like to say a word in regard to certain implied powers which the President has and which we have categorically stated, particularly in rule 38RR. My honourable Friend Mr. Kamath objected to clauses (2) and (3) on the ground that the powers are implied and need not be categorically stated. If that is so, there is nothing wrong in stating them categorically. And the mere fact that the powers have been categorically stated would perhaps help us over the difficulties that arose on previous occasions, particularly during the last session. We had a little difficulty because of the inflexibility of the rules and the president did not want to take advantage of the very wide powers that are normally vested in him without any express sanction for that purpose. I feel, Sir, that at the Third Reading stage it will be necessary to arm the President with specific and categorical powers of that nature.

**Shri H. V. Kamath :** What exactly is the confusion arising out of the word "other" which my honourable Friend, Dr. Pattabhi Sitaramayya asks to delete ?

**Shri T. T. Krishnamachari :** The conclusion will be what was originally intended that there will be formal and consequential amendments. If any amendment of a different category becomes necessary in regard to what has happened between now and the 14th November perhaps, and the President considers they are necessary modifications--honourable Members should bear in mind that the authority to consider what is a necessary amendment happens to be the President--they will go through.

**Shri H. V. Kamath :** What about the word 'other'?

**Shri T. T. Krishnamachari :** Our revered Leader Dr. Pattabhi Sitaramayya felt that the word "other" qualifies the necessary amendments unduly and that it refers more to the words occurring prior to that word "formal or consequential" rather than to the word "necessary", and I agree with the interpretation of Dr. Pattabhi Sitaramayya. If the President agrees, he might put it to the House to decide on the

matter.

**Mr. Naziruddin Ahmad :** The President has got full powers with regard to unnecessary and useless amendments.

**Shri T. T. Krishnamachari :** It has always been borne in mind. This Constituent Assembly, being a sovereign Body, the President has got absolute powers and that is not affected by mere rules. Nevertheless, we felt that it would be much better to precisely state why and how he would exercise those powers within the limits which is possible for us to envisage in our rules.

**Mr. Naziruddin Ahmed :** Supposing the Drafting Committee commits an obvious mistake indulges in a palpable error.....

**Shri T. T. Krishnamachari :** We depend upon Mr. Naziruddin Ahmad to fill up any lacuna.

**Shri Kala Venkata Rao** (Madras : General) : I would like to have this point answered. There is the question of linguistic provinces which have not been settled, and roughly the proposal seems to be to amend the Schedule if need be at the Third Reading stage. How will these rules affect that? How can we form new linguistic provinces through an amendment at the Third Reading stage and what is the provision in this blueprint of procedure which Shrimati Durgabai has presented before the House and which Mr. Krishnamachari has clarified ? I want satisfaction on this point, Sir, whether it would be possible to move an amendment for the addition of certain States in Schedule. I would like to make consequential amendments in the whole Act I would like that some provision should be clearly made under these rules to make that possible That is my request.

**Shri T. T. Krishnamachari :** I do not want to anticipate the statement that the Honourable the President is likely to make with regard to Schedule I, but I would say that that and other factors that might arise would undoubtedly be covered by the words "necessary amendments". It would be made clear if the House adopts the amendment suggested by Dr. Pattabhi Sitaramayya. Thereafter the amendments moved may be consequential or they may be necessary.

**Shri R. K. Sidhva** (C. P. & Berar : General) : Does my honourable Friend know that under the rules of the Legislative Assembly there is no time limit for speeches on the First Reading and Third Reading stages ? If that is so, why should we deny to any Member the privilege of speaking at the Third Reading for any length of time?

**Shri T. T. Krishnamachari :** My Friend is ignorant on this point. The present rules of the Legislative Assembly do fix a time-limit even for a Bill like the Finance Bill.

**Shri R. K. Sidhva :** I do not know whether any fresh rules have been made by the Speaker, but those rules have not been placed before the House. So far as I know, there is no time limit. No doubt the inherent right of the Speaker is always there for checking a member if he is going out of the way or repeating arguments or unnecessarily taking up the time of the House.

**Mr. President :** May I just say a few words before I put this to the vote. As has

been explained by Mr. Krishnamachari, the whole situation has to be taken into consideration before we launch upon the Third Reading stage. We have two limits which it is not possible for us to cross. One is on this side and the other is on the other side. That is to say, it is not possible to begin before the 14th November and we cannot prolong our discussion beyond the 25th or the 26th at the latest, because the Constituent Assembly (Legislative) will meet from the 28th.

**Shri R. K. Sidhva :** We can have night sittings even after that.

**Mr. President :** Within those 12 days if we sit on Saturdays also or if you like to sit on Sundays 13 days-we shall have to complete the whole of the Third Reading stage. This is the time table envisaged by this amendment of the rules and these are the limitations which we have to observe. If we have more time on this side in connection with the amendments, we shall proportionately get less time for general discussion. If we allow more time to one speaker, we shall have proportionately to cut down the number of speakers. I was just considering how the thing will work in actual practice. If we give three days for the disposal of the amendments--two days are suggested but if one day more is given in view of the importance of the amendments that will be coming up--then we shall have nine days left. The last day I want to keep for other formalities So, we shall have eight days. At the rate of forty minutes we can give a chance to sixty speakers.

**Shri H. V. Kamath :** How many hours daily?

**Mr. President :** Five hours.

**Shri R. K. Sidhva :** We can sit for ten hours.

**Mr. President :** Ten hours; that means 120 speakers.

**Mr. Naziruddin Ahmad :** We do not mind sitting for ten hours.

**Mr. President :** It will depend upon you. You may sit as long as you like I shall not object.

**Shri H. V. Kamath :** We may sit for eight hours.

**Mr. President :** At that time, we will see. I am not fixing the number of hours now. I am only making certain arithmetical calculations. It will be for the House to say for how many hours it will sit. I shall not stand in the way. That I will promise. There will of course be the question of quorum, (Laughter) and it will not be in my power to compel Members to attend.

**Shri Mahavir Tyagi** (United Provinces : General) : I just want a ruling from you on a particular point, either your ruling or a reply from the honourable the I Mower of the motion. There are amendments coming for changing the name of U. P. I want to know if you will permit them to be considered in the 3rd leading?

**Mr. President :** I can say this, that if there is general agreement about the change of name, I shall not stand in the way. If it involves discussion and if there are

different suggestions made, then I shall stick to the name which is given here.

**Shri Mahavir Tyagi :** If the House leaves it to the U. P. Members ?

**Mr. President :** I do not mind, but I would not like to interfere with the name of U. P.

**Shri R. K. Sidhva :** The question of altering the name is very important and I would suggest it is not proper to leave it to the Members of this House It should be left open both to the Government of that Province and to the Legislature of that Province. We cannot change the name of a Province by discussing it here. This matter should not be treated lightly.

**Mr. President :** I think you are right. I said if there is general agreement by all parties concerned then I will not oppose its discussion.

**Shri Mahavir Tyagi :** The word of the Premier of the Province should be considered enough.

**Mr. President :** But at this stage I do not think we should insist on any commitments from me or from any Member. We should take things as they arise and we shall decide them when the question arises.

Now, it was mentioned by Mr. Naziruddin Ahmad and I believe by some other Members also, that the time that is allowed for giving notice of amendments is very short. It is now only three days. I would suggest it would be good if Mr. Shibban Lal Saksena's amendment could be accepted extending it to five days. But it all depends upon the resources of the Press. So far as it is possible we shall try our best, but if you like and if the office thinks we could give five days, I personally would not object to five days being given.

**Shri H. V. Kamath :** Sir, you were telling the House, when Mr. Tyagi cut you short, about the length of 'sittings, and I think there is something left unsaid.

**Mr. President :** It will depend upon the House as to how many hours it wishes to sit but we could not go beyond the 26th in any case; that is fixed.

**Prof. Shibban Lal Saksena :** Would you not accept my suggestion that all Members who want to participate should give their names beforehand ?

**Mr. President :** It is not necessary to introduce it in the Rules. Supposing a Member fails to send his name I do not know if you would like we to disallow him. Shrimati Durgabai will reply now.

**Shrimati G. Durgabai :** Mr. President, Sir, before dealing with the amendments moved by my honourable Friends, I would clear up two points made by some of the Movers of the amendments. I will be very brief in my reply and not take much of the time of this House.

I have heard one honourable Member making this charge against the Drafting Committee that they have set up some lady to move these Rules. I may straightaway

tell the House that it is not the business of the Drafting Committee. These Rules came up before the Steering Committee, and were approved by them and I have now moved them in this House. Another Member has made a suggestion that a lady has been put up to defend the action of the Drafting Committee. Sir, I am very sorry to find some of the honourable Members of the House-male Members-still conscious of this sex business though the women Members have completely forgotten it. I very much wish that there should be no longer any talk of this question of men and women.

As regards the amendments moved, honourable Members are aware that some were moved by Mr. Naziruddin Ahmad. I may straightaway tell the House that I have pleasure in accepting his amendment 2 (iii) which reads thus :

"for the word' clauses' the words 'articles, clauses and sub-clauses' be substituted."

Though it is strictly a matter for the Drafting Committee. I will have no hesitation in accepting this amendment.

I would also be willing to accept amendment No. 2 of the list of amendments moved by Mr. Shibban Lal Saksena. The Honourable the President also has suggested that five clear days' notice would be required and therefore this amendment would be accepted.

With regard to all the other amendments particularly those of Mr. Naziruddin Ahmad, I would say that they are all matters for the draftsmen to set right because they are either verbal or grammatical or relating to punctuation. So they might be safely left to the Drafting Committee or the draftsmen. His amendment No. 6 about the three clear days' notice has already been covered by accepting Mr. Saksena's amendment about five clear days' notice being substituted for three days.

With regard to Mr. Kamath's amendments, Mr. Kamath wants to move substantial amendments by deleting the words "which is either formal or consequential upon". Our experience has shown that some thousands or substantial amendments have already been moved during the second stage of the consideration of the Draft Constitution. Now the Honourable the President has got the power to suggest any substantial amendment to be moved by the Drafting Committee. Therefore, it will not be necessary to enable Members to make substantial amendments and independent amendments at that stage.

Mr Kamath had also questioned the power of the President to fix a time-limit to the speeches and also the power to relax or suspend the Rules.

**Shri H. V. Kamath :** I did not question his power, I said he had inherent powers.

**Shrimati G. Durgabai :** To that my submission would be that no doubt the President has got over-all power in all these matters. He has got power either for fixing the time-limit or for disallowing any amendment at his discretion. But I wanted these Rules that I have moved to day to be self-contained and independent, a complete procedure to be laid down for the Third Reading stage of this Draft Constitution and its passing. Therefore, there will be nothing objectionable in making a complete, self-contained procedure for this purpose.

**Shri H. V. Kamath :** No necessity, though there is no objection.

**Shrimati G. Durgabai :** Mr. Sidhva raised an objection that in the Legislative Rules of Procedure there is no provision for time-limit, that the President could not fix a time-limit, but I would simply refer Mr. Sidhva to Rule 46, sub-clause (iv) of the Legislative Assembly Rules.

**Shri R. K. Sidhva :** They have not been passed by the House. They were not placed before the House.

**Shrimati G. Durgabai :** We are following those Rules in that House. Therefore, I would simply refer him to those Rules under which the President has got the power to fix a time-limit. We are all aware that the President most necessarily have these powers, unless we want still further to delay and are not anxious to expedite the passing of this Constitution. Some Members have taken objection to my saying that it is a financial drain on the revenues of the country. In the name of the common man about whom we are always speaking here and everywhere. I will appeal to my Friends in the House. I appeal in the name of the common man, who is not interested in these long procedural questions but who is only looking forward to the day of receiving the benefits accruing from this Constitution, to expedite this work. Let us enable the President to exercise more drastic powers to expedite the work of this Constitution.

**Shri H. V. Kamath :** In the name of the common man, who has been guilty of delay here ?

**Shrimati G. Durgabai :** With regard to the point raised by Dr. Pattabhi Sitaramayya, my Friend Mr. Krishnamachari has already clarified the position. I would unhesitatingly accept the suggestion made by him, that is, the deletion of the word "other" before the word "necessary".

He also, I think, asked for the clarification of the word "necessary"' amendments. Necessary amendments are those which have become necessary due to the changes in the country, which the President may allow the Drafting Committee to move, if he considers them necessary. After the clarification of the different points raised here, I have no hesitation in saying that the House will accept the motion that I have made.

**Mr. President :** I will now put the amendments to vote. The question is:

"That in the proposed now Rules 38R and 38RR, for the word 'Constitution' wherever it occurs the words Draft Constitution' be substituted."

The amendment was negatived.

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

"That in sub-rule (1) of the proposed rule 38R,--

(i) for the word 'considered' the words 'considered and disposed of' be substituted,--

The amendment was negatived.

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

"That in sub-rule (1) of the proposed rule 38 R,--

(ii) for the word 'amended' the words '(amended by the Assembly)' be substituted,--

The amendment was negatived.

**Mr. President :** Part (iii) has been accepted, I understand. The question

"That in sub-rule (1) of the proposed rule 38R,--

(iii) for the word 'clauses' the words 'articles, clauses and sub-clauses' be substituted;--

The amendment was adopted.

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

"That in sub-rule (1) of the proposed rule 38R,--

(iv) for the words 'to recommend' the words 'to submit a report recommending' be substituted."

The amendment was negatived.

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

"That after sub-rule (1) of the proposed rule 38R, the following new sub-rule be inserted:-

'(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committee."

The amendment was negatived.

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

"That in sub-rule (2) of the proposed rule 38R, for the words 'After the Constitution has been referred to the Drafting Committee, the report of the Committee, the words. 'The report of the Drafting Committee' be substituted."

The amendment was negatived.

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

"That in sub-rule (2) of the proposed rule 38R, for the words 'in the Constitution' the words 'to the Constitution' be substituted."

The amendment was negatived.

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

"That in the proviso to sub-rule (2) of the proposed rule 38R, for the words 'three clear days' the words 'seven clear days' be substituted."

The amendment was negatived.

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

"That in sub-rule (4) of the proposed rule 38R, for the words 'which is either formal or consequential upon' the word 'to' be substituted."

The amendment was negatived.

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

"That in sub-rule (6) of the proposed rule 38R, the words 'and it shall not be necessary the President to put each of those amendments separately to vote' be deleted."

The amendment was negatived.

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

"That in sub-rule (8) of the proposed rule 38R, the words 'shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and' be deleted."

The amendment was negatived.

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

"That sub-rule (2) of the proposed new rule 38RR be deleted."

The amendment was negatived.

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

"That sub-rule (3) of the proposed new rule 38RR be deleted."

The amendment was negatived.

**Shri T. T. Krishnamachari :** No. 122 need not be put, Sir. It is only a consequential one.

**Mr. President :** Let me put that also. The question is:

"That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (10)."

The amendment was negatived.

**Mr. President :** I shall now take up Mr. Shibban Lal Saksena's amendments. As

they have not been circulated, I shall read them. The questions is:

"In the proposed new Rule 38R, in clause (1) the following words be added at the end :-

> "But the President shall have power to allow any other amendments to be moved according to his discretion."

The amendment was negatived.

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

"In the proviso to sub-rule (2) of Rule 38R, for the words three clear days' the words 'five clear days' be substituted."

The amendment was adopted.

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

"That in sub-rule (3) of the proposed rule 38R, for the words beginning with 'and at this stage' to the end of the sub-rule the following be substituted:--

> "and at this stage the debates shall be controlled by the President according to his discretion'."

The amendment was negatived.

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

"That in sub-rule (6) of the proposed rule 38R, the words 'and it shall not be necessary for the President to put each of those amendments separately to vote' be deleted."

The amendment was negatived.

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

"That at the end of sub-rule (4) of the proposed rule 38R, the following be added:--

> "except by the President according to his discretion'."

The amendment was negatived.

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

"That in the proposed rule 38RR, for sub-rule (2), the following be inserted:--

> (2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 30 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion.

(2a) The President shall have power to extend the duration of the daily sittings of the Assembly.

The amendment was negatived.

**Mr. President :** There is an amendment suggested by Dr. Pattabhi Sitaramayya that "the word" other, occurring in the last but one line be omitted. The question is:

"That the word 'other' occurring in the last but one line of article 38-R (1) be deleted."

The amendment was adopted.

**Mr. President :** I shall now put the motion moved by Shrimati Durgabai, as amended, to vote. The question is:

"That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:--

Revision of the Constitution by the Drafting Committee and the consideration of the amendments recommended by them.

'38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the articles, clauses and sub-clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or necessary amendments to the Constitution as may be required.

(2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other members of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration.

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available five clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

(3) While making any motion referred to in sub-rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.

(4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.

(5) If notice of a proposed amendment has not been given two clear days before- the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, any member may object to the moving of the amendment, and such objection shall prevail unless the President in his discretion allows the amendment to be moved.

(6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred

to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.

(7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.

(8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2), has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so recommended as modified by any amendment or amendments adopted by the Assembly be made as the case may be.

(9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed.

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| Passing of the Constitution. | 38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved. |

(2) The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1).

(3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38-R or this rule relax or suspend any of these rules'."

The motion was adopted.

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## DRAFT CONSTITUTION *(Contd.)*

### *First Schedule.*--(Contd.)

**Mr. President :** We shall now take up the First Schedule. With regard to the First Schedule, there are a large number of amendments of which notice has been given. Some of those amendments relate to the Schedule as it was in the original draft; some others relate to the proposition as it was moved by Dr. Ambedkar yesterday. I find in respect to several of these amendments one difficulty--both in regard to the amendments relating to the original draft as also, some of the amendments relating to the proposition moved yesterday. The difficulty is that they do not actually represent facts as they ate today: For example, the effect of some of these amendments is today down names of provinces which are not in existence today and about which we do not know whether they will come into existence at all. We shall experience, in fact, insuperable difficulties if this Constitution is passed containing names of provinces which are not in existence and omitting names of provinces which are in existence today. I do not know how the Constitution will work after it comes into force with

names of provinces which are not in existence and omitting names of provinces which are in existence today. The whole structure of the constitution as it is framed, will be difficult of operation. For example, we do not know what the Assembly will be: whether it will be the Assembly of Madras, or whether it will be the Assembly of Andhradesha or of Tamilnad. Similar difficulties will arise with regard to numerous other provinces in the Constitution.

I would therefore suggest to honourable Members that at this stage when the question with regard to, the creation of new provinces has not actually been decided it may not be wise to include in the Constitution names of Provinces which we hope or propose to create but which have not been created. Similarly, there may be other difficulties also arising in connection with those other Provinces which are in existence and with regard to which some changes are sought to be introduced by some other amendments.

There are some amendments relating to the transfer of certain areas from one Province to which they are attached today to another province. If we pass the Constitution as it is, the transfer of those areas does not automatically take place and similar difficulties will be experienced if we include in the territories given in the Constitution areas which are not included in the territories of the provinces which are named.

I would, therefore, suggest to honourable Members not to bring any amendments at this stage, which will create difficulties in the actual operation of the Constitution when it is passed. I have no doubt that there are certain Members, in fact there are many Members in this House who are keen on certain matters with regard to the creation of new Provinces or even with regard to the change of the boundaries of Provinces, but those things should be first brought about before they can be incorporated in the Constitution; and I would therefore, suggest to those honourable Members who have given notice of such amendments to bring about the change which they want in the actual situation and then ask the Constituent Assembly to incorporate these changes in the Constitution. We have made provision in the rules which we have just passed in the form of rules for introducing amendments which will conform to facts as they will exist at the time when the Third Reading takes place and if any changes are brought about within this time the Drafting Committee will certainly take note of these changes and it will certainly bring them up before the House. I hope that this statement of mine will enable honourable Members to consider the question from this point of view and if they agree, we might also incidentally save some time of the House by not having to consider those amendments, and ultimately it may be that many of them not be accepted.

**Shri H. V. Kamath :** As regards the re-naming of existing provinces, I would request you to see to it that in every case the matter of re-naming of the province is left to the Provincial Government, the legislature, the P.C.C. and the representatives of that province in this House.

**Mr. President :** So far as this is concerned, I think there is change in the name of only one province, I believe. There is no other.

**Shri H. V. Kamath :** There is C. P. and Berar.

**Shri Mahavir Tyagi :** There are amendments to change the name of U.P. also.

**Mr. President :** There are amendments for the change of the name from Orissa to Utkal.

**Shri T. T. Krishnamachari :** So far as the adoption of any change in the name of a State is concerned, in the draft that is before the House, we have been following one principle, namely, if there is a substantial number of Members wanting a change and that change has been approved by the Premier of the province, we have put it in one amended schedule and that is the reason why the name, so far as C. P. is concerned has been changed. We have received a representation from a number of Members belonging to Orissa and the matter will have to be referred back to the Premier of the Orissa Province and if he agrees and if you, Sir, and the House permit, we might probably introduce an appropriate change in the revised fair-copy to be taken into consideration at the next session, changing the name from Orissa to Utkal; but that is the principle that we have followed in accepting an amendment for a change where they have been more or less approved or ratified by the Premiers of the Provinces concerned .....

**Shri R. K. Sidhva :** I take strong exception to the suggestion made by my honourable Friend, Mr. T. T. Krishnamachari.....

**Mr. President :** He has only explained the position.

**Shri R. K. Sidhva :** We had experience on the question of the Second Chamber being left to the Members of this House and there has been subsequently clamour that nobody was consulted in the province and many of the people in the province felt that it was improper to have retained the Second House without consulting them. Therefore on matter of greater importance than that, i.e., changing the name of the province, as I suggested earlier not only the Premier but the whole Cabinet of that province and also the members of the Legislative Assembly may be given an opportunity to express their point. This matter is not a small one and anybody can make a suggestion in this House or even the Premier. With due respect to the Premier, it is just possible.....

**Mr. President :** May I suggest one way out of this difficulty. On behalf of the Constituent Assembly. I propose to send, to the various provinces whose names are sought to be changed, to the Governments of those provinces to express their opinion on them and when we have got their opinion. If necessary, we may introduce the changes even at the Third Reading stage.

**Honourable Members :** All right, Sir.

**Shri H. J. Khandekar** : (C. P. & Berar : General) : I am very glad that you are giving instructions to the Provincial Governments suggesting the names of the provinces. I also suggest.....

**Mr. President :** You have misunderstood me, I am not giving instructions. If any proposals have come here, I will send those proposals to the Provincial Governments for their opinion.

**Shri H. J. Khandekar :** I suggest, Sir, that the opinion of the Members of the province should be taken into consideration as they have been done in the case of the Upper House, I mean the M.C.A.s.

**Mr. President :** The Members are present here.

**Shri J. H. Khandekar :** I mean the same, Sir, that the opinion of the Members of the Constituent Assembly of the Province the name of which is to be changed.

**Mr. President :** They will be present here and they will be able to express their views.

**Shri H. J. Khandekar :** Thank you Sir.

**Shri H. V. Kamath :** Do you want specific proposals, Sir, in this regard ?

**Mr. President :** No. There are so many amendments and I will take note of those amendments which have already come.

**Shri Kuladhar Chaliha :** (Assam : General) : I have an amendment and I want to change the spelling of the word Assam only because it is anglicised. Instead of the word "Assam" I want the word "Asom".

**Mr. President :** In that also I shall consult the Provincial Government. What shall we do now ? Shall I now take up the amendments ?

**Honourable Member :** Yes, Sir.

**Shri Gokulbhai Bhatt** (Rajathan) : *[Mr. President, on a point of clarification, Sir, the schedule which has been placed before us excludes a part of India, about which nothing has been decided as yet and that part is Sirohi. It would be better if any member of the Drafting Committee clarifies it.]

**Mr. President :** There is an amendment with regard to that; but I do not know the exact position myself.

**Shri K. M. Munshi :** May I say, Sir, with regard to what my honourable Friend Mr. Gokulbhai Bhatt said, I ascertained the position from the Deputy Prime Minister. So far as Sirohi is concerned, it has not yet been finally settled as regards the province in which it is to be placed. At present, it is being administered by the Government of Bombay under the Extra-Provincial Jurisdiction Act.

**Shri Jainarain Vyas** (Rajasthan) : Mr. President, I want to draw the attention of the House to the note under Part I where the province of Bombay has been defined. The last four lines of that note state : "any territory which immediately before such commencement was being administered by the Government of that province under the provisions of the Extra-Provincial Jurisdiction Act, 1947." This note makes it clear that the territory which was administered by that particular province before the commencement of the Constitution would be included in the province of Bombay. This means that Sirohi would go to Bombay even without a covenant being signed by the Boy Ruler of Sirohi or the mother of the Ruler, or the Ruler whose case is pending in

Bombay. In that case, I would request Mr. Munshi to see that these lines which say "which immediately before such commencement were being administered by the Government of that province under the provisions of the Extra-Provincial Jurisdiction Act, 1947" are deleted so that there may be no apprehension in the minds of the people of Sirohi that Sirohi has merged.

**Mr. President :** This does not apply only to Sirohi. It applies to other areas also.

**Shri Jainarain Vyas :** That would apply to Sirohi also and Sirohi would be considered to have merged even without a covenant being signed. That I want to point out.

**Mr. President :** We can make an exception in that case.

**Shri K. M. Munshi :** My honourable Friend Mr. Vyas must realise that the whole of this Schedule has been drafted on the basis of what is existing today. We do not want to disturb the existing conditions. Nor is it suggested that no changes should be introduced in this matter. As has already been pointed by the Honourable the President, if circumstances change hereafter, when we come to the Third Reading, those changes will be duly incorporated. At the present moment what is stated in the schedule is quite clear and therefore the reference to Sirohi is irrelevant at the present moment.

**Shri H. V. Pataskar :** (Bombay : General): There is one question which I would like to ask. So far as Sirohi is concerned is it part of Bombay or is it a separate State?

**Shri K. M. Munshi :** I do not know, I am not in a position to make any authoritative statement on that question. So far as I know, it has been transferred to the Centre and the Centre has given it to the Bombay Government for purposes of administration under the Act. I speak subject to correction. That is my impression.

**Shri Shankarrao Deo :** (Bombay : General) : Is it not necessary, Sir, that the House should know the exact position? Some Members are interested in the matter and want to know whether Sirohi forms part of Bombay or has been transferred to Bombay for administration. Will you please request the States Ministry to make a statement on this ?

**Shri K. M. Munshi :** Yes, I will.

**The Honourable Shri K. Santhanam :** (Madras : General) : Up to the 26th of January, is it not open to the States Ministry to make adjustments ?

**Shri K. M. Munshi :** Mr. Santhanam is correct. Up to the 26th of January, it is perfectly open to the Government of India to transfer any part of a State to any Province. That is the position in law. So far as the present Schedule is concerned, it applies on and after the 26th of January. Whatever portion of a State on that date, has been transferred to Bombay. What has been transferred to some other province will be in that province. Mr. Shankarrao Deo asked what is the present position of Sirohi. That is how I have understood it.

**Shri Shankarrao Deo :** I would like to know what will be the status after the 26th

of January.

**Shri K. M. Munshi :** That will be decided on or about the 26th of January.

**Shri Shankarrao Deo :** We would request you to convey the desire of some Members here to the States Ministry that they would like to know what is exactly their mind and scheme for Sirohi.

**Shri K. M. Munshi :** I shall convey the request to the proper quarters.

**Shri Sarangdhar Das :** (Orissa States): Sir, I have got a certain amendment which does not come in the category of amendments that you have said should not be moved. I wish to move them when an opportunity is given to me.

**Mr. President :** I am going to call every amendment and every Member is free to move whichever amendment he likes. The first amendment is No. 404, Mr. Kuladhar Chaliha--Do You want to move this ?

**Shri Kuladhar Chaliha :** Yes, Sir.

**Mr. President :** It was suggested that these may be referred to the provincial Governments.

**Shri H. V. Kamath :** They may be formally moved and then referred to the Provincial Governments.

**Shri R. K. Sidhva :** You may take the sense of the House on this question, Sir.

**Mr. President :** I have only made a suggestion. But, if Members insist on moving their amendments, I cannot prevent it.

**Shri Kuladhar Chaliha :** Sir, I move:

"That in amendment No. 380 of List XV (Second Week), for item 1 of Part I, the following be substituted:--

"1. Asom."

**Mr. President :** If it is once moved I shall have to dispose it of in some way. It will have to be put to the vote.

**Shri M. Thirumala Rao :** (Madras: General) : The proper spelling of Assam is Assam. He has given his remedy to spell it Asom. 'Asam' can be pronounced as 'Asom' if he likes.

**Mr. President :** Amendment No. 405.

**The Honourable Shri K. Santhanam :** Each amendment may be disposed of separately and may be put to the vote.

**Mr. President :** I shall take each amendment separately. Mr. Chaliha if you want

to move your amendment, then I shall have to put it to the vote.

**Shri Kuladhar Chaliha :** I only want it to be referred to the Government, Sir.

**Mr. President :** Amendment No. 405. Mr. Brajeshwar Prasad do you want to move it ?

**Shri Brajeshwar Prasad :** (Bihar : General) : Yes, Sir.

**Shri R. K. Sidhva :** Once it is moved, it becomes the property of the House.

**Shri Brajeshwar Prasad :** Yes, Sir, I know. You may reject it. I know you will reject it.

**Mr. President :** If you want, you may reject it. He takes the risk.

**Shri Brajeshwar Prasad :** There are seven amendments standing in my so far as the first Schedule is concerned. I refer to amendments 335, 340, 348, 356, 357, 358 in List XIV Second Week. In List XVII, there are two amendments 405 and 411. With your permission, Sir, I move amendment No. 358, There is a technical difficulty.

**Mr. President :** As I have said if your amendment is carried, it will create a situation in which it will be impossible to work the Constitution. It means lumping together all the Hindi speaking areas. How will they be described in the Constitution and what will be the Legislature and who will be the Governor ? There are five Governors in the 5 States and provinces now. Which will be the Legislature that will function in that State which you wish to create by this amendment of yours ? That is the difficulty which I have been pointing out.

**Shri Brajeshwar Prasad :** I thought your observations referred to linguistic provinces only.

**Mr. President :** No. I have made this suggestions out of courtesy to the Members of this House, I am entitled to rule them out of order.

**Shri Brajeshwar Prasad :** I will bow down to your observations.

**Shri H. V. Kamath :** May I know whether all these amendments with regard to renaming of provinces will be referred by your Secretariat to the provinces concerned ?

**Mr. President :** Yes, all amendments relating to names.

**Shri Mahavir Tyagi :** Have all these been ruled out of order ?

**Mr. President :** Yes. All those amendments which want to create new provinces either by lumping together provinces or carving out parts of one province and by mixing together areas of one province with other provinces, are ruled out of order. Wherever any amendment impinges the boundary of one particular province today is

ruled out, because it does not correspond with existing facts.

**Pandit Balkrishna Sharma :** (United Provinces : General) : There was an amendment from a Member from Madhya Bharat. It was said at that time that Dr. Ambedkar was prepared to accept that.

**Mr. President :** Let that change be made in fact; then we shall take it.

**Prof. Shibban Lal Saxena :** May I move 406 proposing that the U.P. be named Brahmvart, Aryavart, Hind or Brij Sakait ?

**Mr. President :** All amendments relating to names will be referred to Provincial Governments for their opinion. So it is not necessary to move your amendment. I do not think there is any other amendment now which remains with regard to this after all these amendments altering the territories have been disposed of.

**Shri Sarangdhar Das :** May I have your ruling, Sir, about my amendment ?

**Mr. President :** I have ruled it out of order because it seeks to transfer certain territories from one province to another.

**Shri Sarangdhar Das :** It is not transfer Sir. It provides for determining the wishes of the people and according to such wishes a certain area may go from one province to another or may not. I will give you my argument for it.

**Mr. President :** This cannot be a part of a Constitution. This is a Resolution for the Assembly. You can move that in the Assembly, and if you succeed there and you get this change made, it will become part of the Constitution.

**Shri A. Thanu Pillai :** (United State of Travancore & Cochin) : Article 3 provides for such cases.

**Mr. President :** Yes, I am grateful to you for pointing that out.

**Shri Yudhisthir Misra :** (Orissa States) : Some of the amendments which have been given notice of contemplate the change of boundaries of different provinces; but so far as the States are concerned, I think you will remember that last January we had amended the Government of India Act, 1935, and passed a new Section 290 A and it is according to that provision that these States have been given to certain neighbouring provinces for the sake of administration. I submit they do not legally form part of those provinces but they have been given to those provinces for administration. Therefore my amendment No. 390 cannot be ruled out.

**Mr. President :** My ruling is based upon one thing, viz., that we cannot by any amendment of the Schedule introduce any change in the existing state of affairs and in the Constitution we are providing only for those things which are today in existence and not for what we wish or what may come into existance later. Therefore, I say that these amendments which contemplate changes are ruled out.

**Shri Sarangdhar Das :** What about Seraikella ?

**Mr. President :** It is open to them to have a change in the decision before 26th January.

**Shri Sarangdhar Das :** Mr. Munshi in reply to the problem of Sirohi, as posed by Mr. Jainarayan Vyas, stated what the Deputy Prime Minister intended to do. So, I wish that there should be some statement on my amendment, because I maintain that these two States had been integrated into Bihar against the wishes of the people as well as the Rulers. It goes aganist the Preamble of the Agreement that the Rulers entered into with the Government of India. Also when they were integrated into Bihar last May, the Ruler of Seraikella replied to the Officer appointed by the States Ministry, that Seraikella was integrated temporarily for purposes of administration; but that before the Constitution is finally adopted the wishes of the people and the rulers have to be ascertained. That is why I introduced this provision, and if the States Ministry would make a statement as to whether these States have been merged permanently in Bihar or the matter will be considered by a Boundary Commission or some other way will be found to determine the wishes of the people. I would be satisfied and withdraw my amendment.

**Mr. President :** I believe the State Ministry issued a communique the other day saying that they stick to the decision which they have taken previously. I think they have issued such a communique and it was published the other day.

**Shri Yudhisthir Misra :** So far as we the representatives of the merged States are concerned, we are here to represent their case in the Constituent Assembly. Now you are going to make certain provisions in the Constitution, so far as the merged States are concerned, and if we, the representatives of the merged States, are not to have our say here, then what are we here for? I submit it would not proper to shut out discussion of this question.

**Mr. President :** I do not think, I can go back upon the ruling which I have given.

**Prof. Shibban Lal Saxena :** Sir, I have to say something about Part III.

**Mr. President :** What about Part III.

**Prof. Shibban Lal Saxena :** Sir, here we have defined the territories Rajasthan and Saurashtra and said that Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in United State of Kathiawar and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction, Act, 1947. And in the Names of States, we have put in Jammu and Kashmir also. I want to clarify the position. I want it to be stated here that the State of Jammu and Kashmir shall comprise the territory as it was immediately before the 15th August, 1947 and which were being administered by the Maharaja of Jammu and Kashmir on that date. This, Sir, is necessary, because at present, as we all know there is the Cease-fire Line and part of the area is in the possession of the raiders.

**Mr. President :** It is a purely political question and we cannot decide it by a resolution of this House.

**Prof. Shibban Lal Saxena :** Then what will be the position of Jammu Kashmir ? What will be its area ?

**Mr. President :** Well, whatever we have, got now we have got, and if we get more, we shall have more.

I think there is no other amendment. If any Member wishes to say anything about the amendments he can do so.

**The Honourable Shri N. V. Gadgil :** (Bombay : General) : Sir, I thought some of us belonging to Maharashtra have a duty on this occasion to make, at any rate, our position clear. The recent resolution of the Working Committee, although very helpful, does not give sufficient lead, because at this time, when the Federal Constitution is being framed, certain principles which should govern the delimitation of the constituent units should have been laid down. At the same time, I realise that this is not a very propitious time. As I have always expressed, this is a question which can and must be solved with understanding, with agreement and in an atmosphere of goodwill. I also realise this, and speaking before the committee that was appointed by you, I pleaded that this question should be postponed for a period of five years. It is not that I am stating this for the first time. I am cognisant of the difficulties and therefore, I am repeating it, not merely in connection with the formation of Samyukt Maharashtra, but it connection with other provinces also; and I am encouraged because I find that the present clause (3) as amended has really facilitated matters. As it stood originally it was a very laborious and long winding process, but now a Bill can be brought in for the delimitation of any province, and such a Bill will not be considered as a Bill amending the Constitution. Now the position as it has developed in this, that we have a machinery in the Constitution itself, and therefore, all questions about the formation of provinces need not be raked up now, and the Schedule, as suggested by Dr. Ambedkar should be accepted. That is the point I wanted to make out.

There is one little suggestion I want to make. If you want to have the Hindi Karan of the names, do not confine it merely to a few, such as Koshal Vidarbh etc. You can call Bombay "Paschim Bharat"..... and Madras..... "Dakshin Desh", etc. If you want to do it, do it completely, but not by parts. This suggestion of mine may please be kept In mind by the Drafting Committee. Otherwise all sorts of implications are likely to come out and instead of doing any good, such a thing is bound to do more mischief than is contemplated by those who have inserted these exceptions alone. I would, therefore urge upon the Members of the Drafting Committee that this may be kept in mind.

I think any discussion with respect to delimitation or correction of boundaries would be more properly and more successfully taken up when the new Constitution comes into operation, and when the electorate gives, I should say, a mandate, and those who are today of the view that a particular solution is the only feasible solution, well, they have got to be persuaded and they have got to be convinced that an alternative solution, and a much better one in the larger interests of the country is available. So taking all these factors into consideration. I state that the whole question should be postponed and that the Schedule as proposed, with the suggestion that I have made, about the change of the names, may be accepted.

**Shri Jainarain Vyas :** Mr. President, Sir, I bow to your decision, but I want to

make two simple submissions regarding Sirohi. One is that at present Sirohi is constitutionally a "no man's land". It is a territory not covered by Part I of Scheduled One, or Part II or Part III. and I understand that my learned Friend Mr. Munshi is going to request the state Ministry to make a declaration on this point. I hope that that declaration will be forthcoming. The Second submission is that in the amendment which has been officially put up by Dr. Ambedkar, Bombay Presidency has been defined in a way to incorporate Sirohi. The application of the Extra-Provincial Jurisdiction Act, 1947, to Bombay means no territory except Sirohi. So while making that declaration, I hope the States Ministry will clarify this position in regard to the definition of Bombay. Otherwise the people in Sirohi as well as in Rajaputana and in the country as a whole, will have every right to apprehend that Sirohi is silently being merged into Bombay without proper formalities being performed.

This is all that I wanted to say.

**Shri Yudhisthir Misra :** Sir according to the amendment moved by Dr. Ambedkar, the States the rulers of which have ceded their jurisdiction and powers over the same, to the Central Government, have been included in the provinces. In January last, the Government of India Act of 1935 was amended and power was vested with the Central Government to hand over those States to any province for the sake of administration. According to the provisions of 290A, therefore, although there has been an administrative merger, still by legal fiction, the constitutional entities of the States have been maintained. Therefore I want a clarification of the point from the Drafting Committee whether the same position has been maintained in this draft or not.

Sir, when Sardar Patel visited Cuttack on 14th December 1948 and the rulers of the Orissa States entered into an agreement with the Government of India, these rulers had specifically mentioned in the preamble of that agreement that their States should be handed over to the provinces of Orissa for administration. I will read the relevant portion of that agreement by the Raja of Seraikella "whereas in the immediate interests of the State and its people the Raja of Seraikella is desirous that the Administration of the State should be integrated as early as possible with that of the province of Orissa in such manner as the Government of the Dominion of India may think fit...." Now by providing for the amendment which has been moved by the Drafting Committee, the agreement has been violated. I would request the Drafting Committee to consider this point.

Sir, I represent the Orissa States along with Shri Sarangdhar Das and have therefore a special responsibility in this matter. As far as these two States of Seraikella and Kharswan are concerned, they have elected us as their representatives. I think it is but proper that their wishes should be Placed before this House as briefly as possible. From time immemorial the people of these two States have social and cultural contact and relationship with the people of the Orissa province and they have linguistic and racial affinity with them. These two States were and are still under the Utkal University having its headquarters at Cuttack. Oriya is the court language of these two States and in the primary schools there till recently, education was being imparted through Oriya. For administrative political purposes also these two States were included in the Orissa group of States previous to 1948. It is unnecessary for me to relate that the movement for the integration of the Orissa States including Seraikella and Kharswan started in Orissa under the leadership of the leaders from Orissa.

**Shri Brajeshwar Prasad :** This matter has been finally disposed of by the States Ministry and according to the circular which has been issued, re-distribution of provinces has been made. Now to take off one territory and add on to another could not be done. I think the honourable Member is going beyond his jurisdiction.

**Shri Yudhisthir Misra :** As far as this House is concerned, it has nothing to do with the States Ministry. It has nothing to do with any order passed by the States Ministry. Therefore I am entitled to express my views in this House. If you, Sir, say that I have no right, I will resume my seat.

**Mr. President :** I wish to point out that these views of yours expressed here will have no effect anywhere. This House cannot change the boundaries of Orissa.

**Shri Yudhisthir Misra :** Let me at least have the satisfaction that I have placed the views of the people, as their representative, before this House. It is for this purpose that I took your permission to participate in this debate.

Sir, it was in the Orissa States that the question of merger of the small States with the provinces was first mooted and it was there that the ideal of the merger of States with the provinces took its real shape. When the Honourable Sardar Patel was in Cuttack, he took the step of entering into an agreement with the rulers of the States as a result of the wishes of the people expressed to him through the All India States People's Conference, through the regional council and also through the various Praja Mandals. As you are aware, these two States in January 1948 were handed over to the province of Orissa; but, owing to certain unfortunate incidents, there was firing and these two States, in consequence were handed over to Bihar. There was a great tussle before that between Orissa and Bihar over this question and the Government of India announced the appointment of a Judicial Tribunal presided over by an eminent judge of the Bombay High Court to ascertain the wishes of the people regarding the language and culture and the administrative convenience as far as these two States are concerned. There was expectation of a fair and impartial solution of the problem through this Judicial Tribunal. But, to the great surprise of the people of the States, they were placed under the Government of Bihar and thus debarred from exercising their right of self-determination. It was then understood that the Raja of Seraikella wanted temporarily that his State should be placed under the Bihar Government for administration till a new Constitution was framed and adopted.

Sir, to a question of mine in 1948 in the Constituent Assembly (Legislative).....

**Shri Brajeshwar Prasad :** I will have no time to reply to the honourable Member. I have met the Maharaja of Seraikella and he told me that he wants the merger of Seraikella with Bihar.

**Shri Yudhisthir Misra :** Let the honourable Member go through the representation that the Maharaja of Seraikella has made recently to the States Ministry. In 1948, Sardar Patel was pleased to give me the reply that the handing over of Seraikella and for Kharswan administration to Bihar was only a temporary affair. I find, Sir, that in last August these States were transferred permanently to Bihar under section 290A of the Government of India Act. The wishes of the people of the States were not consulted.

**Shri Brajeshwar Prasad :** Wrong statement.

**Shri Yudhisthir Misra :** As far as the people were concerned, they were left out of the picture completely. If it is wrong, as is suggested by my Friend, Mr. Brajeshwar Prasad, then I challenge him to accept a referendum to ascertain the wishes of the people of these States. If he accepts it, I will not press for what I am submitting in this House.

**Shri Brajeshwar Prasad :** Let the honourable Member write to Sardar Patel and ask him to reopen this question.

**Shri Yudhisthir Misra :** My Friend is side-tracking the question.

**Mr. President :** I do not want challenges thrown and accepted here.

**Shri Yudhisthir Misra :** The only ground which was put forward by the States Ministry as to why these States were transferred to Bihar was that if these States were transferred to Orissa, there would be certain administrative in convenience. Now, Sir, when the State of Mayurbhanj was merged with Orissa that difficulty was removed, and the only ground that was put forward by the States Ministery for handing over these States to Bihar falls to the ground.

I want to resume my seat with a few more remarks. The steps that have been taken in regard to these two States are not proper, or just or legal or valid. I want a change in their position by a change in the First Schedule. I submit that these observations of mine should be taken into consideration and the future fate of these two States should be decided in accordance with the wishes of the people.

*(Shri Jadubans Sahay rose to speak.)*

**Shri H. V. Pataskar :** I will finish within a few minutes. I am going away tomorrow.

**Mr. President :** Are we sitting tomorrow ?

**The Honourable Shri Satyanarayan Sinha** (Bihar : General) : Not in the afternoon today anyhow, Sir.

**Mr. President :** (To Shri Jadubans Sahay)-Do not take much time.

**Shri Jadubans Sahay** (Bihar : General) : Sir, I would not have taken part in the general discussion but for the remarks made by the honourable Friend from Orissa just how. I would not go into details, but I would only tell my Orissa friends and other friends that the matter has been already settled finally. There ought to be some finality in everything. If the Orissa and Bihar friends go on wrangling over this issue which has been finally decided by the Minister for States and which has been taken for granted, then there will be no end to the ill-will prevailing between the two provinces. We in Bihar expect that this matter having been finally settled would restore the goodwill and good feeling and mutual understanding which exist between these two provinces and ought to exist not only in the general interests of these two provinces but in the general interests of the country as a whole. I therefore, Sir, this question

which has been sought to be raised in this House by the observations made by Mr. Yudhisthir Misra should not have been raised.

The whole question is whether the merger of Seraikella and Kharswan with Bihar should be reopened again. The Honourable Sardar Patel went to Cuttack, he saw everything, he appointed the officer, he looked into the Covenant entered into by the Raja or Seraikella and after considering all these things, the States Ministry under the able guidance of Sardar Patel has given out that the final decision is that these two States of Seraikella and Kharswan should remain finally merged with Bihar. Where is the question of reopening the question now ? Because the reopening of this question will not do any good to either of these two provinces. I would simply appeal to my Orissa friends that this will not redound to the credit of these two provinces.

Apart from this, under the encouragement of Orissa, the Maharaja of Seraikella who is a disgruntled man, for reasons not within the control of the Government of Bihar, has distributed a pamphlet among the Members of the Constituent Assembly, but we thought that saner elements in Orissa would prevail; but instead of that, if the statesman of Orissa lend a hand to such agitation, then, Sir, it would not do good either to the province of Orissa or to Bihar. Let them give us time to do some constructive work to ameliorate the conditions of the aboriginals and the non-aboriginals who are living in the States of Seraikella and Kharswan. The Bihar Government is doing its best to raise the economic condition and the educational condition of the people of these two States. If this wrangling goes on, it will prove a very bad thing so far as these States of Seraikella and Kharswan are concerned. I will therefore not try to reply to Mr. Yudhisthir Misra, but I will simply appeal again to the friends from Orissa to help us in restoring goodwill between the two provinces and not try to rake up this matter which has been finally decided by the Minister for States.

**Shri H. V. Pataskar :** Mr. President, Sir I had a number of amendments standing in my name to this Schedule, but I thought and thought rightly that no purpose would be served by moving them. I have also a amendment No. 324 for the insertion of article 3 A for the formation of a new State of Maharashtra, but for practical considerations I did not move it also, because I knew there was no chance for it. What I want to make quite clear is that we have postponed consideration of this question because of a resolution of the Working Committee by which it will be possible to form some of the provinces in respect of which an enquiry was ordered by you, Sir, some time ago by the appointment of a Commission.

So far as Maharashtra was concerned, that resolution of the Working Committee says, that subject to the conditions mentioned in the report of the three man committee known as the JVP Committee, the State of Maharashtra should be formed. That report lays down that under no circumstances will Bombay city be included in the State of Maharashtra. I do not want to create any discussion or controversy at this stage. I would only like to make it clear that so far as Maharashtra is concerned a State of Maharashtra without the city of Bombay will never be acceptable to them. It is from that practical point of view that I refrained from moving my amendment No. 324. We would prefer to wait for the time being when those who are at present inclined for various reasons and out of distrust and suspicion to take Bombay out of Maharashtra will by mutual agreement and co-operation, be willing to concede the natural thing i.e., allow Bombay to remain where it is that is in Maharashtra. We do not want Maharashtra in the interests of the Maharashtrians alone; but we want it in the interests of the nation as a whole. There is absolutely no idea of any provincialism

in it. Therefore so far as the question of Maharashtra is concerned, I would like to make it quite clear that I do not move my amendment No. 324 for the very simple reason that I find that in the present circumstance is not possible to have any province of Maharashtra.

**The Honourable Shri Satyanarayan Sinha :** Sir, the question may now be put.

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

"That the question be now put."

The motion was adopted.

**Mr. President :** Would Dr. Ambedkar like to speak ?

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : I have nothing to say.

**Mr. President :** Then I will put the whole schedule to vote as there is no amendment later on.

**Shri H. V. Kamath :** Subject to the names of provinces being amended.

**Mr. President :** There is no question of it being "subject to." As I have the matter will be referred to the Provinces and if we get any reply which necessitates any change we shall consider that at the time of the Third Reading.

The question is :

"That the First Schedule stand part of the Constitution."

The motion was adopted.

The First Schedule was added to the Constitution.

**Mr. President :** Before we rise, we have to fix the time table. It was suggested in the morning by some Members that we should meet tomorrow. *(cries of "No". and " Yes").*

**Shrimati Annie Mascarene :** Sir, are we to be impose upon by the tyranny of the majority party ?

**Mr. President :** I do not think the Honourable Member is justified in saying that. There is no question of tyranny by any majority. The only question is that of fixing a time-table and surely the time-table for going to the church can be adjusted to the time-table of the House. There is no difficulty in that. If the Members do not want to sit on a Sunday then it is a different matter.

**Shri R. K. Sidhva :** If we are to finish the business in one day then I do not see

why we should not sit tomorrow, Sunday.

**Mr. President :** We are not likely to finish in one day. Even if we sit tomorrow we may have to sit on Monday; and if we do not sit tomorrow, we may have to sit on Tuesday. Therefore, if the Members wish we can sit tomorrow. *(some Honourable Members : "No, no").* Then I shall take a vote on this.

The question is :

"That the Assembly do meet tomorrow, Sunday."

The Assembly divided by show of hands : Ayes ; 41, Noes :35.

The motion was adopted.

**Mr. President :** So we shall sit tomorrow.

The Assembly then adjourned till Ten of the Clock on Sunday, the 16th October 1949.

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*[Translation of Hindustan speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

***Sunday, the* 16*th October* 1949**

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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.

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## DRAFT CONSTITUTION-*(Contd.)*

**Mr. President :** We have got a number of articles on the agenda, Some of them are of a controversial nature and are of great importance. They will probably take a little time in discussion, while the others are more or less of a formal nature. I would like to take up the difficult and controversial articles first, so that we might dispose them of and then we can deal with those which are only consequential amendments and things of that sort. Shall we begin with 264A. Dr. Ambedkar ? Will it suit you ?

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : May I point out that these amendments were received by us at quarter past nine this morning and I had to read them on my way to the Assembly.

**Mr. President :** Quarter past nine ? They were circulated last night.

**Some Honourable Members :** We got them at 9 A.M.

**Shri Mahavir Tyagi** (United Provinces : General) : My proposal is that this article may be taken up in the afternoon, Sir.

**Mr. President :** We may not have a session in the afternoon. In this way I do not know what to do.

**Mr. Naziruddin Ahmad :** These are very intricate matters and they are reopening decisions of the House already taken.

**Mr. President :** Article 264A has been there for several days, article 274DD has been there for several days; so also article 302AA.

**Mr. Naziruddin Ahmad :** I am speaking generally of the agenda today. Most of them reopen matters already decided by the House. It is difficult for anyone, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made.

**Mr. President :** No doubt article 280A, I understand, is a new article which has come up today; but the others have been there on the agenda for many days.

**Shri H. J. Khandekar** (C. P. & Berar: General) : 264A is a new article altogether and we got notice of it at about 9 A.M. today. It is impossible to send any amendment to that article. Therefore, I request that it may be taken up in the afternoon or tomorrow.

**Mr. President :** It means that we shall have to prolong the session for two or three days. I do not think that will be right. Let us take up article 264A.

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## Article 264A

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, I move amendment No. 425.

"That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted-

Restriction as to imposition of tax on sale or purchase of goods.

'264A. (1) No law of state shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

*Explanation.*--For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase at any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may order by direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent'."

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into

what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause (1) of article 264A as proposed by me, sub-clause (b) is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause (1) (b) is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales-tax.

Similarly, sub-clause (2) is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause (3) it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President, so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause (2) is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistently or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

(Amendments Nos. 426 and 427 were not moved).

**Prof. Shibban Lal Saxena** (United Provinces : General) : Sir, I move:

"That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words 'for the purpose of consumption in that State' be deleted, and the following new clause be added at the end :--

> '(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned'."

Sir, this amendment No. 425 is in modification of the original amendment No. 307. It is a bit more comprehensive and tries to deal with some of the objections which had been raised against that article. But I feel that the article even as moved by Dr. Ambedkar is very defective and will have the effect of reducing the income of several provinces by some crores of rupees. In fact I am told that the Central Provinces Government will lose about 1 crore and the Bihar Government about 2 crores. Probably the same will happen to other provinces also.

The principles that Dr. Ambedkar has placed before us are simple. First, on imports and exports to sales tax will be levied; secondly, on inter-State trade no sales tax will be levied; and thirdly, on essential articles of life no sales tax will be levied without the approval of the President. But in clause (1) restrictions are to be put on the power of the States to impose sales tax on articles meant for import and export even to the extent of one pice per maund or other small amounts. The result will be that many of the provinces will lose huge amounts of revenue. For example, the Premier of the Central Provinces was telling me that they export manganese and other mineral products from their State. Bihar exports mica and such other things. They impose a small amount like one or two pice per maund as sales tax. That brings to the coffers of the province a crore or so of rupees.

Now we have said that if these goods are meant for consumption in the State then alone this tax can be imposed, otherwise not; and this will result in the depletion of the finances of the provinces to very dangerous extent. I therefore think that these words "for the purpose of consumption in that State" should be removed and to make up for this depletion, I am suggesting, a new clause, which I read just now and which says : "The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole." It may be argued that if this power is not kept here then many States shall levy taxes which would really amount to an excise tax or production tax in a way. What I want is only this, that when there are any such taxes which injure the Centre or which are injurious to trade, then this overall power given in clause (4) shall come into play and I also say that the President shall have the final power, so that the Centre will have the power to intervene, if necessary.

At the same time I do not want that this article 264A should cripple the provinces to such an extent that they will not be able to carry on their nation building activities such as Education etc. Therefore, this amendment of mine that is, removing the words "for the purpose of consumption in that State" and adding clause(4) will not injure the

Centre in any away and will also let the State have some income. In fact in our discussions on the financial provisions States like Assam told us that they produce mineral oil, petroleum etc., but that they do not get anything. It was agreed in the Conference of Prime Ministers also that they can impose sales tax up to one pice and thus, they can have some revenue with which they can run their administration. It is only fair that province which produces an article should have at least some portion of that revenue. In fact, in my province, we produce sugar and although sugar is not taxed, we put a cess on sugar-cane and that brings to the province about a crore of rupees.

I do not think that such restrictions will help the Centre. But they will injure their main source of revenue. In fact in some provinces the revenues are much greater. I therefore, think that this article is an important article and it must be suitably amended, and I do not think that the provinces should be treated in such an unjust way as has been done by this article. If my amendment is accepted the Centre and the provinces will both benefit, and by deleting the words "for the purpose of consumption in that State" the Centre will not lose any money in import and export duties. I think that it is never the intention of any Provincial Government to usurp that function, and besides clause (4) will enable the Union Parliament to put limits on the amounts of sales tax they put and that will not affect the imports or exports and if a small tax it levied the Provinces will be able to benefit and it will be so good for them.

It is also unfair to the provinces that produce the main products such as petroleum or tea not to permit them any income there from. Now if Assam is allowed to have a small sales tax at the very beginning of one pice or two pice per maund, it will be able to have a large amount of money for their own province. Similarly, provinces like Bombay will have some money from the sales tax on the things produced therein and if these are uniform all over the country, the provinces will also gain and there will be no difficulty in inter-State trade and export and import. I think my amendments are very fair and something should be done to make provisions for these matters.

**Shri Mahavir Tyagi :** Sir, I beg to move:

"That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted :

'Provided that the sale tax shall not exceed Rs. 3/2 per cent of the sale price'."

Sir, while moving this amendment, I wish to appeal to the sense of justice of this House in the name of the people whose representatives we are. This article from one point of view is extremely important. I deem this Constitution to be a contract between the State and the people. This contract has been given for drafting to the arbitration of the representatives of the people. We should therefore not be guided, biased or prejudiced by the administrative difficulties, as may be pointed out by the honourable ministers, in various provinces; but we should take notice of the difficulties of the citizens at large. Constitution is a contract between the Citizen and the State; the main terms are, that the citizen shall pay such and such taxes whenever they be required by law to do so. This is the biggest liability which the citizens agree to take on themselves. On the one side, there are the citizens of India and on the other is Dr. Ambedkar, acting on behalf of the second contracting party, the State. He is already representing the State and puts the State's Point of view. The state, through this Constitution takes over the responsibility of maintaining peace and enhancing the

prosperity of the people. People being absent, I must appeal to the good sense of the representatives of those people, to be loyal to their clients and safeguard their interests in this supreme court of the nation. We are deciding their fate in their absence in this House.

When we allow the Provincial Governments to pick a pie from the private pocket of an individual citizen, we should see to it that it is obtained only willingly, and that every pie that we drawn from the pocket of a private individual must ultimately go back to him either in the shape of services rendered to that individual or in the shape of an enhanced sum returned to him. Today in India hundreds of taxes are being realised, and the people do not really get any substantial benefit out of these taxes, either in the shape of additional 'prosperity' which they are told to expect from Government or any other kind of service. Whatever little service the State renders here in India is a further charge on the people. For instance, there are the railways which is an amenity given to people, but then it is run on a commercial basis and people are to pay for it. The telegraphs, the Post Office, the canals and everything else which go as services, we make extra charges for them. The State renders no free service to the people except a few dozes of quinine mixtures mixed with water that the State gives free to some poor people. Otherwise even doctors charge their fees and treat the people on payment. So we see that the State is not actually rendering any free service except that we are giving our citizens a psychological satisfaction to enjoy in their belief that they are a free people. They do not know what is the value of freedom. State justifies taxation on the plea that it defends the borders against wars. Wars never come alone, and when a war comes, it brings an extra tax along.

Now I submit that the taxes we get from the private individuals do not go back to them. If the Provincial Governments are permitted to realize sales tax, it is for them to see that they also enhance the prospects of commerce and bring about general prosperity among those people who are engaged in commerce. Now, what service do they render to the shop-keepers and those persons who either purchase or sell ? They render no service to them. Have they created any new markets or given any facilities ? What for is this tax ? When various taxes were enumerated in the list of provincial subjects, it was considered that the sales tax was a sort of minor help to the provinces, for their revenues were static and there was no chance for raising them. The provinces mostly depended on their land revenue which is more or less fixed for a number of years. Therefore, with the increased activities of the provincial Governments it was thought better to give them some margin of extra revenue to balance their budgets.

Now, Sir, they got a little margin in the shape of this sales tax. As I see things, within a few years, the situation is totally changed. The sales tax is becoming a major source of revenue, even bigger than what their main sources of revenue used to be. In my province, previous to the war, the total revenue was hardly 13 crores or so; now, it is nearing 55 crores. These other taxes which the provinces have levied, over and above their main source of revenue are also taxes from the same people.

Now, Sir, the incidence of taxation is the heaviest in India. India had never faced even in times of war, such an incidence of taxation as it is bearing today. And, the Governments are rendering the least service in exchange for these taxes This House is the highest authority vested with all powers of Sovereignty; we are sitting as the Supreme Court to decide whether we can permit the provincial Governments to go on taxing the people without any ceiling limits, Because there is no ceiling limit on this

sales tax, they can go on raising the tax and ultimately there may come a time when the people may not be in a position to give much, and our taxes in the Centre would consequently be adversely affected. If the provincial Governments go on raising their taxes at the present speed, the result would be that total paying capacity of the people would be exploited by provincial Governments and the Central Government would thereby suffer. My point is that if we do not fix a limit, the provincial Governments would go on taxing, and we would be doing sheer injustice to the people who are at our mercy and who will have no right to protest or withhold these taxes. They would only have to draw solace from the fact that they were after all being taxed by the persons for whom they had voted. This is "ballot box democracy," which will tell in that manner on the people. I therefore, submit, Sir, that a limit of six pies per Rupee which comes to Rs. 3-2-0 per cent. should be fixed so that the provinces may not enhance the rate of this tax.

Again, I want to fix a limit also from another point of view. What I say is that in spite of the budgets of the various provinces having been inflated too much they are not rendering more service to the people than what the old Governments used to do. The result is that though they are freely inflating their budgets with the help of this liberty of raising taxes, they are doing nothing to reduce their expenditure, there is no tendency in any province to reduce the expenditure. The expenses today are more than what they used to be during the times of war. I say war was an emergency and they had temporarily to raise the taxes. Sir, it was foreign rule then. But now it is the people's government. Even though war is finished, the provincial governments have not begun to reduce their expenditure. Most of their income is going towards revenue expenditure and no portion of it is devoted towards the capital expenditure which is meant to enrich the people. If the money was spent in capital investments, I could have understood. Very little of the revenue expenditure is going towards capital expenditure. Whenever any money is invested in capital expenditure, it is obtained by borrowing.

Therefore, Sir, they are not only depleting the resources of the provinces, but also encumbering the citizens. I therefore, submit if in this manner, the provinces are given full opportunity to go ,on encumbering the position of the citizens in the provinces, it will tell upon the prosperity of the country as a whole Therefore, while we are deciding between the citizens and the States, we must also define the limits to which the taxation of the provinces can go. With these words, I appeal, without any consideration to our party tables and prejudices, to the provincial Governments, that we, sitting as the judges of the nation, must do justice unimpaired, unprejudiced, fair and balanced to the citizens who are not here. They must be given full justice.

There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor cars, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quite; he is using undue influence.

**The Honourable Dr. B. R. Ambedkar :** I have followed the point.

**Shri Mahavir Tyagi :** Have you followed it ? Have you also appreciated it ? Are you prepared to accommodate me ? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the

citizen. I submit, Sir, this is the manner in which this tax is being levied. In one State there is a tax of two annas per Rupee; in another State there is a tax of two pies per Rupee. In one State in the sale is taken at one point only; in another State it is taken at so many points wherever there is a sale. Like the gamblers' den, whoever is playing, he has something to pay to the gamblers' pool. In this manner, the provinces are running after every sale. This is something which is tending to become a blind law.

I submit that this is a very serious matter. It would be better if Dr. Ambedkar would reconsider the whole article and make it a 'uniform tax' and put it in the hands of the Central Government. The best thing would have been for the Central Government to enact a law so that the provinces would have a uniform pattern of taxation and the tax would be realised at one single point and in relation to one single commodity. A commodity should not be taxed at every point whenever it is put up for sale. With these words, Sir, I hope the House, not caring for the mandates or labels that they might have received from their houses, will please do justice and speak freely and vote freely in the matter and guard the rights of the citizens.

**Mr. President :** There are some more amendments which relate to the article as it was originally proposed. I do not know if all the amendments arise; but there is one which certainly can be moved. Amendment No. 385, Mr. Ajit Prasad Jain.

**Shri Amiyo Kumar Ghosh :** (Bihar : General ): I have got amendment No. 383, standing in my name.

**Mr. President :** Let me see first amendment No. 385.

(Amendment 385 was not moved).

**Mr. President :** Do you want to move amendment No. 383 ?

**Shri Amiyo Kumar Ghosh :** Yes, Sir.

**Mr. President :** Just show how it fits in with this now.

**Shri Amiyo Kumar Ghosh :** Mr. President, Sir, of course my amendment No. 383 was tabled against amendment No. 307, that is to say, to article 264-A as it originally stood but today another amendment to that amendment has been moved which does not change the original position in the least except that an explanation has been added to the previous article, to clear certain minor points. So it fits in with the amendment moved just now by Dr. Ambedkar. So I move my amendment:

"That in amendment No. 307 of List XIII (Second Week) clause (2) of the proposed new article 264A be deleted."

What I want by this amendment is this, that clause (2) which deals with inter-State trade and commerce and gives an exemption to such transactions from sales tax, should be deleted. As a matter of fact, my clear impression is that this Constitution though in form is Federal, is in essence a Unitary Constitution. In this Constitution all powers and all sources of finance have been taken away by the Centre and the provinces have been left without any resources of their own. As a matter of fact the Union has been so much over-loaded that it may break at its own weight. It is said

that we have got provincial autonomy, I assert that the provincial autonomy we have under this Constitution is worse than what it was in 1935 Act. Coming to the question the only source of taxation which the provinces have in this Constitution is the sales tax. But that power has been taken away by this new article 264A to a great extent.

Now I will particularly speak with reference to the province of Bihar because I am not acquainted with the sales tax position prevailing in other provinces. So far as Bihar is concerned, I must emphatically assert that if this new article 264A is allowed to stand, the Province will lose immediately an income of more than 2 croes of rupees. In Bihar the income *per capita* and consequently its expenditure *per capita* is the lowest in the whole of India the reason being that hitherto its financial resources were inelastic. It has got fixed income in land revenue. In other provinces like U. P, Madras and Bombay the land revenue is a progressive one but in Bihar, due to Permanent Settlement, the income from this land is rigid, being something less than 2 crores.

Then there is another source of income from excise, but if prohibition is to be carried out, the province in going to lose $5^1/2$ crores out of its present revenue and there is no other source of revenue left to Bihar except sales tax to implement the loss that the province will sustain by the introduction of prohibition. This sales tax was the only elastic taxation left in the hands of the States to increase their revenue but that too is now taken away. Bihar has great resources but in spite of her holding rich position, she is one of the poorest province in India. Today 75 percent. of the coal and iron consumption of India is supplied by Bihar. Besides these, there are other commodities like sugar, cement, chillies, tobacco etc. which go out of Bihar; but if this provision is allowed to stand, the result will be that Bihar will not be entitled to any tax on these commodities at all, and will not derive any benefit from her own wealth. This article also closes the door of future implementation of the income for all times.

It is therefore only fair that Bihar which produced iron, coal etc. with the labour of the province and has to spend lots of money over maintaining law and order in those industrial areas--should be allowed to have an income out of them. It is understandable if some such clause is put in to the effect that a uniform taxation will be levied on all such commodities that go out of any province and a position of such taxation will go to the province which produce them and the balance to the province where it is consumed. Under the present article 264A all the coal, iron and other commodities will leave the boundaries of Bihar, the Province will have no hand to tax them at all a position which is very unfair to the Province. This will tell very heavily upon the financial resources of the province.

The State Governments are primarily responsible to the people and morally obliged to carry out so many social welfare programmes. They are to maintain law and order which requires huge expenditure. They are to eradicate want, ignorance, disease and unemployment. How to discharge these obligations? All these works require spending and doing. But where from to spend if there is no income ?

So, I submit that this is a clause which falls very heavily upon all provinces, particularly Bihar, and I would request the Drafting Committee to reconsider the subject over again. Everyday Provinces are being saddled with new responsibilities and if they have to discharge them, it will require large money more money. The situation in the country is such that expenses on police and other administrative matters are mounting. Wherefrom can these be met if we have no financial resources of our own ?

So, I oppose this Article 264A and I submit that so far as inter-State trade and commerce are concerned, they should not be exempted from sales tax and altogether deprive a province from such an important source of income. The benefit of this article goes wholly to the big businessmen who always evade paying taxes but is of no relief to the petty-businessmen and the consumers. If the power of imposing sales tax is abrogated in such a manner then it is better to liquidate the States altogether. If you want to maintain the States, you should not reduce them to the position of orphans with a begging bowl in hand approaching the Union Government for money and help. They must be given to stand on their own legs and must be allowed some resources wherefrom they can implement their various plans into action. A healthy State means a strong Union.

Then, Sir, in this new article, it is said--

"No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--

> (b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Now, this gives a great loop-hole to the businessmen to escape taxation. In all cases of export, there are various transactions before the, commodity is actually exported from the country. But under this clause, all these transactions--the intermediate transactions which take place--are exempted from sales-tax. I could have understood the position if it was that at the point of export, that is to say, the last transaction, where from it is actually exported, the sales-tax will not be realisable at that point. But this clause as it stands means that all transactions that take place in the course of sending, the goods outside the territory of India will be exempted from sales-tax. Now, how can you check the nature of these transactions ? A buys a commodity saying that he will export it. But he does not export it, but, sells to B, and B purchases it saying that he will export it, and in this manner the commodity passes on from one hand to other and from one province to another without payment of any tax, and it may be that in the end it is not exported at all. How can you check up this process ? There will be a lot of difficulty and confusion, if this clause is passed as it stands. So my humble submission is that there, export and import should be clearly defined, and we must say that export means the last transaction and import means the first transaction, and only at the point of these two transactions commodities will be exempted from sales tax, and at no other point.

With these words, Sir, I commend my amendment for the acceptance of the House.

**Mr. President :** Dr. Kunzru, do you want to move an amendment to this article ?

**Pandit Hirday Nath Kunzru** (United Provinces : General) Yes, Sir; but my amendment is being typed and I hope it will be ready very soon. I hope you will kindly give me a little time to.....

**Mr. President :** Well, you may move it later and in the meantime we may have some discussion.

Shri Jagat Narain Lal.

**Shri Jagat Narain Lal :** (Bihar : General) : Sir, I have tabled no amendment, nor do I purpose to press for the support of any amendment that has been moved here. But all the same, I do want to make a suggestion to the Mover of this article 264A, to take into consideration certain views which are strongly held and which are being felt by a fairly large section of the House, for reasons many of which have already been expressed here.

There is no disagreement on the question of not allowing the States to tax imports or exports as such. But it has been already said by the some previous Members, and I have got to repeat it, that unless the words are properly clarified, the words "in the course of" which occur in sub-clause (b) of clause (1) are bound to create a good deal of confusion. It has been pointed out that the Supreme Court of the U.S.A. had arrived at certain decisions with regard to this question which have clarified the position. We want for various reasons that these words should go. I would suggest that they be replaced by the words "at the initial stage of import into" and "at the ultimate stage of export out of India". I suggest that these words that I have suggested may be kept, for the simple reason, firstly, that that will eliminate confusion, and secondly, the difficulties which would be felt in taxing the goods which pass from hand to hand until a part of them is exported out of this country, would be eliminated. Otherwise, there will be a good deal of confusion and a good deal of difficulty.

Some of the previous speakers have already pointed out the difficulties which will be felt by Provinces like Bihar, and C.P. if the words "for the purpose of consumption in that State" in sub-clause (1) are retained, and I do not want to repeat those arguments. But I do want to point out that in the absence of certain very important sources of revenue which we do want, on account of the programmes which the Congress has chalked out-say for prohibition and so on-and sales tax is a very important source of revenue and an expanding source of revenue. While the Centre is in no way hit and is in no way affected, there is no point in saying that the Provinces where big manufactures go on, and very large-scale production goes on, like iron, sugar, coal, cement and so on should not tax the sale of those commodities in or outside the province. So I want that the words "for the purpose of consumption in that State" should go out. Otherwise, the proviso which has been provided to sub-clause (2) where it is said that they may continue to be levied for one year, should go, and they should continue to be levied as before.

These are the few suggestions which I want to make to the Mover of this article. I do not want it to be pressed in the form of an amendment, but I leave it to the good sense of the Mover. There is neither the desire that the Centre should be crippled, that the Federal Government should be crippled by being deprived of taxes or the power to tax, nor should there be any desire on the part of the Federal Government--and I hope there is none--that the States should be crippled. Both should work harmoniously. Both are inter-related, as on the safety and welfare of the Federal Government and of the States, the safety and welfare of the entire country rests. Therefore, Sir, I appeal to the Mover of this article to take into consideration these two suggestions and to make such alterations or modifications as may be acceptable to the entire House and there may be no feeling of resentment or the feeling that the difficulties of the States have not been fully taken into consideration. I do not want to add more to what has already been said.

**Pandit Hirday Nath Kunzru :** Mr. President, Sir, I beg to move:--

"That after clause (1) of article 264A, the following new clauses be inserted:--

> '(1a). No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
>
> (1b) Parliament may by law fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods'."

Sir, the amendment placed before the House by Dr. Ambedkar prevents a State from levying sales taxes on imports and exports. It thus protects the interests of the Central Government. The amendment also prevents the State from imposing sales taxes on goods bought or purchased in the course of inter-State trading. It thus protects also the interests of the State in which the goods are ultimately to be sold. But except in a limited way, it does not protect the interests of the consumers. Clause (3) of the amendment moved by Dr. Ambedkar says, that no tax on the sale or purchase of any essential goods declared by the Central Government to be essential for the life of the community, shall be levied by a Legislature, unless the law imposing the tax has been reserved for the consideration of the President and has received his assent.

This amendment protects the interests of the consumers too, but only in respect of those articles that are declared by the Central Government to be essential to the life of the community. It will depend on the Central Government what goods it will include in this category from time to time. It is therefore desirable that something more should be done to protect the interests of the consumer.

In many provinces, Sir, the sales taxes are levied only when the goods pass to the consumer. But it is not so in all provinces, nor is there a limit to the rate of the tax. I think it is desirable in the interests of the public at large that the Constitution should take account of these points.

The first part of my amendment requires that a tax on the sale or purchase of goods should be levied only when the sale or purchase is made to or by a consumer. The second part of my amendment authorises Parliament to fix the maximum rate at which such a tax may be levied. It may be said that the general economic condition of the people will impose a limit on the power of the Government of any State to fix the rate of the sales tax. It is very difficult in the first place to determine what the economic rate should be. In the second place, if the rate is to be determined only by experience, that is by following the method of trial and error, the proceeds of a tax may be large in the case of a particular commodity, but, on the other hand the sale of some other commodity might go down. The matter cannot therefore be left to be judged entirely by the Finance Minister of a State. It is important enough to require to be dealt with at this stage.

In some of the countries, there are multiple-point sales taxes. Perhaps the economic condition of those countries permits of the imposition of such taxes. But, in India, particularly at the present time when prices are high, obviously it is undesirable that each of the processes that has to be gone through before the manufactured goods reach the hands of a consumer should be subjected to the payment of a tax on the sale or purchase of goods. I think it will be generally agreed that it is desirable

that some restriction should be placed on the power of a State in this respect. And even where such a restriction has been imposed, it is desirable that the Parliament should have the power to prescribe the upper limit of the tax.

Several speakers have complained of the burdensome character of the sales taxes that have to be paid at present. That shows that the Governments concerned have not been able to adjust the rates in such a way as to create a sense of contentment among the consumers. Something more is, therefore, obviously required to be done. All that need be done in this connection is that Parliament should be given the power of fixing the upper limit where this may be necessary. It may not do so in every case. It may not do so in the case of luxury goods; but it may have to do so in the case of goods which, though not absolutely necessary for the satisfaction of our primary needs, are nevertheless in such general demand that it will be a hardship to the people to go without them.

Sir, I think that what I have said sufficiently explains the purpose of my amendment and shows that the amendment is such as to meet with the approval of the House. As I have already said, the amendment placed by Dr. Ambedkar before the House fully protects the interests of the Central Government and the interests of the State in which the goods purchased in another State are to be sold. But it only protects partially the interests of the consumer. My amendment seeks only to give as full protection to the consumer as Dr. Ambedkar's amendment has given to the interests of the Central Government and those of the State in which the goods purchased are ultimately to be sold.

**Shri B. M. Gupte** (Bombay : General) : Mr. President, Sir, I am sorry I have to express my dissatisfaction at clause (2) as it stands just now. My grievance is that it does not take into adequate account the difficulties of the provincial governments. Ours is a welfare State and it is bound to be more and more so as time rolls on, but most of the welfare work falls to the share of the provinces and the local bodies. The lower we go down the units of administration, the closer they come into contact with the daily needs of the people, and even today the Provincial Governments are hard put to it to meet their responsibilities with regard to what are called nation- building activities. And in the case of some of the provinces their difficulties are accentuated by the merger of States.

Take, for instance, the case of the province to which I have the honour to belong, *viz*., Bombay. Today Bombay is facing the prospect of heavy deficits in its budgets for some years to come at least; and at such a time, instead of affording more sources of revenue to them we are clamping restrictions on the sources already available to them. Now, the sales tax is the most important and perhaps the most elastic source of revenue, and if we affect the income from that source, how will they meet their deficits ? The provincial governments proposed that the provinces and the Centre should sit round a table, take stock of the whole situation and arrive at some arrangement for a more equitable distribution of the financial resources of the country and if there was not enough to go round, for a more equitable sharing of the financial difficulties.

The report of the Expert Finance Committee appointed by you, Sir, was an admirable opportunity for that purpose; but the Drafting Committee shelved the consideration of that report, maintained the *status quo* and provided for the appointment of a Finance Commission within two years of the commencement of the

Constitution. There may be very good reason for that. I do not challenge that, but my point is that those good reasons should apply equally to the imposition of these restrictions. If the financial adjustment could wait, then certainly the imposition of these restrictions also could wait. After all, the question is not whether these restrictions are proper--they may be proper--but whether we are justified in imposing these restrictions without making any compensatory sources available to the provinces. In the absence of such sources of revenue, what will the provinces do ? They will always look to the Centre for grants and we will be making the provincial Finance Ministers a crowd of unfortunate beggars on the doorsteps of the Central Finance Minister. I do not think this is a very desirable position.

I am glad one concession is made in the provision. That concession is that the present arrangement might continue up to the 31st March 1951. My point is that it would have been better if this period had been extended up to the time when the First Finance Commission will have made the necessary adjustments in the financial relations between the provinces and the Centre. We could certainly have waited till then. That would be only three years instead of one and a half years, which is a very small matter. Otherwise, I feet that there is bound to be a dislocation in the financial structure of the provinces. It must be remembered that the Centre cannot remain unaffected by the effects of that dislocation.

After all the Centre and the Provinces are parts of one integrated whole. Take, for instance, the case of sugar at present. The Central Government passed a freezing order at Delhi, but the looting and shooting took place in Calcutta and Bombay. Let us therefore remember that any discontent arising out of the financial difficulties of the provinces would ultimately detract from the strength of the Centre, however strong that Centre may be. And as I have once said, a strong Centre cannot be sustained on weak units.

**Shri Prabhu Dayal Himatsingka** (West Bengal : General) : Sir, I beg to support the amendment moved by Dr. Ambedkar for the incorporation of article 264A. The article is framed to meet a number of difficulties and in the circumstances appears to be the best. I personally would have liked if the Centre had been authorised to impose the tax, collect it at the source,--at the import or the production centres,--and distribute the collections to the provinces. That would have reduced the number of points where expenditure has to be incurred in keeping books of account, but as the provincial governments did not agree to the Centre imposing the tax and then distributing it, the article as now proposed is the best. It seeks to do away with certain anomalies, which exist in the legislation of certain provinces where tax is imposed on sale, even though the article is delivered or consumed in another province. Similarly, it will do away with the tax on certain articles which are produced in one province but are sent to other provinces, that is to say in the course of inter-State transactions. At the present moment, Sir, I know of two cases where taxes have been imposed in Bengal to the extent of 25 lakhs of rupees on a mill which is situated in Orissa. Even though the goods were sold in provinces other than Bengal, still Bengal imposed an amount of twenty-five lakhs of rupees as taxes, simply because the company's head quarters happens, to be in Bengal. The present section will do away and remove such taxes being levied in such cases where the sales take place outside the province.

So far as the suggestion made by Pandit Hirday Nath Kunzru is concerned Bengal has met the difficulty already because it has introduced what is called registered dealers. When a sale takes place between two registered dealers, no sales tax is

realised. When a sale takes place to a person who is not a registered dealer, then and then only is the tax realised; and therefore it is presumed that a man who is not a registered dealer is taking it for purposes of consumption. So, Bengal has met this difficulty by making registration necessary in the cage of those Who do not want to pay any taxes on their purchases.

I support the article as moved by Dr. Ambedkar. Certain apprehensions have been expressed by different provinces, but I do not see that there is any justification for the same. They ought to Know that they will be safe because there are a number of articles produced in each province which are exported for consumption in other provinces. Similarly, they ought to know that there are a number of things which come to the different provinces for consumption. Take, for instance, the case of cloth from Bombay. When cloth goes out from Bombay, they are prevented from imposing any sales tax, and Bihar which is importing a lot of cloth from Bombay will be able to realise the tax from such cloth. Therefore, ultimately, they will adjust in such a manner that all the provinces will practically get what they have been getting now. The thing will adjust itself in the course of a year or two, and none of the provinces will stand to lose anything but at the same time, the whole procedure will be simplified. I therefore support the article as moved by Dr. Ambedkar.

**Shri Gopal Narain** (United Provinces : General) : Mr. President, Sir, I have risen to support the amendment of my Friend Shri Mahavir Tyagi. He has struck the right note. In levying a tax or in introducing a measure of taxation the first consideration should be whether it is in the interests of the people. We have to see when we introduce a tax that it will be spent in the interests of the people, the masses. It is argued that we have introduced prohibition and so this new tax is required to make up the deficit in that direction. In my own Province only in eight districts we have introduced prohibition and that too is not successful. This is not prohibition in any sense.

Why do we need such taxation ? I may say, Sir, that it is due to the top-heavy Expenditure that we are introducing new measures of taxation. We are not economising in that direction in the Centre and in the Provinces. We find that Economy Committees have been established and have submitted their reports. In my own Province they have submitted a report that we should lessen our expenditure by Rs. 6 crores, and out of that six crores I found that four crores are from the capital expenditure for roads and buildings and two crores from other directions. This is not sufficient. Before levying this new taxation we should have an economy drive in the Centre and in the Provinces. We are not doing any good to the masses but are burdening them with taxation. My Friend Mr. Tyagi has drawn the attention of the House in this very direction. He has said that we must see if this taxation will do any good to the people at large. I think they are being burdened unnecessarily on account of the huge expenditure in the administration of the Government. We should curtail it first and then we should think of introducing this taxation.

I will say one thing more. As for the amendment of Dr. Ambedkar, there is some discrimination in it. Some provinces will suffer by that. The U.P., Bihar and the C.P. will be the greatest sufferers by that amendment. I think there should be no discrimination as between Province and Province. All the Provinces, if they have to suffer, should suffer equally. It may not be beneficial to one Province while the other Province have to suffer. I would appeal to Dr. Ambedkar to accept the amendment of

Mr. Tyagi.

With these few words, I support the amendment moved by Shri Mahavir Tyagi.

**Shri Yudhisthir Misra** (Orissa States) : Sir, the question be now put.

**Several Honourable Members :** No, no.

**Shri Mahavir Tyagi :** You kindly exercise your discretion, Sir, the matter is very important.

**Mr. President :** You have already spoken and you will have, no chance again. I have to put the closure motion to vote.

The question is:

"That the question be now put."

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar :** Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament. There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial Premiers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other financial system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works in the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its "no confidence" in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very Justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I

am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have no doubt that my Friend Mr. Tyagi, if he goes into the Provincial Legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

**Sri Mahavir Tyagi :** Have I become so inconvenient to you?

**The Honourable Dr. B. R. Ambedkar :** Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There after I know, some friends who do not like the phraseology in sub-clause (1), in so far as it applies, "in the course of export and in the course of import". Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology., So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

**Mr. President :** Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to

the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces. which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

The question is:

"That in amendment No. 307 of List XIII (Second Week), clause (2) of the proposed new article 264A be deleted".

The amendment was negatived.

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

"That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words 'for the purpose of consumption in that State' be deleted, and the following new clause be added at the end :--

> '(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned'."

The amendment was negatived.

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

"That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted --

'Provided that the sales tax shall not exceed Rs. 3/2/- per cent of the sale price.' "

The amendment was negatived.

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

"That after clause (1) of article 264, the following new clauses be inserted :--

> '(1a) No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
>
> (1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.' "

The amendment was negatived.

**Mr. President :** Then I put the original proposition moved by Dr. Ambedkar. The question is:

"That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted--

| | |
|---|---|
| Restrictions as to imposition of tax on the sale of purchase of goods. | '264-A. (1) No law of a State shall impose or authorise the imposition of, a tax on the sale or purchaseof goods where such sale or purchase takes place-- |

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

*Explanation.*--For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise, the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.' "

The amendment was adopted.

Article 264-A, as amended, was added to the Constitution.

**The Honourable Dr. B. R. Ambedkar :** I would like you to take up article 280-A.

**Pandit Hirday Nath Kunzru :** I strongly object to that article being taken tip today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

**Mr. Naziruddin Ahmad :** In addition, this article proposes to introduce a new kind of emergency unknown in any system.

**The Honourable Dr. B. R. Ambedkar :** Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the

honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

**Pandit Hirday Nath Kunzru :** Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members-rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider this amendment. notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

**Mr. President :** I would suggest that we go in the order in which it is on the agenda and take up article 274DD.

**The Honourable Dr. B. R. Ambedkar :** I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

**Pandit Hirday Nath Kunzru :** It is a pity that the Chairman of the Drafting Committee, who by virtue of his position may be' supposed to appreciate the rights of others, makes light of them.

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## Article 274-DD

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

"That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :--

| | |
|---|---|
| Power of certain States in Part III of the First schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States. | '274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement : |

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

**Prof. Shibban Lal Saksena :** Sir, I move:

That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks', the words 'it thinks' he substituted."

I only want that in matters of financial agreement with the States the Parliament should be the authority and not the President.

**Shri T. T. Krishnamachari :** (Madras: General): Sir, with regard to the only objection that has been put forward by Prof. Shibban Lal Saksena I would like to say that we have followed the scheme of article 258 already passed by the House, where it is the President that enters into an agreement and not the Parliament. Actually if we bring in Parliament for the purpose of making an agreement with the ruler of a State or the executive of a State, we are diminishing the status of Parliament which has supremacy over the States. Parliament cannot be a party to an agreement with the States: it is a matter of executive arrangement and the arrangement follows the scheme recommended by the V. T. Krishnamanhari Committee Report. That Committee's Report in its scheme for financial integration has practically done away with the system of land customs levied in various States, Only two exceptions have been made and one Singular exception happens to be Rajasthan where on an examination of the internal financial structure of the Union they have found that the Government of India will have to pay an enormous amount by way of subvention or a large amount of money by way of a grant if the State is to balance its budget. Therefore, they have for a period of five ears to start with--perhaps it may be ten years in the ultimate--allowed them to levy land customs. This is a matter between one executive authority and another and if Mr. Saksena's amendment is accepted it will be taking away from the supreme position that the Parliament would enjoy in relation not merely to the executive at the Centre but also in relation to the executive of the States as well. This is a transitory provision and follows the scheme that has been recommended by a Committee which has gone thoroughly into the scheme of State finances and has prescribed ways and means by which complete integration can be secured at the earliest possible moment. I do feel that no possible objection can be taken which can be sustained with respect to the article in question.

**The Honourable Shri K. Santhanam** (Madras: General): Sir, I am glad that the draft of this article has been considerably improved and I certainly approve of the principle and the objective of the article. But there is one point which has to be examined in connection with this. It says: "any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States". Suppose some articles come to Bombay port and go straight to Rajasthan and there they are liable to land customs. Will it come under the definition of import of goods from other States into Rajasthan? It will be from outside India into Rajasthan. I think the present agreements include land customs even on such articles. Therefore I do not know if the words "to other States" and similarly "from other States" are necessary. They seem to be wholly unnecessary. We are only concerned with land customs on goods coming into the State or going out of the State. Where they go or where they come from, I do not think, are matters of importance so far as this particular object is concerned and as every thing is defined meticulously in the actual agreement I do not think we should put in words which are likely to give merchants room for evasion. Because things come from Bombay they will argue that they do not come from any State in India and that they come from outside and therefore they ought not to be assessable

to land customs under the agreement. I want the Drafting Committee to look into the point and see they do no give any loophole for evasion. I hope I have made myself clear. My objection is to the words "from other States" and "to other States", which are wholly unnecessary for the purpose of this clause and may be deleted and thereby close one loophole for litigation and evasion.

**Shri T. T. Krishnamachari :** It takes into account existing States where they do levy customs duty on goods that come into the States, whether they are goods from outside or inside and it is merely.....

**The Honourable Shri K. Santhanam :** This clause will mean that if applies to goods coming from some State of India into another State and if the goods come from outside and enter a State this clause will not apply and therefore the State concerned will not be able to levy land customs on them. It is not intended to prevent the State from levying land customs and therefore this point may be looked into.

**Shri T. T. Krishnamachari :** After all it is only an enabling agreement.

**The Honourable Shri K. Santhanam :** It is limited by the clause of the Constitution. If the clause prevents the imposition of a duty then no agreement can prevail against the clause. That is why I suggest that we should widen the clause and leave the agreement to operate.

**The Honourable Dr. B. R. Ambedkar :** We will look into it.

**Shri Raj Bahadur** (United State of Matsya): I have sought this opportunity, to take a few minutes of this House while this article is under consideration to give vent to the feeling of the common people in the States' Unions about these customs, duties and taxation. As a matter of fact, ever since political awakening dawned upon the people of the Indian States customs taxes have been a particular target of political opposition. It was not without reason that the people of the Indian States and their movements were set against the imposition of customs duties on both imports and exports. It was because of a particular feeling amongst the people that this opposition was there. We have felt all through that all our trade, our industries have been crippled because of these Customs Duties. Even today we are not going to be benefited by it. Somehow or other, because these States were not viable units and they had to balance their budget, the customs taxation was resorted to. Apart from that it was also supposed to be a part of the sovereign rights of the States. But so far as the interests of the people were concerned, they were not served by the imposition of these customs duties.

Even when this article is being retained here in this Constitution. I may at once give expression to my feeling and to the feeling of the large majority of the people in the Indian States that they are 'not at all happy about these customs duties being imposed in their States. As a matter of fact even the exports of buffaloes, bullocks, camels and donkeys are not being spared from these customs duties. In Rajasthan if you want to export a donkey, you will have to pay Rs. 7 per donkey. If you want to export a bullock you will have to pay Rs. 15 and in the case of a camel Rs. 25. The extra or surplus cattle that we have got we cannot easily export. Even the donkeys that we have got cannot be exported unless something is paid as customs duty on them. As far as cottage and, other industries and trades are concerned, they are

crippled by the imposition of these customs duties.

I would, therefore, urge, while this article is under discussion that the Centre should come to our help. We do not want these customs duties to continue, In view of the fact that our province is a deficit province and the standards are very low, the sooner these customs duties and the Customs Department are done away with, the better for us. Even today the inter-State commerce and trade is being affected by such restrictions. Our trade with other provinces is obviously much more affected. The price of the ordinary consumer goods that we want in our province is higher than if obtains in other provinces on account of the customs duties levied on such goods. All these considerations are there and the common man in the street or in the villages feels the pinch of this tax in his every day life. With these words, Sir, I would request the leaders and the Central Government to consider this point and come to the aid of our new Union, so that we may be rid of this scourge as early as practicable.

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

"That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks'. the words 'it thinks' be substituted."

The amendment was negatived.

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

"That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted:--

| | |
|---|---|
| Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States. | 274DD. Notwithstanding anything contained in the foregoing provision of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export goods from the State to other States may if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement: |

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.' "

The amendment was adopted.

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

That proposed article 274DD stand part of the Constitution."

The motion was adopted.

Article 274DD was added to the Constitution.

**The Honourable Dr. B. R. Ambedkar :** If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

**Mr. President :** I think we had better take it up a little later.

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## Article 302AA

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

"That after article 302A, the following article be inserted:--

| | |
|---|---|
| "Bar of jurisdiction of courts with respect to certain treaties, agreements, etc. | 302-AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant engagement, *sanad* or other similar instrument. |

(2) In this article--

(a) 'Indian State' means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and

(b) 'Ruler' includes, the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.' "

Sir, so far as the article itself is concerned, it is self- explanatory. The idea is to bar the jurisdiction of the courts including the Supreme Court in regard to adjudicating in respect of any disputes that might arise out of any treaty agreement, covenant, engagement, *sanad* or other similar instruments that might have been entered into by the Government of the Dominion of India or by any predecessor Government.....

**An Honourable Member :** Who will decide?

**Shri T. T. Krishnamachari :** The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of article 119 by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him. The House will also remember that there are a few articles in the Constitution specifically, 302A and 267A where there are references to these agreements, covenants, *sanads,* etc. and even these are precluded from adjudication by any court. The House will recognize that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well nigh probably upset certain arrangements that have been recommended and

agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period. After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VIA and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two articles 267A and 302A, the covenants will by and large not affect the working of the Constitution; and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operateable after the passing of the Constitution must not be a subject-matter of a dispute in a court of law. I think that Members of this House will understand that it is a very necessary provision so as to save unnecessary disputes by people who might feel that they have been affected or injured and who would rush to a court to make the court recognize such rights and other similar matters which have been practically extinguished by the provisions of this Constitution excepting in so far as certain articles of the Constitution preserve them. Sir, I hope the House will pass the article without any demur.

(Amendment 403 was not moved.)

**Mr. President :** There is no amendment to this. Does any Member wish to say anything about this article? I will put this straightaway to vote.

The question is :

"That after article 302A, the following article be inserted:--

Bar of jurisdiction of Courts with respect to certain treaties, agreements, etc.

'302AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article--

(a) "Indian State" means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any India State.' "

The motion was adopted.

Article 302AA was added to the Constitution.

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*Schedule III*

**Mr. President :** We might take up the other articles and Schedule III. They are minor things.

**Shri T. T. Krishnamachari :** Schedule III and the other articles involve reopening of articles and schedule already passed. We have to take the permission of the House.

**Mr. President :** You will ask for leave reopen.

**Shri T. T. Krishnamachari :** Mr. President, in the Order Paper today, beginning from item 1, article 13 to the Third Schedule, with the exception of the items relating to article 264-A, 274DD, 302AA which have been passed and 280A which has been held over, all the other items are for re-opening the articles or Schedules that have been passed. I would therefore request that you put to the House the proposition whether they are willing to allow these articles to be re-opened.

**Mr. President :** I take it that the House gives leave to re-open these articles.

**The Honourable Members :** Yes.

**Mr. President :** We shall take up Schedule III.

**Shri H. V. Kamath** (C. P. & Berar: General): What about article.

**Mr. President :** Let us finish first this Schedule.

**Shri T. T. Krishnamachari :** Sir, I move amendments 401 and 402 together:

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'judges of the Supreme Court'. the words 'and the Comptroller and Auditor-General of India' be inserted."

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'Supreme Court of India', the brackets and words '(or Comptroller and Auditor-General of India)' be inserted."

This is merely an omission which we seek now to rectify. The form of oath that has been prescribed for the Judges of the Supreme Court will be prescribed, if it is accepted by the House to the Comptroller and Auditor-General of India.

**Mr. President :** There is no amendment to this amendment to the Schedule.

The question is:

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'judges of the Supreme Court', the words 'and the Comptroller and Auditor-General of India' be inserted."

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'Supreme Court of India', the brackets and words '(or Comptroller and Auditor-General of India)' be inserted."

The amendments were adopted.

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**Article 13**

**Mr. President :** Let us take up article 13.

**Shri T. T. Krishnamachari :** May I request, Sir,.....

**Shri H. V. Kamath :** With regard to this amendment, Sir,.....

**Shri T. T. Krishnamachari :** May I request, Sir, that you take up the first item afterwards, at the end?

**Mr. President :** We shall take up item 1 later. Let us begin with article 16.

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**Article 16**

**Shri T. T. Krishnamachari :** Sir, I move amendment No. 393 Which reads thus:

"That article 16 be omitted."

The reason is that we have taken article 16 from the Fundamental Rights Chapter and put it in Part XA, in the Chapter entitled Trade, Commerce and Intercourse within the territory of India. The article now finds place in a different form under article 274-A which reads thus:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

The difference between this and the article as it appears in article 16 is only in the phraseology of the articles which says that subject to the powers of Parliament, trade,. commerce and intercourse etc. shall be free. Having taken it over to Part X-A, there is no meaning in keeping article 16 in the Fundamental Rights, and that is why I have moved this amendment.

May I also explain, Sir, to the Members of this House, who, I believe, are aware of the substance of my explanation, that the original idea of putting the article which confers a very restricted right under fundamental rights has got a history behind it. That was because at the time when we framed the Fundamental Rights we felt that the picture of the Constitution would be different, Even so, the right that is conferred is limited by any law made by Parliament, The appropriate place, therefore, for an article of this nature, which is in reality not a fundamental right, in the sense that other, articles, are fundamental rights, is in the chapter relating to trade and commerce. I think the House will have no objection to deleting what is now more or less a surplus article in the articles on fundamental rights.

(Amendment No. 416 was not moved.)

**Pandit Thakur Das Bhargava** (East Punjab: General) : May I ask a question of Mr. T. T. Krishnamachari? According to him, article 274A now takes the place of article 16. May I just know if article 25 shall apply to article 274A?

**Shri T. T. Krishnamachari :** My honourable Friend, if he waits for some time, will find that I shall be bringing forward another amendment to indicate that article 25 shall not apply to article 274-A and for eliminating its application to article 16. The normal processes of law, the normal powers that are conferred under this Constitution on the Supreme Court to see that every provision of this Constitution is observed will operate so far as all the articles 274-A to 274-E are concerned. Any special provision that might have operated will be very restricted in so far as article 16, as it now stands, permits. If Parliament had abridged that right by law, what could article 25 do by way of conferring any special right because what could be taken to the Supreme Court under article 16 could be only what Parliament chooses to allow people to take to the Supreme Court?

**Shri B. Das** (Orissa : General): Sir, as I understood article 16, it confers freedom of trade and commerce and intercourse throughout the territory of India. I listened most attentively to my honourable Friend Mr. T. T. Krishnamachari and I feel that though we have given certain powers under article 274-A or any other article I do not very much understand the idea that the articles on Fundamental Rights which we had discussed so thoroughly in this House on two or three occasions should be tinkered with. Supposing by article 274-A you have conferred equal freedom as is contemplated by article 16, let article 16 also remain. Of course, I heard Mr. T. T. Krishnamachari's argument that there is no need for going to the Supreme Court and to argue that the Fundamental Rights have not been interfered with. But, I am not clear in my mind, whether the subsequent articles do complete justice as was contemplated in article 16. I do not wish at the fag-end of our Constitution-making stage to tinker with the Fundamental Rights that we passed after so much thought, consideration and deliberation.

**Shri Brajeshwar Prasad** (Bihar: General): Mr. President, I would like to say a word or two.

I am really sorry, Sir, that this article has been deleted from the Fundamental Rights. I hold the opinion that there should be complete freedom of trade and commerce and that neither the provincial Legislatures nor the Parliament should have the right to curtail this fundamental right. I am really sorry that this article has been partly incorporated in article 274-A. I wish that the members of the Drafting Committee had given an amendment deleting article 274-A and not article 16.

**Pandit Thakur Das Bhargava :** Sir, article 16 constitutes one of the provisions which are under the purview of article 25 and this was a very important Fundamental Right possessed by the citizens that intercourse throughout the territory of India shall be free. It ensures that provincial boundaries shall not hamper any kind of movement and every person shall be able to enjoy the full fruits of the citizenship of the Republic of India. But now since we have passed certain provisions contained in part 10-A, it is true that to a certain extent this freedom has been curtailed and I had occasion to say when these articles were being considered how this right was being taken away, but all the same article 16 was allowed to remain where it was. We value this right

because it is one of those right's which could be enforced under article 25 by the Supreme Court by appropriate proceedings though we have not decided how these proceedings will be worked out because the Fundamental Rights constitute new provisions, but all the same we were under the impression that some method will be found by virtue of which we will be able to see that the citizens of this Republic get cheap and easy relief under article 25.

Now this article is being taken away from the Fundamental Rights and 274-A takes its place. My apprehension is that we are being deprived in an unjust manner of the cheap remedies which were secured to us by article 16. This is not the only section, in which attempt is being made in this House at the fag-end of the Session to take away rights or remedies. We have an amendment to article 13 also. We have also seen how under article 307 all the rights are being taken by the Government under the garb of adaptation and modification and sought to be moulded in such manner as the Government considers proper.

I am sorry that I do not agree that article 16 should be taken away from this place of Fundamental Right because after all the appropriate proceedings secured by the Supreme Court may be easier and cheaper in the manner of implementation. I would like that this article 16 is not deleted.

**The Honourable Shri K. Santhanam :** Mr. President, I am afraid my Friend Pandit Thakur Das Bhargava is mistaken in his defence of article 16 as against 274-A because if he looks up article 304 relating to amendment of the Constitution, he will find that the process of amendment of 16 is the same as the process of amendment of 274-A. While on the one hand 274-A can be tempered with by Parliament ordinarily, article 16 gives Parliament the power to make any law limiting the freedom of commerce and intercourse throughout the territory of India. At least 274-A ensures the freedom of commerce subject to amendment of the Constitution, while 16 gives the Parliament freedom. You cannot have 16 and 274-A together as they are inconsistent. One of the other must go. Therefore he must choose whether 274-A must go or 16 must go.

**Pandit Thakur Das Bhargava :** 274-A is a pious declaration. A declaration decree may not be executable. The remedy under article 25 is cheaper and easier.

**The Honourable Shri K. Santhanam :** 274-A says it shall be free and there is the usual remedy. Anyone is entitled to go to the Supreme Court for enforcing any article of the Constitution, not only the Fundamental Rights. The Supreme Court is the guardian of every article of the Constitution. While 16 is a mere pious declaration leaving to Parliament all powers article 274-A says subject to amendment of the Constitution, trade shall be free, and the only limitations will be those specifically provided the following clauses. Therefore, it is necessary in the interest of consistency and for the freedom of the trade that article 16 should go.

**Shri Kuladhar Chaliha** (Assam: General): Sir, I have heard Mr. Santhanam with great care, but I find difficulty in following him or accepting his views. It is necessary that rights of intercourse throughout the territory shall be free. Such rights should always be incorporated in the Statute and if we take it away, probably we will be depriving ourselves of a great right which afterwards will be tinkered with or whittled down somehow or other and wiped out in the process of amendment. We have seen how it has been tinkered slowly and gradually by one section, then by another and

then by the third. We have seen that process. If it is taken away, probably we will not be able to talk even here that we have such a right. Therefore these Fundamental Rights should be incorporated in some way, I, therefore, protest against the deletion of it.

**Mr. Naziruddin Ahmad :** Mr. President, with great respect I would also submit that I could not follow the reasoning of Mr. Santhanam in this regard. Article 16 was inserted as a part of Fundamental Right, that trade shall be free. Then somehow or other it struck the Drafting Committee to introduce an identical provision, article 274-A perhaps absolutely forgetting the existence of article 16. If they knew of it or remembered it then of course article 16 should have been repealed at the time when 274-A was passed. But subsequently they found that there is an overlapping between 274-A and 16. I submit it is now a question of whether article 16 or 274-A should go. Personally speaking, article 274-A must go because 16 is more favourably situated in the Constitution than article 274-A, Article 16 is subject to the provisions of article 25 making this right justiciable. What justification is there to remove it from the justiciable part of the rights to article 274-A is a thing which is not made quite clear. I therefore, submit that it is not clear as to whether article 274-A should be justiciable. It is very doubtful and it will perhaps tax the intelligence of many constitutional lawyers and the Supreme Court to say whether it is justiciable or not. If this is justiciable there is no reason to remove article 16 and enact it here. I submit that article 274-A must go and 16 must remain in order to make it clearly and obviously justiciable.

**Pandit Thakur Das Bhargava :** It will be justiciable by appropriate proceedings and not necessarily by a declaratory suit.

**Shri Alladi Krishnaswami Ayyar** (Madras : General): Mr. President, the objection to the amendment moved by my Friend Mr. Krishnamachari proceeds on an entire misapprehension. As has already been pointed out by Mr. Santhanam the mere fact that a provision finds a place in the Chapter on Fundamental Rights does not carry with it any particular sanctity or any special sanction regard being had to the saving in article 16 itself--"subject to any law made by Parliament".

Article 16 as it found place in the Fundamental Rights ran in these terms:

"Subject to any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free".

The article therefore gave a *carte blanche* to Parliament though the subject matter dealt with is styled a Fundamental Right. It is a right which can be invaded and encroached upon by Parliament in any manner it likes. That is the effect of article 16 of the Constitution as it stood.

The idea of transposing this provision to the Chapter relating to inter-State trade requires explanation. When the Constituent Assembly started its work in pursuance of the Cabinet Mission proposals, it was felt that unless we were in a position to bring inter-State provision as a Fundamental Right there was no scope for even freedom of trade. In the circumstances in which we were then placed it was thought desirable to put the freedom of trade clause in the Chapter on Fundamental Rights having regard to the circumscribed scope of the powers of the Constituent Assembly at the time when the Constituent Assembly started on its work. That is how the provision came to

find a place in the Chapter on Fundamental Rights.

The House will remember that the Fundamental Rights Committee was constituted before the later developments in regard to the position of India and to the wider range of the powers of the Constituent Assembly. There is no question now of the Constituent Assembly being in any way restricted in the exercise of its functions and we are in a position to frame any constitution we like for a free and independent India. It is in this setting that the new articles relating to the freedom of trade beginning from article 274-A have been framed. We have, provided in article 274-A that trade and commerce throughout the territory of India shall be free subject to the other provisions in that part. Therefore, any legislation by Parliament affecting freedom of trade will be subject to the inhibitions contained in that Chapter.

The mere fact that a provision in regard to freedom of trade finds a place either in one part of the Constitution or in another part of the Constitution does not alter or affect the nature of the right. Articles 274B, 274C and 274D contain the necessary exception and limitations to freedom of trade. There is one other thing also which you may notice in this connection. Article 274-C, far from abridging or restricting the scope of the right to freedom of trade, enlarges the scope of the Fundamental Right.

It says--

"Notwithstanding anything contained in article 274-B of the Constitution, neither Parliament nor the Legislature of a State shall have the power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination....."

This provision by restricting the power of the State Government and the Central Government enlarges the scope of the Fundamental Right, if you choose to call freedom of trade a fundamental right within the meaning of the Constitution.

Whether a particular provision is called a fundamental right or not, in regard to the point as to justiciability raised by my Friend Pandit Bhargava, it does not depend upon a particular provision finding a place in the Chapter on Fundamental Right or in other parts of the Constitution. So far as the jurisdiction of the Supreme Court is concerned, it has plenary jurisdiction with regard to the interpretation of the Constitution. The Supreme Court can be called upon to decide in every case whether a particular Statute or any law is in conformity with the terms of the Constitution or not.

I, therefore, submit there is no particular virtue in the article finding a place in the Chapter on Fundamental Rights. I think, when article 274 was before the House, my Friend Dr. Ambedkar pointed out the advantages of all the provisions relating to trade and commerce finding a place in a single chapter. On these grounds I submit there is absolutely no force in the objection to the proposition as moved by my Friend Mr. T. T. Krishnamachari.

**Mr. President :** Does Mr. Krishnamachari want to say anything?

**Shri T. T. Krishnamachari :** No, Sir. Mr. Krishnaswami Ayyar has answered all the points.

**Mr. President :** I shall then put it to vote. I mean amendment No. 393 asking for

the deletion of article 16. The question is:

"That article 16 be omitted."

The motion was adopted.

Article 16 was deleted from the Constitution.

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**Article 27**

**Mr. President :** Then we take amendment No. 417.

**Shri T. T. Krishnamachari :** Sir, I would like to move amendments Nos. 394 and 417 together, because they both relate to article 27. I will first move No. 394:

That in clause (a) of article 27, the word and figures 'article 16' be omitted."

This is a consequence of the acceptance by the House of the previous amendment 393 to delete article 16.

**Mr. President :** Let us dispose of it now.

**Shri T. T. Krishnamachari :** Yes, Sir.

**Mr. President :** This amendment follows upon the decision which has just been taken. The question is:

"That in clause (a) of article 27, the word and figures 'article 16' be omitted."

The amendment was adopted.

**Shri T. T. Krishnamachari :** Mr. President, Sir, I move my amendment No. 417 which reads thus:

"That in the proviso to article 27, after the words 'subject to the terms thereof' the word 'and to any adaptations and modifications that may be made therein under article 307 of this Constitution' be inserted."

Sir, this has become necessary because of the wording of article 307(2) which we have passed in which we have given power to the President to adapt and modify existing laws so as to fit them in with the provisions of the Constitution, as also the Fundamental Rights that we have passed.

**Mr. President :** There is no amendment to this. Does anyone wish to say anything about it?

**Mr. Naziruddin Ahmad :** There is no time for amendments at all.

**Mr. President :** Well, this has been there from the 15th inst.

**Prof. Shibban Lal Saksena :** No, we got it this morning.

**Mr. Naziruddin Ahmad :** At nine o'clock.

**Mr. President :** I think it is more or less a consequential amendment.

**Mr. Naziruddin Ahmad :** The effect of this amendment it is impossible to measure, unless one has the genius of Dr. Ambedkar.

**Mr. President :** I will put it to vote. The question is:

"That in the proviso to article 27, after the words 'subject to the terms thereof' the words 'to any adaptations and modifications that may be made therein under article 307 of this Constitution' be inserted."

The amendment was adopted.

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**Article 42**

**Shri T. T. Krishnamachari :** Mr. President, Sir, I beg to move:

"That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him' be substituted."

Sir, clause (1) of article 42, as amended, would read thus :

"The executive power of the union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution and the law."

Sir, this has been found necessary, and it does not involve any serious variation. It is fairly.....

**The Honourable Shri K. Santhanam :** Sir, does it mean that a Bill passed by a Legislature could be signed by an officer subordinate to the President?

**Shri T. T. Krishnamachari :** The clause says, "in accordance with the Constitution and the law." If the Constitution and the law permit that Bills could be authenticated by somebody else, appointed by the President, well, that will be possible.

**The Honourable Shri K. Santhanam :** The amendment permits such a thing. You are making the Constitution permitting the President to discharge his function through officers- subordinate to him.

**Mr. President :** It relates to the executive powers and not the legislative powers. Signing of Bills, I suppose comes under legislative Powers.

**Shri T. T. Krishnamachari :** Yes, this relates to executive powers. I am grateful

to you, Sir.

**The Honourable Shri K. Santhanam :** If you want another instance, there is the question of the declaration of war. Can it be done by the Commander-in-Chief? Can this power be delegated? I do not think that in the absence of this amendment the executive head loses the power to do certain things through his officers. I do not think this is necessary. I do not think in any other Constitution a similar provision is to be found.

**Mr. President :** Mr. Kamath has given notice of an amendment to that effect.

**Shri H. V. Kamath :** I move:

"That in the proposed clause (1) of article 42 in amendment No. 418 of List XVIII, the 'either directly or through officers subordinate to him' be deleted."

I have no quarrel with the change of the word 'may' to shall'. It is necessary and right. (An Honourable Member: What is the number of your amendment ?) My amendment has no number, because I gave notice only this morning. I got List XVIII only last night and so could give notice of my amendment to it only this morning.

Sir, while this article was under discussion, it was made clear that the President would not exercise his executive power personally or directly, but certainly only in accordance with the Constitution. The President is only the symbol of executive authority. It does not mean that he will sit in Delhi and order the arrest of so and so and things like that. The Ministers or officers working with him or under him will exercise the executive power in accordance with the Constitution and the law. I fail to see why my honourable Friends Dr. Ambedkar and Shri T. T. Krishnamachari, with the acumen that they possess, still feel it necessary to bring in an amendment of this nature. This is redundant and I submit to the House that the words beginning with "either" and ending with "him" may be deleted, so that the article will read as follows:--

"The executive power of the Union shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law."

That is sufficient for our purpose.

**Mr. Naziruddin Ahmad :** I submit that this amendment is not only hasty, but absolutely purposeless also. It has been introduced without enough consideration. I will draw the attention of the House to article 130(1) where the executive power of the State is vested in the Governor and may be exercised by him in accordance with the Constitution and the law. While we make a change here in article 42 we forget to make the same change in article 130(1).

**Mr. President :** There is an amendment to that effect lower down the Order Paper.

**Mr. Naziruddin Ahmed :** All right, Sir. It should be obvious that the executive power of the Union, when it vests in the President, may be exercised by him in accordance with the Constitution. This obviously means that he way exercise that power in accordance with the Constitution, i.e., with the help of agents. In fact there

are a large number of departments of the Governments for the purpose such as the Courts, the Police, the Jails and so on. Is it to be supposed that unless we make it clear that the President shall exercise his powers through agents he has to act on his own initiative and personally? It is absurd to suppose so. This attempt to clarify things is grossly exaggerating the idea of going into details. I submit that when we vest the power in the Governors or the President, we allow his executive to work in his name. It shows that the President and the Governors are merely legal entities and ornamental figureheads. Everything is done in the name of the President. This is the purport of article 42(1) that the executive power may be exercised by the President in accordance, with the Constitution. That is the obvious significance. Then what is the object of changing the word 'may' into shall? The use of the word 'may' is very apt.

**Shri H. V. Kamath :** I think the word 'shall' refers to the constitutional exercise of that power.

**Mr. Naziruddin Ahmad :** The word 'may' is enough for the purpose. The exercise of this power is optional, and if it is exercised it must be in accordance with the Constitution. The President may not exercise it at all; and if he exercises it he shall do so in accordance with the Constitution. The word 'may' is enough for the purpose. It is difficult on the spur of the moment to see the weakness of this last-minute amendment. I ask, when is the Drafting Committee to finish its labours in order to give us some amount of rest and contentment? We want to go home as early as possible. But the Drafting Committee will not let us do so. As I have repeatedly submitted, they should make tip their minds and give to the House a complete picture of their drafts and not come here every day with fresh amendments of this sort. It is extremely tiresome and irksome for Members to work under these conditions.

**Mr. President :** I was going to call upon Sir Alladi Krishnaswami Ayyar to explain the position. But before doing so, I want to put him one question which strikes me also. It is said, 'through officers subordinate to him'. Does it mean that it is contemplated that the President will have officers in the provinces on behalf of the Union, or does it mean that there will be only provincial officers who will act as subordinates to the President? Is it contemplated, as in America, to have two separate sets of officers, one belonging to the Union and the other belonging to the provinces?

**Shri Alladi Krishnaswami Ayyar :** In regard to purely federal Subjects you can have purely federal official agency; but in regard to concurrent subjects you can utilise the provincial agencies. If the Federal Government is not satisfied with the provincial agencies, the Constitution provides that the Federal Government may have its own agency in regard to concurrent subjects. It is only in regard to provincial subjects that the entire provincial agency is entrusted with the task. There you use the officers subordinate to you, though they may not be directly subordinate. There is power of intervention even when the provincial agency is utilised. Inasmuch as it is for the enforcement of the Federal subjects, he will have the right to utilise the provincial agency.

I want to say something later about the general point raised.

**Shri Brajeshwar Prasad :** Mr. President, Sir, I rise to oppose the amendment which has been moved by my Friend, Mr. T. T. Krishnamachari. I hold the opinion that the amendment is not merely thoughtless as my Friend, Mr. Naziruddin Ahmad characterised it, but it is dangerous. The executive power of the President must vest in

his hands and in his hands alone, because he has to perform under the Constitution certain functions; he has to use certain powers. I do not think unlike my Friend, Mr. Naziruddin Ahmad, that the President is merely an ornamental head. Had he been so, I would have no difficulty in accepting the amendment moved by Mr. T. T. Krishnamachari, but my reading of the Constitution is that the President has very large powers. I therefore hold the opinion, Sir, that it is dangerous, it is risky--it is in my opinion not merely thoughtless--to empower the President to delegate his powers under the Constitution into the hands of executive officers.

**Pandit Thakur Das Bhargava :** Mr. President Sir, with reference to this amendment, I am not satisfied whether this amendment is necessary. As a matter of fact, when we speak of the exercise of the powers of the President under article 42 And the use of the words "may be exercised by him," we understand that these powers are being exercised by the President in an almost impersonal manner. So far as the executive power of the Union is concerned, it is exercised by the President or by the Governor or by the Prime Minister or by many other officials. It is not that the President must exercise it in a personal manner. There are certain rules and regulations by virtue of which many officials have to exercise the executive power of the Union. If these words are there, it would give rise to the argument that the powers should either be personally exercised by him or by officers subordinate to him. When these officers so exercise these powers, in many cases the President does not even know that these powers are being exercised in his name. Therefore, my submission is that the words "by him" do mean that either the President himself could exercise them or he could delegate those powers.

The second question may arise that the powers delegated by him can be exercised only by people to whom they are delegated because of a certain maxim that delegated powers cannot be delegated further. It would raise many other difficulties if we regard that the exercise by him of these powers is either personal or it is only through officers subordinate to him. Therefore my submission is that the words as they stand are quite sufficient and do not give rise to any sort of ambiguity. Moreover, Sir, I do not agree that the use of the word "shall" is necessary. In a particular context this word "may" does mean "shall".

So far as the question raised by Mr. Kamath is concerned that the powers shall be exercised in accordance with the Constitution and the law, the word "may" does not relate in any manner to the words "in accordance with the Constitution and the law". My submission is that the words that we have passed already are enough and they answer all the purposes they are intended to answer and no change need be made.

**Prof. Shibban Lal Saksena :** Sir, the question is, if this amendment is not made, what harm would accrue? If I see it from that point of view, I think that this amendment is not only redundant, but it is positively injurious. In fact, nobody thought so far that this article 42 was incomplete. It says that the executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law. Now the amendment says that that power shall be exercised by him either directly or through officers subordinate to him. Is it necessary? Does not the Constitution and the law say that the President shall use officers provided for him for carrying out his purpose. In fact, the clause says "in accordance with the Constitution and the law". As the Constitution and the law prescribe how the President shall exercise his powers either himself or through officers, I think these words are absolutely unnecessary. I do not think any

amendment is necessary.

**The Honourable Shri N. Gopalaswami Ayyangar** (Madras: General): Sir, I feel some difficulty in appreciating the objection which has been raised to this particular amendment. Article 42 says that the executive power of the Union shall be vested in the President. We all know or lots of powers which are vested in the President but actually he does not exercise those powers. He simply exercise them at the dictation of other people who are responsible to the legislature. That is point number One which I should like the House to appreciate.

The Second thing is that the Constitution itself contemplates that executive action, which is really the exercise of executive power cannot as a matter of fact be done by the President directly. Look at article 64(1). It says:

"All executive action of the Government of India shall be expressed to be taken in the name of the President."

So, the actualities of the case require that in innumerable matters the Constitution or the law vests the power in the President, but the actual exercise of it is to be left to other people who are held to be responsible to him. No doubt, he takes the responsibility for action taken by these officers. It is impossible as a matter of practical administration for the President to exercise all the powers that are vested in him by the Constitution. Take, for instance, even the powers which relate to the exercise of his functions in relation to legislation. On a number of matters, for instance, the power of summoning the Assembly, dissolving the Assembly and so on, he takes action, but the exercise of that power is on the advice of his constitutional advisers. And in the ordinary course he cannot really exercise all the powers that are vested in him. What is the objection to his asking officers subordinate to him, who owe responsibility to him, to exercise such powers? As it is absolutely unnecessary for him even to look at them before those orders issue, we ought to give him the latitude to select such officers in whom he can have confidence and who may be trusted to exercise this power.

I have no doubt noticed the objection: what is he to do in regard to giving assent to Bills when passed by the Legislature? True, ordinarily we expect the President to sign those Bills in token of his assent, to express his assent on them. Naturally in a case of that sort he would not ordinarily ask other officers to sign for him, but assuming that circumstances arise in which he is unable to append his signature to an assent of that sort, it may be necessary for him to ask that somebody else should sign the assent in his name. I do not see anything which is legally improper, or even from a constitutional point of view improper, for somebody to sign even an assent to a Bill passed by the Legislature if the President is unable to do so or thinks in particular circumstances other people might sign in his name. I think that in order to obviate difficulties which would actually arise, the addition of these words is very necessary.

**Shri H. V. Kamath :** Is not the purpose that my Friend Mr. Gopalaswami Ayyangar has in view sufficiently met by the phrase "in accordance with the Constitution and the law?" Whatever is delegated to other persons or agents will be done by the President in accordance with the Constitution and the Law.

**The Honourable Shri N. Gopalaswami Ayyangar :** In that case we shall have to go to Parliament for a law in every case he wants to authorise an officer to do so. But

if Parliament can authorise it, why not the Constitution do so ?

**Shri Alladi Krishnaswami Ayyar :** Sir, some of the points I wanted to urge have been anticipated by my Friend Mr. Gopalaswami Ayyangar. There is nothing novel in trying to bring the present provision in line with Section 7 of the Government of India Act, 1935. Though Mr. Naziruddin Ahmad, in the plenitude of his literary wisdom, has chastised the Drafting Committee as being careless, I would invite his attention to the language used by the Parlimentary draftsmen in Section 7 of the Government of India Act. I am reading the Section:--

"Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor either directly or through officers sub-ordinate to him....."

Therefore, there is nothing novel or fantastic in making an express provision to the effect that the executive authority can be exercised through official agencies.

So far as the general executive power is concerned, it is vested in the President. So far as the responsibility for carrying on the executive administration is concerned it is vested in the Ministers. So far as the question of utilisation of official agencies is concerned, it is implicit in the very foundation of the Constitution. I should think that even under a provision as it stands without the amendment, it would be perfectly competent for the President to institute any official agency, though the ultimate responsibility for the acts of any official agency, would be that of the President advised by his Cabinet. As a matter of fact, when the original article was drafted it was the lines of article 12 of the Irish Constitution. That article runs thus:--

> "There shall be a President..... who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law."

**Shri H. V. Kamath :** That is an argument against your view.

**Shri Alladi Krishnaswami Ayyar :** The present amendment says that the President may exercise the power either directly or through officers subordinate to him.

**Shri H. V. Kamath :** I have got a copy of the Irish Constitution with me here. Officers are not at all mentioned there.

**Shri Alladi Krishnaswami Ayyar :** If only you have the courtesy to listen to me you would not have raised the objection. I pointed out that even without an express provision like that it would be competent for the President to have or to institute any official agency, and there are Constitutions in which express provision is not made, and I referred to article 12 of the Irish Constitution which to some extent will support Mr. Kamath's point of view. There are some counsel who, even when the opposite side makes a concession in favour at one's contention, would oppose the opposite side. That seems to be the attitude of my Friend Mr. Kamath. What I pointed out was that it is merely a question of drafting and making the provision clear. The Parliamentary draftsmen in Section 7 of the Government of India Act made express reference to officials. In the Irish Constitution there is no reference to officials. Even without a reference to officials it would be perfectly competent for the President to utilise official agency for the purposes of carrying on executive function, though ultimately the

responsibility will rest upon the President and the executive in regard to the discharge of any function vested in the executive whether under any statute or whether under the general principles of the Constitution in regard to the functions of the executive.

Therefore, I submit, Sir, that in making quite clear what is implicit, there is nothing wrong. "Official" is the word used there. Whatever objection you may have in regard to the Government of India Act of 1935, generally, there can be no objection to adopting this wording here. I would also go further and urge the necessity for such a provision from a constitutional point of view. The question as to the exact extent to which the President can delegate his function has been debated in America. If, for example a power is vested in the President, questions might arise as to whether it is possible at all to delegate his authority or whether in every case issue should come up before the President. We are told that in fact nearly 2,000 signatures have to be obtained form the President almost every day so far as the presidential system is concerned. That has been pointed out recently in a book published in regard to the American Constitution as to the necessity of Presidential signature in regard to very many Acts of which he may know nothing.

Therefore, we have to divorce these two questions: the question of the ultimate responsibility and the question of the particular agency which may be employed in the working of any governmental institution or any structure. Therefore, a statute might provide that a particular agency may carry out orders. Even there it does not mean that the Government of the country is not responsible for the proper functioning of the statutory agency. The agency may be a statutory agency or it may be an administrative agency. In all these cases there is nothing to prevent the executive from employing any particular official agency; by putting in the word "officers" all the theory of delegation which has loomed large in the American Constitution will be set at rest.

It is possible that having regard to the fact that our system is founded mainly on British ideas, even without such a provision an official agency might be employed. In the other Dominion Constitutions, a general provision is incorporated to the effect that the power is vested in the Queen. The Australian and the Canadian Constitutions say so. It is merely the employment of a particular language and I see absolutely no objection to that: The average layman need not go into the question as to the American law or Constitution or to the provisions of Dominion Constitutions. To make it clear to the laymen in this country that an official agency can be employed, this provision is a salutary one.

**Shri H. V. Kamath :** On a point of clarification, Sir, may I ask my Friend Mr. Alladi Krishnaswami whether any other Constitution in the world makes such a reference to subordinate officers of the executive head of the State in this context.

**Mr. President :** He read out a Section from the Government of India Act.

**Shri H. V. Kamath :** The Government of India Act is no Constitution of a free State.

**Shri Alladi Krishnaswami Ayyar :** This question has nothing to do with freedom.

**Shri H. V. Kamath :** It is a stupid provision.

**Mr. President :** I will put this to vote. Mr. Kamath's amendment is really a negative of this.

**Shri H. V. Kamath :** No, Sir.

**Mr. President :** Very well, I will put yours to vote first. The question is :

"That in amendment No. 418, in the proposed clause 1 of article 42, the words 'either directly or through officers subordinate to him' be deleted."

The amendment was negatived.

**Mr. President :** Then, I will put the proposition moved by Mr. Krishnamachari. The question is:

"That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him' be substituted."

The amendment was adopted.

**Mr. President :** I think it is one o'clock now and we shall adjourn. I desire to point out to Members that we shall take up the other articles, of which notice is given in today's agenda at 4.30 this afternoon.

**Pandit Hirday Nath Kunzru :** When we agreed to a session being held today it was, I think, understood that the session would be held only in the morning. I do not think anybody was prepared for an afternoon session. I should earnestly request you, therefore, to hold another session tomorrow morning. We have engagements this afternoon which were made because in the normal course the Assembly does not meet in the afternoons.

**Mr. President :** I did not understand, at any rate, that we would not sit in the afternoon today. It was left open and it is for us to decide now whether we shall sit in the afternoon or not. In view of the fact that many Members are anxious to complete the Second Reading stage and many of them are anxious to, go away on account of Dipawali, I think we should sit in the afternoon today. If we do not sit this afternoon, it may be that we may not be able to finish even tomorrow.

**The Honourable Shri N. Gopalaswami Ayyangar :** As a matter of fact Sir, we and several others have accepted invitations to a party at the Government House at 5 P.M. today. If we start at 4.30, I do not think we can do any business.

**The Honourable Dr. B. R. Ambedkar :** In that case we may meet at 4.

**Mr. President :** This House has the first claim upon its Members. I therefore fix 4.30 this evening. The House stands adjourned till 4.30 p.m.

*The Assembly then adjourned for Lunch till Half past Four of the Clock.*

*The Assembly re-assembled after Lunch at Half Past Four of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.*

## Article 280A

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

"That after article 280, the following new article be inserted :

Provisions as to financial emergency.

'280-A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution--

(a) any such direction may include--

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the state;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions fog the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.' "

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the necessity of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article In our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which gave the power to the President to make similar provisions in order to remove the difficulties, both economic and

financial, that had overtaken the American people as a result of the great depression from which they wore suffering. The reason why, for instance, we have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of that legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.

**Prof. Shibban Lal Saksena :** Sir, I beg to move:--

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The article if my amendment is accepted will read thus:

"If the President is satisfied that a situation is imminent whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect."

My reason for this amendment is this that after the situation has arisen, it might lead to much disturbance and people might lose confidence in the country's credit. The article says that if a situation has already arisen and there is chaos, people will lose confidence in the credit of the State. I want instead of the words "has arisen", the words, "is imminent" to be substituted.

My second amendment is No. 441 which reads as follows:--

"That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed now article 280A, after the word 'operation' the words 'Parliament shall have power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent list, and' be inserted."

If my amendment is accepted, the article will read as under:--

"During the period any such proclamation as is mentioned in clause (1) of this article is in operation Parliament shall have power to make laws in respect of subjects contained in the State List as if they were Subjects in the Concurrent List, and the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose."

Sir, these amendments of mine are only intended to cover two lacunae in the article. Although the article is an extraordinary one and provides for financial emergency, in the present state of our country, I think it is necessary that the power should be with the executive. I have only tried to compare it with article 275. What I wanted is this: First of all, by changing the words "has arisen" into "is imminent" in clause (1), we would be able to take measures before the situation becomes grave. Therefore as soon as a financial emergency is imminent, we can take the necessary measures if we substitute the words "is imminent' for the words "has arisen".

Then the President should have the power to treat all State Subjects as if they

were subjects in the Concurrent List and Parliament should be able to legislate about them. It is quite possible that the State may be forced by some legislation of their own, by their own laws to act in a particular manner and may not have the legal authority to carry out the directions of the President. What I want is that the Parliament should have power to alter those laws of the States and therefore I want that during that period Parliament shall have power to pass laws even on subjects contained in List No. 2 as if they were in the Concurrent List, so that the necessary financial measures will be taken in order to meet the emergency. I think that unless that is done, a mere order will not enable the President to pass orders or to have them carried out because they may conflict with the laws of the States and it may not be possible for the President to got those laws changed. Further the Provinces may not be agreeable to them. So what I want is that Parliament should be given this power that in those matters laws may be made by Parliament.

I think, Sir, that these amendments are necessary. We want this power. May I also say that this article does not take away any powers of the legislatures also and I think it is necessary in the interests of the State especially when we are in the midst of financial distress.

**Shri H. V. Kamath :** Sir, may I ask your permission for a verbal change in this amendment No. 438? I propose to use the word "breakdown" instead of the word "chaos".

**Mr. President :** Yes. (Interruption.)

**Shri H. V. Kamath :** I have got the President's permission to change the word "chaos" to "breakdown". Sir I move amendments Nos. 438, 442 and 444 of List No. XIX. Amendment No. 438 is to the effect.

"That in clause (1) of the proposed new article 280A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened, the words 'which threatens India or any part thereof with financial breakdown or economic disaster,' be substituted."

Amendment No. 442 is to the effect:

"That in amendment No. 429 of the same List, clause (4) of the proposed new article 280A be deleted."

Amendment No. 444 is to the effect:

"That in amendment No. 429 of the same List, clause (5) of the proposed new article 280A be deleted."

This new article 280-A invests the President of the Union with further emergency powers, powers in excess of what have been conferred on him by the Constitution under articles 275, 276 and subsequent articles upto 280. This article envisages a contingency or a situation where the financial stability or credit of India or any part thereof may be threatened. I feel that this contingency or danger to economic stability or credit of India or any part thereof ought not to be regarded as an adequate ground for the proclamation of an emergency. An emergency proclamation can be justified only under more dire circumstances, that is, only in the event of or only when there is danger of a financial breakdown or economic disaster. To invest the President with such wide powers in the event of the financial stability or the credit of India or of a

province or State thereof, being threatened is going much too far.

This morning, you rightly observed, Sir that many provinces are complaining about or have already complained about the ill distribution of the Income-tax proceeds, and that a new inroad upon their revenues was made this morning, as some honourable Members felt, by the article on Salas Tax adopted by this House. Some provinces like Madras, and partially the Central Provinces too, have inaugurated prohibition. That has eaten into the revenues of the provinces, and has further put them to extra expenditure on prohibition staff and ancillary paraphernalia.

Suppose, under these circumstances, the situation in future worsens. The world economic situation may worsen may aggravate. We shall try our best to see that our economic conditions improve, but what with devaluation all over the world including the devaluation of our own Rupee, no one would be Such a rash prophet as to say that we will be better off in the near future. Suppose, if the worst comes to the worst, the economic situation worsens further and the provinces, on account of the loss in revenue on account of prohibition and on account of other factors besides, cannot put into effect the constructive schemes which they have in mind, and suppose they are hard put even to make both ends meet, and their budgets are deficit budgets, imagine, it is not an improbable situations series of deficit budgets--may not be large deficits even small deficits every year--such a situation may be construed by the President as one where the financial stability or credit of the particular province or State is threatened. May I ask, will that be adequate ground for the President to assume to himself the powers which will be his once a proclamation of emergency is made? I say, Sir, if we really want to implement the scheme of provincial autonomy, in spirit as well as letter, this is not the way to treat our constituent units, Certainly see to it that financially, economically, we are sound. But, on the slightest pretext of the administration not being able to put through their schemes, and not being able to produce surplus budgets, on these pretexts, it will--I will not use any strong words--it will not be wise for the President to proclaim an emergency and assume to himself all the extraordinary powers that will accrue to him once such proclamation is made.

I agree, I admit freely, that this course must be adopted if there is imminent danger of a financial breakdown,--that is certainly a much worse situations potentially a much more dangerous situation than economic instability. Economic stability may mean nothing to anybody or all things to all men. If there is any danger of financial breakdown or economic disaster, then certainly I can agree to vest certain emergency powers in the President, but not otherwise; not on the mere threat to economic stability or financial stability of a province. That may mean, as I said, many things. I cannot agree to vest emergency powers in the President for this reason of any threat to economic stability. My submission to House is that if there is danger of a breakdown or a disaster, then only the President may be invested with emergency powers.

I am afraid, looking to the paucity of attendance in the House today, that we are very likely to pass this article without mature care and attention being bestowed on it. It Is an unfortunate circumstance that Depawali is so close. Honourable Friends are more keen on illuminating their homes during Diwali than on illuminating the darkness that seems to have overtaken the House at the fag-end. I hope, in spite of the paucity of attendance, those Members who are Present here will carefully consider this matter as to whether it would be necessary to invest the President with such powers when the financial stability or credit is merely threatened.

I come now to amendments 442 and 444 which seek to delete clauses 4 (a)--it ought to be 4(a); It has been wrongly typed here; I sent amendment No. 442 as referring to clause 4(a) of the proposed new clause, not the whole of clause (4)--and clause 5 of the proposed new article. The House will see that clause (3) gives the President ample powers in the event of a Proclamation of Emergency under these circumstances. The last part of clause (3) reads thus: "and to the giving of such other directions as the President may deem necessary and adequate for the purpose." This omnibus provision enables him to do practically what he likes so long as when he passes the order he says, "I am satisfied that it is necessary and adequate for the purpose." He can do whatever he likes and nobody can question his acts or decrees or ordinances in a court of law or anywhere else on earth. In the face of this, I personally feel that there is no necessity for incorporating clause 4(a) in this article, because clause 4(a) refers to the reduction of salaries and allowances and some provisions about Money Bills which are matters which could come within the scope of the provision embodied in the second part of clause (3). So, this can be safely deleted without any detraction from the meaning that is attached to clause (a) and without derogating from any of the powers that this clause confers on the President in the event of a financial emergency.

Clause (5) is a mere consequential provision. Why it is put in here at all. I do not understand. I fail to see any *raisen d' etre* for this clause. If the House will turn to article 277A and 278 which this House adopted a few months ago my honourable Colleagues will see that this contingency when the Government of any State cannot be carried on in accordance with the provisions of this Constitution is clearly, unambiguously visualized in these articles 277A and 278. Now, Sir, the Governor of the State must decide as to whether the Government of that State can or cannot be carried on in accordance with the provisions of this Constitution and the Governor makes a report. The first clause of 278 says--

"If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation etc. etc."

This is very clear. After the issue of directions by the President under this new article 280A when he visualizes a financial emergency in India or any part thereof, what is the need for this clause (5)? The Governor is on the spot and he can and will, if he is a conscientious and diligent Governor, he is bound to report to the President from time to time as to how these directions are being implemented. What are we doing here by incorporating all shorts of jumble--I would not use stronger words--and absolutely unnecessary verbiage? We have adopted articles where we have provided for emergency powers, and if the Governor feels and is satisfied that the Government of the State cannot be carried on in accordance with the Constitution, he will report to the President, Why should we say 'Any failure to comply with the directions given etc.?' Who will judge? That is the crux of the matter referred to in clause (5). Who will judge will it be the President or Governor or some other authority? Make it clear and do not leave it vague. If the President is satisfied it is a failure, then make it clear that if the President is satisfied that it is a failure, then it means the State Government has failed. Otherwise say that the Governor of the State will report to the President about the failure or otherwise.

But clause (5) in the first place is unnecessary, redundant, and secondly, it is very vague. The authority or the person to judge where there is a failure or not is nowhere defined and it is dangerous to leave it so vague as this. Make it clear beyond any

shadow of doubt that the President will judge as to whether it is a failure or not. If it is left vague, it will reflect on our own wisdom. I hope that Dr. Ambedkar's learning is not so completely divorced from good sense and wisdom that he cannot see the force of my contention. He is learned I agree, but I hope his learning is not completely divorced from other components of human wisdom; and I hope he will bestow sufficient attention upon the amendments I have moved. I commend them with all my heart to the House for the consideration.

**Shri Brajeshwar Prasad :** Mr. President, Sir I move amendments 439, 440 and 443. They read as follows:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A after the words "threatened" the words 'or is likely to be threatened' be inserted."

"That in amendment No. 429 of List XVIII (Second Week). for clause (2) of the proposed new article 280A, the following be substituted:--

> '(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.' "

"That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280A, the following be substituted:--

> '(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State;' "

I would make a few comments in connection with the amendments which I have moved. Sir, I am of opinion that when there is a period of financial crisis, provincial autonomy must completely be suspended till such time as the emergency lasts. There should be no hesitation, there should be no qualms of conscience on this account. I am of opinion that the period of emergency should last till such time as the President in his discretion may consider to be necessary. This proclamation should last till the emergency lasts. There is no sense in going to Parliament and seeking its approval whether the period should be extended or not. The President and the President alone is the best person to judge whether the emergency is over or not. Do not distrust the President--he is the first citizen of the State. He represents the people of India in a more true sense than any member of Parliament. He is elected by the representatives of the Legislatures of the Centre and the Provinces. He is not elected by a particular constituency. Therefore it is in the fitness of things that power should be vested in the hands of the President alone.

I am of opinion that by doing so we will not be violating any Constitutional convention because the essence of Federal Constitution is the separation of powers. Under the new Constitution our Parliament is not going to be a sovereign body. I cite the case of the American President. He has a large number of powers. Nobody can say that he is a dictator or autocrat or that by vesting powers there has been any violation of the principle of federalism. Therefore, I am of opinion that power must be vested in his hands to deal with any situation that may arise in the future as a result of financial instability or crisis.

We have achieved our freedom only a few years ago. Is it right or proper that we should jeopardise our freedom at the altar of some newfangled notion or concept? Our State has become free at a time when the political horizon is full of anxiety. The

political and economic situation not only of this country, but of all parts of the world is on the brink of disaster.

Therefore, our Constitution must take these factors into account.

Sir, there is another factor which must be borne in mind. This institution of Parliamentary Government is quite alien to the genius of our people. Our ancient law givers were Saints and Seers and not Parliamentarians. Therefore, I have more faith in a President than in a Parliament elected on the basis of adult franchise in a country where there is no literacy, where the standard of living is very low and where the people are the victims of communal passions. Therefore, I am of opinion that we must not jeopardise the interest of the State at the altar of Parliamentarism or of any ideology. Ideologies are mere concepts. They may be cloudy, hazy and nebulous. But the State is a solid reality, and we cannot jeopardise the interests, of the State at the altar of some newfangled notions. In the words of the German philosopher Hegal-"The State is God on earth". I am, therefore, of opinion that if vital questions are left to be decided by Parliament, it will mean the end of the State. It is only in a very highly developed community that Parliament plays an effective part. In a country like India it is bound to occupy a secondary role. For a long time to come, the executive and the executive alone will play a dominant part in our national life. If our Constitution does not recognise this fact, it will break down and plunge the country into chaos and anarchy.

**Mr. President :** Did you move amendment No. 443?

**Shri Brajeshwar Prasad :** Yes, Sir, all the three amendments.

**Mr. President :** All the amendments are moved and the article are now open for discussion.

**Shri R. K. Sidhva** (C. P. & Berar: General): Mr. president, Sir, yesterday, when my Friend Mr. Krishnamachari told me that a clause regarding financial emergency was to come up, I felt that probably there was going to be some another cut upon the right and previleges of the legislature. But when I received this article last night, I must admit that I found that this article is justified; and under the conditions that exist now, and that may exist, I do feel that if this article had not been there, our Constitution would not have been complete. I give credit to the Drafting Committee for even at this last moment, to have realised that such a situation might arise, and therefore, the President must be empowered with these extraordinary powers. My Friend Mr. Kamath has been having unnecessary apprehensions of the President misusing these powers. Mr. Kamath said that even if there is a deficit budget, the President might declare that there is an emergency in the financial stability of the country. If we have a President who really declares, because of a deficit budget that there is financial emergency, then I must say that that President is not worthy of occupying the high place that he would occupy, and I may add that it is the House and the persons who will be electing the President who would be responsible for it. But I am quite confident that both Houses will elect a really able and eminent, just and right type of person who will exercise his powers rightly and who will judiciously interpret the provisions of this article. I have no apprehensions on that, whosoever may be the President of the Indian Union.

Sir, what does the clause say ? It says--

"If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect."

Now, we know from our experience of our two and a half years of independence, that the political freedom that we are enjoying is absolute, but as far as our economic conditions is concerned, we have to depend upon other countries finances: as, we have not stabilised our finances yet. I do not mean, therefore, that there is an emergency now. I can only say, here is the economic picture before us; and whatever may have been the reasons that have led to it, they are not of our making. But the circumstances under which we were living and were governed, and the world situation, have led to the present economic condition. This is not an emergency. But a real emergency might arise whereby the financial stability may be affected, and we will be perfectly justified if we have an article like this, and I have no doubt at all in my mind that this article then would be very helpful.

Mr. Kamath made capital out of clause (4), but I welcome that article. What does it say? It says that the President shall have the power to reduce the salaries and allowances of the staff when necessary.

**Shri H. V. Kamath :** My only difficulty was that this power was not vested under clause (3).

**Shri R. K. Sidhva :** But clause (4) says--

"Notwithstanding anything contained in this Constitution--

'any such direction may include (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State.' "

Today we know very well how our staff is not only heavily paid but how they are excessive in numbers. But that apart, this is a very happy provision, and we should all welcome that the President is vested with this power, because we know that in the Constitution, we have provided for the salary of the Judges and that it may not be reduced in times of emergency. We have been clamouring over the high salaries of the Judges, and when the Drafting Committee comes with a provision that in the event of a financial instability. The President win have the right even to cut down the salary, we say that it is not proper. I am very sorry to hear this. I must, an the other hand, give credit to the Drafting Committee. I am a man to give credit where credit is due, though I give a bit of my mind where that is necessary. About the judges also, in (b) we have said that the President can reduce the salaries of the judges of the Supreme Court and the High Courts. I welcome this article. It did not strike me at all that such a provision is necessary, but after reading it, and after seeing what is surrounding us, and what is going to happen, I feel that it is very necessary. Let us foresee things. We must also foresee what may happen in future. We cannot always be content with confining our ideas to the. present. A Statesman is he who foresees things. A politician is he who foresees what is going to happen.

We know we have achieved our political freedom, but unless our economies are fully stabilised, then the political freedom which we have won will always be in such a position that we will not be able to render the service to humanity as we would like to.

'Today we know we passed so many laws and I know there was a little fear in the minds of several Members in connection with the article relating to the Sales Tax. And I do feel that they were justified in feeling that they would have to cut down their finances and so would not be able to introduce so many of their development schemes. But still I supported the article, because it is in the greater interests of the country. And at any time when there is a question of cutting down the powers of the Legislature or of the President comes up, we should look at the merits of it, and looking at the merits of the present question. I feel the article is perfectly justified and I am confident that the President, whosoever he may be, he will exercise his power rightly, and interpret this article in the right sense and in the right manner and for the benefit of the country and the benefit of the people of this country. With these words, I support the amendment that has been moved by Dr. Ambedkar, article 280A.

I do not want to say anything more. But if you were to look at the article and at the provisions of sub-clause (ii) of clause (4), you will see that it relates to even money Bills. Power is given to the President to see that if he feels that the provisions of article 174 combined with those of 182 are likely to jeopardise the financial stability of the country, he will certainly use his power, and apply the brakes in applying this article 280A. But as the preamble of the article states, it comes up only when there is an emergent situation as far as the financial stability is concerned. I have no apprehension that this article will be misused by the President, and with these words, I commend it to the House.

**Pandit Hirday Nath Kunzru :** Mr. President, the Mover of the amendment excused himself for not justifying the amendment by saying that it was certain that every Member understood its need. That was a very easy way for him of getting rid of his responsibility. He made a show of defending the amendment by referring to the American National Recovery Act. Now, the American National Recovery Act was meant to enable the American nation to tide over the great economic depression that had overcome the United States of America along with the other countries of the world in the thirties. Is there anything in this amendment that will enable the Government of India to deal with an economic depression when it comes in the same way in which President Roosevelt tried to deal with it? The whole object of the amendment seems to be to reduce expenditure and to prevent the provincial Governments from giving up any of their existing sources of revenue. Can an amendment with this purpose be said by any stretch of language to resemble even remotely the National Recovery Act of the United States?

Sir, every Member of this House I am sure will admit that the power that is being conferred on the Central Government is a drastic power. It is necessary therefore for us to understand why article 280A is proposed to be inserted in the Constitution at the fag-end of the debate on the Second Reading of the Constitution. This matter, if it is of cardinal importance, could have been dealt with along with the other financial provisions contained in the Constitution. But the fact that this was not done shows that there was no general need felt at the time the financial articles were considered for enabling the Central Government to exercise complete budgetary control over the provinces. What has occurred since then to justify this amendment? Sir, clause (4) of the amendment refers to certain matters that may be included in the directions given by the President when a Proclamation has been issued declaring that the financial stability or credit of India or of any part of it is threatened. The President will have the power to direct any state to observe such 'canons of financial propriety' as may be specified in the directions given by him. Clause (4) is illustrative of the directions that

the President may issue. Sub-clause (a) of this clause empowers the President to require a State to reduce the salaries and allowances of all or any class of public servants. Sir, we had to go through a serious economic crisis not many years ago. It affected not merely the Central Government, but also the provinces. Were the provinces backward then in reducing their expenditure? Did they show any reluctance to reduce the salaries of their public servants or were they only too glad to follow the example of the Central Government and reduce the salaries of all classes of public functionaries? Why has it been necessary, with this experience before us, to propose such an amendment to this House? Is there any reason why, disregarding all past experience, we should show complete distrust of the provinces and treat them is though they were children and the President a village school master?

Sir, item (ii) of sub-clause (a) lays down that the President may require that all Money Bills or other Bills to which the provisions of article 182 of the Constitution apply shall be reserved for his consideration after they are passed by the Legislature of the State.

The House knows what the definition of a Money Bill is. A Money Bill is any Bill that provides among other things for the imposition, abolition, remission, alteration or regulation of any tax. I think these words give us a clue to the significance of the amendment that has been placed before us. A Province can by itself hardly do anything that would jeopardise the financial stability or credit of India. It can at the most injure itself. But if we turn to the provincial sources of revenue that are enumerated in the Provincial List, we shall find that there is hardly any source the use of which can be a danger to the financial stability of the Centre or of a province. Even if a province by its foolishness places itself in a difficult financial position, why should it not be allowed to learn by its mistakes ?

Perhaps, Sir, it will interest the House if I enumerate the chief sources of provincial income. They are chiefly land revenue, stamp duties other than those mentioned in the Union List, estate and succession duties on agricultural land, income-tax on agricultural income, excise duties on alcoholic liquors, opium, etc., sales taxes including taxes on the consumption of electricity and taxes on luxuries including taxes on entertainments and amusements.

**Shri T. T. Krishnamachari :** What about vehicles tax?

**Pandit Hirday Nath Kunzru :** I have not mentioned it because vehicles tax, etc. are generally used for the benefit of local bodies. Now, which of these source of revenue can be misused by the provinces? If the policy that has been followed by certain provinces with the approval of the Centre is followed by other provinces, land revenue is bound to go down, and its reduction cannot be a grievance to the Central Government. The provincial governments have so far shown no reluctance to increase the rates of stamp duties, or to make as much use as they can of sales taxes or taxes on agricultural income. The only tax in respect of which a serious difference of opinion has arisen between the Central Government and some of the provincial governments is the excise duty on alcoholic liquors and certain narcotics. Some provinces, notwithstanding, I understand, the advice repeatedly given to them by the Government of India, have persisted in following a policy of prohibition, which will lead in course of time to a complete abolition of the revenue from excise duties. The advice given by the Central Government may be perfectly right. The present situation may well in the opinion of students of Indian finance require that the provinces should

proceed slowly in respect of the introduction of measures leading to complete prohibition. The Centre and the provinces alike are faced with financial difficulties, and it does not seem to be right that at a time like this any province should try to forego any large source of revenue. It may in theory be desirable to bring about a complete cessation of the use of alcoholic liquors and narcotics, but we cannot have all the good things of the world at once. It will therefore be necessary for the provinces to exercise self-restraint and wait for better times to bring about this reform.

But if they do not listen to the Central Government, is this any reason why so drastic a power as article 280A will confer on the Government of India should be taken so that the provinces may be able to do nothing contrary to the wishes of the Central Government once the President has proclaimed that the financial stability not merely of the whole of India but of any part of it is threatened? Whenever there is serious disagreement between a province and the Central Government, the President can always be persuaded to say that the financial stability or credit of the province is in danger, and then the consequences envisaged by article 280A will follow. The Centre will acquire complete control over the budget of the province and will be able to dictate both to the provincial government and to the provincial legislature what financial policies they should adopt.

This is not a measure for bringing about a better distribution of the resources of India between the Centre and the provinces. This is not meant to enable the Central Government to deal with unemployment relief, or public works, or any of those problems whose solution would lead to economic contentment and add to the wealth of India. The object of this measure is totally different. As the Mover of the amendment has prudently abstained from giving any reasons justifying the amendment, we have to think for ourselves and find out as best we may what may have induced the Central Government to agree to the insertion of such an article into the Constitution. Thinking over the recent financial history of these provinces, I can discover no reason for the anxiety of the Central Government to have the power to exercise financial control over the provinces except the one that I have given.

It is for the House to determine whether the Constitution which our Prime Minister stated in his address before the American House of Representatives and the Senate the other day, followed the principle of federalism which had been borrowed from the American Constitution, should for all practical purposes be converted into a unitary Constitution. Even if the Constitution were unitary, would it be wise for the Central Government to try to curb the financial discretion of the provinces even if their measures were likely to injure them ? How is democracy to be established in the provinces, how is a sense of responsibility to be created among the legislators, how are the Ministers to learn by experience unless they are left to face the consequences of their mistakes? If the Centre wants to step in at every turn, if it wants that it should be able to exercise such complete control that nothing that was harmful to the interests of any province or of India might be allotted to be done, then we must say goodbye to democracy The Centre will certainly be glad to exercise even greater control than is given to it by this Constitution, if we may judge from the facts that we have before us, if we may judge from past experience. But this will not put it right and I venture to say that the mover has not made out the slightest justification for the acceptance of his amendment.

**Shri K. M. Munsi** (Bombay: General): Mr. President, Sir, I can easily appreciate the feelings of my honourable Friend, Pandit Kunzru, in opposing this 28A but he will

also realise the grave situation to which reference has already been made by my Friend, Dr. Ambedkar. The debate in the Parliament, in the other part of the House, a fortnight ago, clearly showed that the country is on the brink of a precipice, and I do not think that the crisis which we are facing now is in any way less important than what faced France in 1937 when it passed the law of June 1937 or a similar measure passed by the United States of America in 1933. If I may read the preamble of the N.R.A. which America adopted:

"A national emergency productive of widespread employment and disorganization to industry which burdens the State and foreign commerce and affects the public welfare and under mines the standard of living of the American people is hereby said to exist."

If my honourable Friend, Pandit Kunzru reads the speeches made by the Members of this House and the Finance Minister on the devaluation debate, I am sure he will feel convinced that a situation like the one which is before the country may require wider powers in the Centre of the nature of those that are contained in article 280A. His fears that there, will be multiplication of functionaries is not real because the Centre, when it acts under this article 280A, will act through the functionaries of the State itself. It is not going to employ its own machinery in place of the provincial machinery. The other argument that the provinces can do nothing without the permission of the Centre is also not quite correct. In normal circumstances, when the finances of the country are stable, so long as the credit of the country stands, there is no chance of this article being brought into force. It is only when there is a financial emergency that it has to be brought into force and till then the provinces are completely free to do what they like. The attitude is not "school masterly" as Suggested. The attitude is that the Centre will step in at the time when there is a breakdown in the financial structure of the country.

This article in the Constitution is the realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the Centre: if the Centre suffers, all the provinces will break. Therefore the inter-dependence of the provinces and the Centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary.

Sir, I may mention that the different articles which this House has passed so far provide that in an emergency, and even in ordinary times, there be a certain amount of integration between the Centre and the provinces. I will only refer to article 226 under which a vote of the Upper House can rule that an item in the State List should be transferred to the Centre. We have the nominated Governors, whom we accepted in place of elected Governors. We have also the emergency sections in articles 275 and 278; when the constitutional structure of a province breaks down the Centre can interfere. When, for instance, internal disturbance threatens any part of the country, the Centre can interfere by emergency legislation. But is it suggested that if there is a financial breakdown of the whole country the Centre must sit idle and do nothing? I submit, therefore, that we have not go far departed from the fabric which we have raised.

Only one word more and I have done, my Friend, Pandit Kunzru, has said that the mover of the article. Dr. Ambedkar, has not explained the object of the measure. I think the object of the measure is patent on the face of it. It is not merely the desire of this Government that they should interfere in the provinces but it should be the desire of every Government in India to see that the financial stability of India is

maintained at any cost and under all circumstances. This is the primary consideration before any Government, either this or any, other.

We have in the preamble, which will come before the House tomorrow, said that the sovereign people of India make this Constitution. The sovereign people are not all the people but the sovereign people of India as one unit acting through its supreme organ, the Constituent Assembly, which is creating the Constitution for the country as a whole. There is no provincial-autonomy, there is no federation by or for itself: these are not sacrosanct words. Every Government must satisfy the needs of the sovereign people of India. In a financial emergency there cannot be a greater privilege than that all financial affairs shall be controlled and directed from the Centre, as put forward in 280A. That is the object, and I submit it is an object without which the Constitution would remain incomplete and I invite the House to carry this article unanimously.

**Mr. President :** Have you anything to say?

**The Honourable Dr. B. R. Ambedkar :** If you think it is necessary, I will speak.

**Mr. President :** No, no. I do not say so. Then I will put the amendment to the vote.

**Shri H. V. Kamath :** I suggest that Dr. Ambedkar might consider the change of the wording from "threatened" to "gravely threatened".

**Mr. President :** You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

**Srijut Rohini Kumar Chaudhuri** (Assam : General): I wanted to make my only speech.

**Mr. President :** But I have already closed the debate.

The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened', the words which threatens India or any part thereof with financial break down or economic disaster', be substituted.

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A.

after the word 'threatened' the words 'or is likely to be threatened' be inserted."

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280-A, the following be substituted:--

'(2)The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.' "

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed new article 280-A, after the words 'operation' the word 'Parliament shall have Power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent List, and' be inserted."

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), clause (4) of the proposed new article 280-A be deleted.,"

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280-A, the following be substituted:--

'(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.' "

The amendment was negatived.

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

"That in amendment No. 429 of List XVIII (Second Week), clause (5) of the proposed new article 280-A be deleted."

The amendment was negatived.

**Mr. President :** I shall now put the original amendment of Dr. Ambedkar. The question is:

"That after article 280, the following new article be inserted:--

| | |
|---|---|
| Provisions as to financial emergency. | '280A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of |

the territory there of is threatened, he may by a proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution--

(a) any such direction may include--

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.' "

The motion was adopted.

Article 280A was added to the Constitution.

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## Article 85

**Mr. President :** We shall now take up the other items.

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

"That for clause (3) of article 85, the following clause be substituted:--

'(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement

of this Constitution.

The reason for making this change is that the scope of the sub-clause has to be extended as the original clause merely referred to the privileges and immunities of Members only. All that the present clause seeks to do is to apply it to the two Houses to all the Members and to the Committees of each House. This has been necessitated by the reason of the fact that we have provided in entry 69, List I, Schedule VII the legislative power to Parliament in 69A. The legislative power reads:

"The privileges, immunities and powers of each House of Parliament and of the Members and Committee of each House."

In order to bring sub-clause (3) of article 85 in line with that entry, this amendment has been moved. Honourable Members of the House will please see that it merely seeks to expand the privileges, immunities and powers from the members to the Houses and also to the Committees and it is a matter which will not invoke controversy as it is consequential on the House accepting 69A, List I, Schedule VII.

**The Honourable Shri K. Santhanam :** Clause (4) also provides the same Privileges to Committees as to the Members.

**Mr. President :** This refers to the House also, not only to the Members.

There is one amendment of which notice has been given by Shri Brajeshwar Prasad. But that is covered by another amendment--No. 397. Therefore this does not arise.

**Shri Brajeshwar Prasad :** But there are two parts (a) and (b) on the next page.

**Mr. President :** Yes, there is 3(b). But is this a matter for the Constitution? That the President shall issue a White Paper is not matter for the Constitution The President shall issue a White Paper if it is suggested to him or if a resolution is passed in the Assembly.

**Shri Brajeshwar Prasad :** The whole purpose is to know what are the powers and privileges of the members of the House of Commons.

**Mr. President :** You may ask the President to issue that White Paper but it cannot form part of the Constitution.

**Shri Brajeshwar Prasad :** I can make a verbal change in this amendment.

**Mr. President :** I think we had better leave it alone.

**Shri R. K. Sidhva :** Sir, when this article was discussed last time we were not certain what were the privileges of the Members of the Commons. I tried to find it out from May's Parliamentary Procedure but I cold not. So, let us know something as to what are the privileges of the Members of the House of Commons. Otherwise a conflict may arise in Parliament. Until two or three years after the formation of Parliament these privileges may not be framed because I know that no act of privileges have so far been framed till now although under the Government of India Act, 1935 there is a

provision that Members' Privileges may be framed; they have not been framed either in the Centre or in the provinces except in two Provinces.

**The Honourable Dr. B. R. Ambedkar :** Sir, I might with your permission inform my Friend Sidhva that since the time when the discussion took place I made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy; if he wants, I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

**Shri Brajeshwar Prasad :** Sir, in amendment No. 419 the words "Provincial Parliament" occur. This is a printing mistake. The word is not "Provincial", but "Provisional". This is a separate amendment which has not been moved by anybody else. May I move it?

**Mr. President :** I suppose the Provisional Parliament has got all the powers and privileges of the Parliament which will be of a permanent nature. So this does not arise really.

**Shri Mahavir Tyagi :** Could we not leave this power to the Parliament itself to decide?

**Mr. President :** That is exactly what the article says. The Parliament will define the powers and privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

**Shri H. V. Kamath :** Will it be open to the Provisional Parliament to define these powers ?

**Mr. President :** Certainly, it will be open to it, if it chooses to do it.

**Shri B. Das :** Sir, in this amendment No. 419, is it the "*Provincial* Parliament" or the *"Provisional* Parliament"?

**Mr. President :** It is a mistake. It ought to be "Provisional Parliament". When Mr. Brajeshwar Prasad pointed it out I did not follow him. It is a mistake in printing. So, the Provisional Parliament has the same right as the permanent Parliament. Is any discussion necessary? So, I will put this amendment to vote.

The question is:

"That for clause (3) of article 85, the following clause be substituted:--

> '(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.' "

The amendment was adopted.

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## Article 111

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

"That for the proviso to clause (1) of article 111, the following proviso be substituted:--

> 'Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court."

This, in effect, simplifies the position as it now is. The present proviso is a longish one. The present proviso which the amendment seeks to supplant reads thus:--

> "Provided that no appeal shall lie to the Supreme Court from the judgement, decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court, or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being."

It is felt that this is not necessary by reason of the fact that this was borrowed from the original Letters Patent, which was amended in 1928. The amended Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed therefrom. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

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

"That for the proviso to clause (1) of article 111, the following proviso be substituted :--

> 'Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.' "

The amendment was adopted.

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## Article 112

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

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:--

| | |
|---|---|
| Special leave to appeal by the Supreme Court. | '112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. |

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words "final order" in the original article are sought to be removed and revised by the insertion of the words "determination, sentence or order" So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision or this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

"That to article 203, the following clause be added, namely:--

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

Clause (4) of article 203 and clause (2) of article 112 deal with the same subject. In the case of article 203 it seeks to prohibit the jurisdiction of the High Courts extending to courts-martial, whereas a similar restriction in regard to the Supreme Court is contemplated under article 112. The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt that there was a case for putting in a provision of this nature in articles 112 and 203.

**Prof. Shibban Lal Saksena :** Sir, I move:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

I wish to bring a charge of breach of faith against Dr. Ambedkar in this matter. Sometime ago I had tabled an amendment to article 112A in which I had specially

desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that such persons are covered by article 112 and the Supreme Court can take notice of such persons under its powers under article 112. Probably a report of the discussion in the House appeared in the papers and the Defence Department has tried to strengthen itself against the protection given by this article to persons condemned by courts-martial. And therefore Dr. Ambedkar has been asked to table this amendment. Mr. T. T. Krishnamachari just now said that this was necessary because the Defence Department wants so. Probably they have read the report of the discussion and that is why they have asked for this provision.

I therefore, think, Sir, that this is not fair. I had withdrawn my amendment that day on the assurance that this will be covered by this article and now just the reverse provision is being made and it is going to be accepted. I have seen and heard many Judge-Advocates who deal with these military courts-martial and they say that they are the persons who prepare the prosecution and they are also the persons who hear the cases and then give the judgement and if any Judge-Advocate made frequent decisions against cases prepared by himself, then he is also dismissed by the military authorities. They do not like that these cases should be dismissed. I think, Sir, this is a grave matter. Recently after the War in Britain also a Commission was appointed to study the administration of these military courts-martial and they also recommended that the procedure should be made more civilized and in the name of discipline the people should not be butchered. I have seen that the present procedure of Judge-Advocates is something against all the laws of jurisprudence and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgements. I consider that this provision is not only unfair but is also against the promise given to me by Dr. Ambedkar on a previous occasion.

**Shri R. K. Sidhva :** Mr. President, Sir, I have my doubts about this clause. I am in entire agreement regarding protection to be given to Armed forces and with the decision that martial law should not be subject to the revision by the Supreme Court. To that extent I am agreeable, but I can show a number of cases where a number of armed forces are involved with a number of the civil population. Sir, there have been many cases of military motor drivers who have met with accidents and killed a number of civilians and those cases are tried by court-martial and in 90 per cent of the cases the civilians, poor fellows, had to suffer. They do not get any compensation and no justice not is the military driver punished in any way or sentenced. My point, therefore, is that the Drafting Committee in the interests of the civilian population will kindly bear this matter in mind and make some arrangement or provision here that the civilian population who suffer from these accidents should be protected. They should not be tried by martial law. I can state a number of cases and if these cases are tried by the civil courts, there would have been fair trial. In the civil and criminal courts they get compensation and also subject to punishment. On account of this lacuna many of the drivers are so rash that they drive rash and kill many civilians. I draw the attention of the Honourable Dr. Ambedkar to this matter. Probably this matter did not come to his notice before, but this is a very important matter and while we want the armed forces to be protected' and their appeal should not come to the Supreme Court, the civilians ought equally to be protected.

**Shri B. Das :** I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be

dissolved at once. We have got the Income-tax tribunal which is the final authority.

**The Honourable Dr. B. R. Ambedkar :** Are they relevant to this discussion? How does the Income-tax tribunal come here?

**Shri B. Das :** In this article it is stated:--

"The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

I only wish to be assured by you that the 'tribunal' does not mean the Income-tax tribunal.

**The Honourable Dr. B. R. Ambedkar :** You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

**Pandit Thakur Das Bhargava :** Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows:

"Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Amend Forces which countenance the judgments etc. by courts constituted under those Acts and the accused in those cases are the civilian population or military personnel accused of civil offences. In regard to say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I therefore think that this clause is too widely worded and needs amendment.

**The Honourable Dr. B. R. Ambedkar :** Mr. President Sir, in view of the observations made by my honourable Friend, Prof. Shibban Lal Saksena, it has become Incumbent upon me to say something in relation to the proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is style correct and there is no doubt about if in my mind. But what I forgot to say is this: That according to the rulings of our High Courts as well as the rulings of the British courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute will not exercise that jurisdiction in order to disturb any finding or decision given or order made by the Court-martial. I do not wish to go into the reason why the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British courts--the House of Lords,

the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them--there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme Court or to the High Court to exercise jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seems to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a

member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

**Shri Mahavir Tyagi :** Can he have two punishments for one crime?

**The Honourable Dr. B. R. Ambedkar :** Oh, yes.

**Shri R. K. Sidhva :** Why not make it clear?

**The Honourable Dr. B. R. Ambedkar :** It is quite clear. Section 2 of the Indian Penal Code says: "Every person". "Every person" means high or low, armed or unarmed.

**Mr. President :** Mr. T. T. Krishnamachari, would you like to say anything after this?

**Shri T. T. Krishnamachari :** No, Sir.

**Mr. President :** I shall put the amendments to vote.

The question is:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

The amendment was negatived.

**Mr. President :** I shall put article 112 as proposed in amendment No. 421.

The question is:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:--

| | |
|---|---|
| Special leave to appeal by the Supreme Court. | '112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. |

(2) Nothing in clause (1) of this article shall apply to any judgment,

determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The motion was adopted.

Article 112, as amended, was added to the Constitution.

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**Article 203**

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

"That to article 203, the following clause be added, namely:--

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment was adopted.

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**Article 122**

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

"That in article 122A, after the words 'In this Chapter', the words and figures land in Chapter VII of Part VI of this Constitution' be inserted."

This deals with a very simple matter. Article 122A deals with interpretation of the Constitution in so far as the Supreme Court is concerned. What is now sought to be done is that this clause in so far as it refers to interpretation of the constitution in reference to any substantial question of law shall apply to the Chapter relating to High Courts as well. It is a lacuna that was not noticed at the time this article was passed and is not a matter which really involves any substantial change. It is only filling up a lacuna which exists.

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

"That in article 122A, after the words 'In this Chapter, the words and figures 'and in Chapter VII of Part VI of this Constitution' be inserted."

The amendment was adopted.

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**Article 130**

**Mr. President :** We proceed to article 130.

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

"That in clause (1) of article 130, for the words may be exercised by him', the words 'shall be exercised by him either directly or through officers subordinate to him, be substituted."

Sir, the House to day passed after some discussion a similar-amendment in respect of article 42 which relates to the President. We have been seeking to import the same wording in respect of the executive powers of the Governor.

**Mr. President :** There was an amendment by Mr. Kamath to the other article. Probably there is similar amendment to this. is it necessary to have a discussion on this ?

**Shri H. V. Kamath :** My views, are that they are simply repeating the mistake I do not move my amendment.

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

"That in clause (1) of article 130, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers, subordinate to him' be substituted".

The amendment was adopted.

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**Article 169**

**Mr. President :** We take up article 169.

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

"That for clause (3) of article 169, the following clause be substituted:--

> '(3) In other respects, privileges, immunities and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ' "

This follows the line of similar amendment moved to clause (3) of article 85 and the House has accepted it and this merely seeks to put in the same set of provisions in respect of powers of the Houses of Legislature, the powers and privileges and immunities of members of the Committees of Houses of Legislatures.

**Mr. President :** We have just passed a similar provision with regard to Parliament. This relates to the Legislatures of the States.

The question is:

"That for clause (3) of article 162, the following clause be substituted:--

> '(3) in other respects, privileges, immunities, and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the

Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ' "

The amendment was adopted.

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## Article 213-A

**Mr. President :** We go to article 213-A.

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

"That in clause (1) of article 213A for the words 'for the purpose of this Constitution' the words 'for all or any of the purposes of this Constitution' be substituted."

This amendment relates to High Courts in State in Part II of the First Schedule and the words are merely an amplification of the original phraseology and there can be no objection to such amplification. I am advised that this is necessary by our legal advisers and that is why this amendment is being moved.

**The Honourable Shri K. Santhanam :** I am afraid we are going in for too many superfluous amendments.

**Mr. President :** Does anyone wish to say anything ? Mr. Santhanam thinks it is unnecessary and so does Pandit Bhargava. Mr. Krishnamachari, do you wish to say anything ?

**Shri T. T. Krishnamachari :** In this matter I am afraid we have to be guided by our Advisers.

**The Honourable Shri K. Santhanam :** Even if they have committed any mistake in the original draft, unless it is indispensable no amendment should be brought before us now.

**Shri. T. T. Krishnamachari :** I am afraid we have committed another mistake in another article if I should accept the argument of my honourable Friend Mr. Santhanam. We have committed the mistake in 303 clause (1) item (II) sub-item (2). It says in the definition:--

**"any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution."**

If we have a definition of the High Court using these words, however, unnecessary it might appeal to some honourable Members of this House, I thought that it is best to bring it into line with the definition which will really be the governing factor in the interpretation of the article of this House.

**An Honourable Member :** If these are absolutely necessary, they can be brought in the Third Reading.

**Mr. President :** I do not think there is any real opposition to this but some Members consider it unnecessary.

The question is:

"That in clause (1) of article 213-A for the words 'for the purposes of this Constitution', the words 'for all or any of the purposes of this Constitution' be substituted."

The amendment was adopted.

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**Article 215-A**

**Mr. President :** We go to 215-A.

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

"That article 215A be deleted."

This article refers to the Scheduled and Tribal Areas. It reads thus:--

> "In this Constitution the expression 'scheduled areas' means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph."

Then again there is definition of tribal areas.

Sir, the House has passed the Fifth and Sixth Schedule which completely cover all that is contained in these two clauses of article 215A. It is therefore considered unnecessary.

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

"That article 215A be deleted."

The amendment was adopted.

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**Shri T. T. Krishnamachari :** There is one item to be dealt with before going to the Preamble.

**Maulana Hasrat Mohani :** (United Provinces : Muslim) : Sir, I object to putting here the Preamble at this fag-end of the day.

**Shri T. T. Krishnamachari :** We have not moved the Preamble. I suggest that article 13 be held over till tomorrow.

**Shri R. K. Sidhva :** Sir, you have not put 445.

**Mr. President :** That is not in today's agenda. I think this covers all the articles, except article 13, which are in today's agenda. It is suggested that we might take up article 13 tomorrow as some Members have given notice of amendments and would like to have a little more time for consideration. Mr. Sidhva--did you refer to 302AA ? It is coming up tomorrow. Shall we take up the Preamble tomorrow ?

**Honourable Members :** Tomorrow.

**Mr. President :** The paper which has been circulated today also has some other articles. All this we shall have to dispose of tomorrow including the Preamble.

**The Honourable Shri K. Santhanam :** The Drafting Committee may consider whether any of them are indispensable; otherwise they may come in the Third Reading as consequential amendments. We need not spend much time on consequential amendments.

**Mr. President :** There is not much there with regard to amendments to clauses which have been passed. The others are substantial propositions. Ofcourse the Drafting Committee will naturally consider whether it is worth while pressing those amendments.

**Shri. R. K. Sidhva :** Do we understand that tomorrow by evening we end the session ?

**Mr. President :** It all, depends upon you. The Drafting Committee is not apart from you. It includes everybody in the House.

Then we shall adjourn now till, what time tomorrow ? When do we meet tomorrow?

**The Honourable Members :** Nine o'clock, tomorrow morning.

**Mr. President :** Very well, if that is the wish of the House, I have no objection. We may meet at 9 o'clock so that we may have four hours to finish all this.

The House stands adjourned till nine o'clock tomorrow morning.

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The Assembly then adjourned till Nine of the Clock on Monday. the 17th October 1949.

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*[Translation of Hindustani speech.]*

# CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

**Monday, the 17th October, 1949**

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

## MOTION-RE ALLOWANCES OF MEMBERS

**Mr. President** : We shall first take up the motion standing in the name of Shri Muniswamy Pillay.

**Mr. V.I. Muniswamy Pillay** : (Madras : General) : Mr. President, with your permission, I beg to move :

"That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :-

1. That in rule (D), relating to daily allowances, in paragraph 4 of the Handbook for Members, and in paragraph 8 (Relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Hand-book, for the figure, brackets and words `Rs. 45 (Rupees forty five)', the figure, brackets and words `Rs. 40 (Rupees forty)' be substituted.
2. That exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for members, be deleted."

Sir, this motion has been brought before the House for certain reasons. Everyone of the members of this august Assembly knows the present general economic condition in India and also the prevailing financial stringency. There has been a cry throughout this country that some savings must be made here and there to help the Government. This motion I have moved shows that the Members who are entitled to Rs.45 per day by way of daily allowance shall forego 11 per cent of it which makes it Rs.40. I know as a matter of fact that this is a small sacrifice. This august Body has go give a lead to the country to improve the economic conditions that prevail today.

Sir, this sum of Rs.40 to which we propose to reduce our daily allowance does not represent our salary. This matter was before the Staff and Finance Committee and the Members thereof felt that this should be placed before the Constituent Assembly. The Members are offering to cut down their daily allowance by 11 per cent. Voluntarily. I contacted many Members of this August Assembly and found that they are all unanimously of the opinion that a five rupee cut in the daily allowance will not be a hardship. In the circumstances I hope the House will give its consent to reduce the daily allowance of Members from Rs.45 to Rs.40.

The second part of my amendment is that exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for Members be deleted. As one coming from Madras I know as a matter of fact that there is arrangement for running a restaurant car from Delhi to Balharshah and also from Balharshah to Delhi in the train service. This arrangement gives some convenience to Members for their meals and other things. At one time there was a feeling that this restaurant car was not meeting the demands mostly of the western style. But the present arrangement which is mostly of the Indian type caters both to vegetarians and non-vegetarians. The arrangements made

in this respect from Delhi to Madras and back are in my opinion satisfactory. Of course, from Balharshah to Madras, the arrangement is not completely satisfactory, because the restaurant car is detached at Balharshah. But there are first class refreshment rooms and there are caterers who wait on the passengers at every important station and take orders and supply dinner and other things either in the train itself or at the halting places.

These two changes in the rules are therefore necessary and I hope the Members will vote unanimously for this motion.

**Mr. President**:There is notice of an amendment to this motion by Shri Shankarrao Deo.

**Shri Shankerrao Deo** (Bombay : General) : I am not moving my amendment, Sir.

**Shri H.J. Khandekar** (C.P. & Berar : General) *[Mr. President, Sir, I beg to move : my amendment which I have tabled in respect of the motion under discussion which has been moved by Shri Muniswamy Pillay proposing that the present amount of daily allowances to the Members of the Constituent Assembly should be reduced from rupees forty-five to forty only.

The amendment reads :

"That in the amendments to Rule (D), and to paragraph figure, brackets and words Rs.40 (Rupees forty) the figure, brackets and words Rs.20 (Rupees twenty) be substituted."

In my amendment I propose that Members should draw only rupees twenty for their daily allowance. There is a reason, Sir, for my suggesting this amendment and it is this. While we were fighting for freedom, every one of us, and I may say millions of our countrymen made every possible sacrifice that was needed to make our country free. After the country had made a lot of sacrifices through the efforts and kindness of Mahatmaji we achieved Swarajaya and made our country free. But after independence, I am sorry to say, Sir, such an atmosphere has grown in the country that everyone who took part in the freedom struggle wants now to earn more and to lead a pleasant and prosperous life. We are, no doubt, free now; but to retain out freedom it is necessary for every one of our countrymen to make sacrifices, for if we do not make sacrifice for the security of our freedom, and the conditions that are obtaining at present in the country continue further, I am afraid, we may be overtaken by chaos and our freedom may turn out to be a short-lived one. The financial position of the Government of the country is getting worse and worse and we should, therefore, make all possible sacrifices to improve it.

From the very start ours has been an organization of selfless people. There was an amendment in the name of Shri Shankarrao Deo which he has not moved ; I wish he had moved his amendment. The amendment he has sent in is not befitting a person of his standing who in his renunciating spirit has discarded even Kurta and Topi and does not put on Dhoti of the usual length of nine cubits. An amendment from him should have said that the Members should not take even a pie for their allowance.

He is a bachelor, I mean to say he is unmarried. Secondly, he has no family; and thirdly, his dress is much simpler than ours. I say he is a great and selfless person,

nay I should say he is a sage or *sanyasin*. It was not proper for a great and selfless sage like him to have sent in an amendment like the one he has tabled.

**Shri M. Satyanarayana** (Madras : General) : May I ask if it is proper for us to speak in this strain about any person ?

**Shri H.J. Khandekar** : I am not speaking anything against hi, rather I am expressing admiration for him; I consider him a selfless persons and a sage and this is what I have said about him. I do not think that there can be any objection against the terms. I have used about him. I only means to say that an amendment from a leader like him should have been to the effect that the Members should not take even a pie as allowance.

Sir, I am a family man ; I have my family and children, whom I have to provide for. I require clothes and house for them. It is, therefore, natural that I may taken some amount as allowance. But at the same time I do wish to make some sacrifice. So, maintaining a balance between our requirements and the sense of sacrifice, I have moved my amendment and every Member of the House who is at least of my status and not thjat of Shri Shankarrao Deo, should accept a minimum allowance of rupees twenty a day. My amendment, Sir, is quite reasonable. Every Member who has so far been making sacrifices should continue to make sacrifice in future also. I believe for a selfless person, my amendment alone is right and every selfless person should accept it.

Outside this House we hear every one exhorting for sacrifice. We hear talks for making sacrifice from the Members of this House and from the Congress platform. Out leaders are also making constant requests to all to make all possible sacrifice for the country. If we, therefore, accept the amendment of Shri Muniswamy Pillay which lays down a nominal sacrifice of rupees five only, it would not be decent and proper for the honourable Members of this House. This sacrifice is not in conformity with the dignity of the Members of the House. If you go to villages and say that you have sacrificed rupees five a day from your income, the people will laugh at you.

**Shri Shankarrao Deo** : Is there any discussion necessary on this point?

**Shri H.J. Khandekar** : I am about to conclude my observations now. So in view of what I have said, Sir, my amendment is very proper and I hope the House will accept it.}

(Shri R.K. Sidhva rose to speak)

**Mr. President** : Is there any discussion necessary ?

**Honourable Members** : The question may now be put.

**Shri R.K. Sidhva** : (C.P. & Berar : General) : Sir, I wholeheartedly support the motion move by .

**Mr. President** : What is the use of this discussion ?

**Shri R.K. Sidhva** : Sir, the only point that I want to make is that the cut should be

voluntary. the Ministers are also having a cut voluntarily. We can unanimously make a declaration in the House that we shall also forego Rs. 5 a day. That will be more graceful than amending the rules and making it compulsory. Nothing else.

**Mr. President** : Mr. Sidhva's point is that instead of amending the rules, let it be in the form of a resolution which every Member will undertake to follow. His point is that instead of making it compulsory by an amendment of the rules, let it be in the form of a resolution which every Member will accept.

**Shri V.I. Muniswamy Pillay** : May I say a few words about the amendment moved by Mr. Khandekar. So far as Mr. Sidhva's point is concerned, a resolution practically comes to the same thing.

**Mr. President** : How will the office prepare the bills ?

**Shri R.K. Sidhva** : On the basis of the resolution.

**Mr. President** : No, the office cannot prepare the bills on the basis of a voluntary resolution, unless the Member concerned gives it in writing. Can you do that for every Member here ? Every Member will have to do it individually.

**Shri R.K. Sidhva** : The salary of the Ministers is regulated by an Act. The act is not amended. Yet the cut has been only voluntary. In this case also similar procedure should be adopted.

**Mr. President** : The Ministers are so few in numbers and all of them can give it in writing. But we are here more than three hundred. All of us are not present here.

**Seth Govind Dass** (C.P. Berar : Geeneral) : For one thing, most of our Members are not here. Therefore, let the Assembly decide this question.

**Shri V.I. Muniswamy Pillay** : Sir, these rules were made by this Assembly and I think it is only proper that a motion should be moved and carried. Mr. Khandekar was referring to the question whether Members were having any extra expenses. I do think that is relevant. When we accepted the original motion in this house, no personalities were concerned or mentioned. There were some members here having their families and servants. Thus having two establishments entailing heavy expenses. At the time the rules were made the Assembly came to the unanimous conclusion by fixing the allowances at Rs. 45. Now, this motion seeks to reduce it by Rs. 5 and make it Rs. 40 and instead of the *circutous* route *via* Bombay and paying more money from the Government, we are providing for the shortest route and paying the amount which is actually due.

**Mr. President** : I will first put Mr. Khandekar's amendment to the vote. The question is :-

"That in the amendments to Rule (D) and to paragraph 8, for the proposed figure, brackets and words Rs. 40 (Rupees forty) the figure, brackets and words Rs. 20 (Rupees twenty) be substituted."

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

"That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :-

1. That in rule (D), relating to daily allowance, in paragraph 4 of Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members resident at the place where the Assembly meets) of the said Handbook for the figure, brackets and words Rs. 45 (rupees forty five) the figure, brackets and words Rs. 40 (rupees forty) be substituted.
2. That exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for Members, be deleted."

The motion was adopted

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## DRAFT CONSTITUTION (contd.)

### Article 59

**Mr. President** : Then we will take up the consideration of the articles on the Order Paper. Article 59, amendment No. 445.

**The Honourable Shri K. Santhanam** (Madras : General) : May I suggest that we take up the articles for which amendments were circulated earlier. These amendments were given to us only this morning.

**Mr. President** : They were distributed to Members yesterday evening when we were sitting in the House.

**Shri T.T. Krishnamachari** : (Madras : General) : Mr. President, Sir, the amendments to articles 59, 62, 141, 175 and 13 would mean reopening the articles already passed. May I suggest that the permission of the House be taken ?

**Mr. President** : Does the House give leave to reopen these articles ?

**Honourable Members** : Yes.

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

"That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which the executive power of the Union extends"

Sub-clause (b) of the original article 59, which relates to the powers of the President to grant pardons, reads thus :-

"(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to

make laws."

This means that the concurrent field would be left in a very nebulous position. In article 60 it is provided that in matters where Parliament so decides the executive power of the Union will extend to the States in respect of subjects falling within the concurrent field. This position will be left nebulous. Therefore the amendment seeks to remedy that defect, making the power of the President to grant pardon to extend to all matters to which the executive power of the Union extends.

There will have to be a consequential amendment in regard to article 141 where the power of pardon is given to the President, which I shall move presently if this amendment is approved by the House.

**The Honourable Shri K. Santhanam** : Sir, I have tabled an amendment to this. I could not send it earlier.

I move :

"That in amendment No. 445 of List XX in the proposed sub-clause (b) of clause (1) of article 59, after the words `offence under any law' the words 'made by Parliament' be inserted."

I understand the purpose of amendment No. 445, but it goes much wider tan its intention, because the executive power of the Union extends not only to laws made by Parliament but also to some of the laws made by the legislature of a State. For instance, in articles 234 and 234A which deal with the giving of directions, the executive power of the Union extends to some laws made by the Legislature of a State. Yesterday, in the matter of financial emergency, we have provided that the executive power of the Union extends to matters relating to money Bills and financial matters. We do not want that in the case of offence under laws made by a State Legislature the right of pardon should accrue to the President. Therefore I want to limit it to offences under any law by Parliament. The point is when Parliament makes any law under the concurrent List and gives executive power to the Union Executive then the power of pardon should be with the President. But we do not want to give the power of pardon to the President even when the executive power extends t laws made by a State Legislature. Therefore, I think the amendment is too wide and I want to limit it to laws made by Parliament.

I am afraid the Drafting Committee who are naturally very tired are trying to introduce amendments drafted in haste. They have had time to scrutinise them and we have had no time either to scrutinise them.

**Shri T. T. Krishnamachari** : May I on a point of order say that the honourable Member is perfectly right to speak about himself. If he has had no time, we agree. But I do not think he ought to cast any aspersions on the Drafting Committee as not having had any time to scrutinise them. I would like to say that we have scrutinised every amendment. If we did not have the time to scrutinise these amendments we would not have tabled them.

**Shri B. M. Gupte** : (Bombay : General) : Saying that they had no time is not

casting any aspersions on the Drafting Committee.

**The Honourable Shri K. Santhanam** : I am not disputing their intention or ability, but I am saying that they are hurried which is a matter of fact.

**Mr. President** : Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

**The Honourable Shri K. Santhanam** : But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words " made by Parliament" are absolutely essential to make the meaning precise and clear.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General ) : Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters and respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the Concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

**The Honourable Shri K. Santhanam** : The article does not limit it only to those laws; it can also extend further.

**The Honourable Dr. B. R. Ambedkar** : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this: the executive power of the centre extends not only to matters enumerated in List I but may also extend to matters enumerated in List III. And the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam's amendment is absolutely unnecessary and out of place because article 60 covers the point.

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

"That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words `offence under any law' the words `made by Parliament' be inserted."

The amendment was negatived

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

"That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

(b) in all cases where the punishment or sentence is for an offence under any law relating to mater to which the executive power of the4 Union extends;"

The Amendment was adopted.

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**Article 62**

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

"That in clause (5) of article 62, for the words `who from the date of his appointment is, for a period of six consecutive months, not a member', the words `who for any period of six consecutive months is not a member' be substituted."

This is a purely verbal alteration in regard to the qualification, or rather the disqualification, of Ministers. If my memory is correct, I think this wording was pointed out to us as being more suitable by my honourable Friend Mr. Gupte at the time we passed this article. And I think Dr. Ambedkar had in mind examining the position. We feel this is the more appropriate wording and therefore we have suggested this amendment.

Incidentally I might mention that there is an amendment tabled by my honourable Friend Mr. Santhanam which may be quite correct, but it is only a matter of variation again of the language. Really the amendment is not a matter of substance but putting the thing in the precise form so as to avoid any mistaken interpretation that may arise in the future.

**The Honourable Shri K. Santhanam** : It is quite correct as my Friend Mr. Krishnamachari has said that my amendment is only to make matters clear because, as the official amendment stands, there is no clear indication where to begin the period of six months and how to count it. It may also be construed – though it may not appear a very correct interpretation – that the period may be counted even before he became a Minister, because it may be said that if a person is not a member of Parliament he cannot be appointed a Minister. Our object is that a person who is not a member of Parliament may be appointed Minister, but after that appointment he must become a member within six months and must continue to be a member afterwards. Therefore my amendment is :

"That in amendment No. 446 of List XX, in clause (5) of article 62, for the proposed words 'who for any period of six consecutive months is not a member' the words 'who after the date of his appointment, is for any period of six consecutive months not a member', be substituted."

When we changed from the wording of the Government of India Act 1935, I remember this was discussed by us and we put the words "from the date of appointment" as the beginning of the period. But in interpretation it may mean that afterwards he may cease to be a member after six months and such a case may not be covered. So I agree that the amendment is desirable. But if the words "after the date of appointment" are put in it will become much more precise.

**Shri H. V. Kamath** : (C. P. & Berar : General) : May I suggest that for the word "after" which Mr. Santhanam suggests, the word "from" would be more appropriate? "After" is not correct.

**The Honourable Shri K. Santhanam :** "From" may mean that for the first six months he should be member and afterwards if he ceases to be member he may continue to be minister. That is the lacuna which we are trying to fill up.

**Shri T. T. Krishnamachari :** There is only one point I would like to mention in respect of Mr. Santhanam's amendment. His amendment is practically the same, except for a minor difference, namely, in a position where a person is a Minister who after having been elected duly and later on during four or five months after the original election some irregularity is found in the election and the election is set aside. Mr. Santhanam's amendment would not cover such a case. So I would suggest that we should err on the safe side and that the House should accept the amendment moved by me.

**The Honourable Shri K. Santhanam :** I do not press my amendment.

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

**Mr. President :** Then I put No 446. The question is :

"That in clause (5) of article 62, for the words 'who from the date of his appointment is, for a period of six consecutive months, not a member' the words who for any period of six consecutive months is not a member be substituted."

The amendment was adopted.

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**Article 147**

**Shri T. T. Krishnamachari :** I move No. 447, which reads thus :

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which the executive power of the State extends' be substituted."

I have already explained the position while moving amendment No. 445 which the House was good enough to accept. This merely seeks to remedy the position so far as the Governor's powers of granting pardon are concerned.

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

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which the executive power of the State extends' be substituted."

The motion was adopted.

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## Article 175

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

"That to article 175, the following proviso be added :-

> 'Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill'."

The reason why we have to bring in this amendment at this stage is this. An amendment had been tabled by Dr. Ambedkar – No. 3406 of Volume II of amendments to amendments – seeking to recast the 4th Schedule, which the House has now decided to drop, and therefore Dr. Ambedkar could not move it. In that amendment, in clause (7) provision had been made in regard to the substance of the proviso which I have now moved. If the 4th Schedule had been there, this amendment would not have been necessary. At the time we considered article 175 we were not quite sure whether the 4th Schedule will be a part of the Constitution or not. That is my explanation for bringing forward this amendment.

On the merits, the house will recognise that the high courts happen to be, so far as appointment had jurisdiction and all that is concerned, a mater exclusively of Central competence. But there are matters in which the Provinces also can interfere and this proviso is intended to protect any hasty action by a province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President. The matter is by itself very simple and follows a principle accepted in the body of the Constitution. I think there can be no serious objection to this amendment.

**Shri H. V. Kamath** : Mr. President, I would request my Friend Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced which might endanger the position. First of all, of such Bills were going to be introduced would it not be *ultra vires* of the legislature at its very inception, *ab initio*? Will not the introduction of the Bill be prevented by the Constitution ? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbrous. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position … and all that, will it not be enough to say " so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the article clearly. I do not see any necessity for this cumbrous verbiage towards the end of the amendment.

**The Honourable Dr. B. R. Ambedkar** : The clause moved by my friend Mr. Krishnamachari is of old standing. It occurs in the instrument of instructions issued to the governor of the provinces under the Government of India Act, 1935.

Paragraph 17 of the Instrument of Instructions says :

"Without prejudice to the generality of his powers as to reservation of Bills our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein

specified, *i.e.*

> '(b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act, designed to fulfil.'"

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Court are placed under the Centre as well as the Provinces. So far as the organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Province have no power either to alter the organisation of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

**Shri H. V. Kamath** : What about my suggestion to simplify the language?

**The Honourable Dr. B. R. Ambedkar** : I cannot at this stage consider any drafting amendments.

**Shri H. V. Kamath** : All right : Do it later on.

**Mr. President** : I will now put it to vote.

The question is :

"That to article 175 the following proviso be added :

'Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill.'"

The amendment was adopted.

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**Article 13**

**Mr. President** : There is a previous amendment of which notice has been given – amendment No. 415.

**Shri T. T. Krishnamachari** : I do not propose to move it.

Sir, I move.

"That in clause (2) of article 13, after the word 'defamation' the word 'contempt of court' be inserted."

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *sub judice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) or article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this house will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We, therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled

amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any mater which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

**Mr. President** : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it ?

**Prof. Shibban Lal Saksena** : (United Provinces : General) For "contempt of court" read "or contempt of court". That has been omitted by inadvertence.

**Shri T. T. Krishnamachari** : `Contempt of court or any matter' : That comes later. Technically, Sir, there ought to be a comma after "defamation."

**Pandit Thakur Das Bhargava** : (East Punjab : General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415 but this amendment has not been moved. My amendment seeks to substitute for the words 'any law' the words 'any reasonable law'. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T. T. Krishnamachari has moved an amendment adding the words 'contempt of court' after the word 'defamation' instead of the words "morality, public order or the administration of justice" and when I gave the amendment it was in view of the words 'public order or the administration of justice'. All the same my amendment does not lose it value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move :

"That for the words 'any law' the words 'any reasonable law' be substituted."

**An Honourable Member** : Law is always reasonable.

**Pandit Thakur Das Bhargava :** The law has been defined only as a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned. I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T. T. Krishnamachari he wants that the words "contempt of court" be added after the word "defamation" in article 13(2) and

the clause would read thus :

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, contempt of court, or any other matter which offends against decency or morality or tends to overthrow the State."

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; sections 178, 179 and 180 relate to the refusal to reply to question put by the Court or refusal to take any oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalized and not speech by itself. The courts are empowered to take cognizance of the act of contempt and there and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression.

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned it is already covered by law and the Supreme Court is perfectly entitle to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that f the legislature passes and such law, it must be subject to the scrutiny of the courts.

As far 'defamation', under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very intricate one. In so far as civil defamation is concerned truth is absolute defamation but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may

come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words "reasonable restrictions". But in clause (2) there are no such words "reasonable restrictions", which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word "reasonable" might have been omitted. Even then so far as the question of "sedition" was concerned when the original article was before us we amended this law and we saw that the word "sedition" did not cover cases which it ought not to have dealt with. Therefore we changed the words thus: "which undermines the security of or tends to overthrow the State", and because these words were changed, the word, "reasonable" was not put in clause (2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the legislature in so far as, if we introduce the word "reasonable" before the word 'law' then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends again decency or morality. All these matter will be rationalized to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties and I therefore suggest that instead of the words 'any law' the words 'any reasonable law' may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, viz. whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislatures, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion against the authority of the courts when you yourself are giving the legislature the power of arming the courts to hold persons guilty of contempt or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts in another way. Therefore, I submit that this amendment of mine should be accepted by the House.

**Shri R. K. Sidhva** : Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr. T. T.

Krishnamachari wants that the words "contempt of court" should be inserted after the word 'defamation.'

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In cases of contempt of court, the High Court Judges is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B. G. Horniman, the Editor of "Sentinel" and Mr. Devadas Gandhi, Editor of the "Hindustan Times". the Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends there are very lenient to the judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it ?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting "contempt of court". In contempt of court, we know when certain extraordinary things happen, High Court judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court judges. Even there, I say the High Court judges are not infallible ; they have also committed so many mistakes. They do not want any comment to be made against a High Court judge when comment was necessary in the interest of the public life.

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words "contempt of court" which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. Alladi Krishnaswami Ayyar will guide whether in any constitution in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

**Mr. President** : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

**Shri R. K. Sidhva** : It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which ma be libel, slander, defamation or contempt of court. A judgment may have been passed by

a court……

**Mr. President** : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

**Shri R. K. Sidhva** : I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

**Mr. Naziruddin Ahmad** : (West Bengal : Muslim) : Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by event he smallest magistrates. Mr. Sidhva described him as the Fourth Class Magistrate; there is no such thing at all. If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are may other serious kinds of contempt which could be punished only the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be overlapping. If there is overlapping that would not be very much of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

With regard to Pandit Thakur Das Bhargava's amendment that the words 'any law' should be substituted by the words 'any reasonable law', it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word 'reasonable' cannot be a condition. That condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it "reasonable law"

it will have no binding force on the Legislature. The word 'reasonable' would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word 'reasonable' would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

**Shri B. Dass** : (Orissa : General) Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity – I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee ? On the 15th we received amendments to article 13 by the same two gentlemen – the Honourable Dr. Ambedkar and Mr. T. T. Krishnamachari – and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this house to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution. it says :

"An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill 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 etc."

When Dr. Ambedkar himself as Chairman had provided in Part XVI – Amendment of the Constitution – with such solemnity, how does the change taken place overnight ?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partially overnight to give certain more powers to these magistrates and judges were not called for. It will be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the allien Raj by the world 'contempt of court' and the chicken-hearted lawyers got frightened at them.

**Mr. President** : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting as persons on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

**Shri B. Das** : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights to the Third Reading of this

Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight ? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

**Shri Krishna Chandra Sharma** : (United Provinces : General ) : Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the words 'existing law' and there is a provision in Cr. P.C. Section 480, which deals with contempt of Court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another contempt of court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions – and I think they are sufficient to deal with the situation – no more protection is necessary. This addition is therefore unnecessary and undesirable.

**The Honourable Shri K. Santhanam** : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court. I think the position, especially of newspapers will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words "contempt of court" here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

**Mr. President** : Would you like to reply, Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar** : Sir, this article is to be read along with article 8.

Article 8 says –

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provision of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of Sate, etc., are matters placed in the Concurrent list so that if there was any very great variation among the laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

**The Honourable Shri K. Santhanam** : But contempt of court is not included in the Concurrent List or any other list.

**The Honourable Dr. B. R. Ambedkar** : Well, that may be brought in.

**Mr. President** : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will up them separately. First I put Mr. Krishnamachari's amendment to vote.

The question is :

"That in clause (2) of article 13, after the word 'defamation' the words 'contempt of court' be inserted."

The amendment was adopted.

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**Mr. President** : Then I will put the amendment of Pandit Thakur Das Bhargava.

The question is :

"That at the end of the amendment No. 415 of List XVIII (Second Week), the following be added :

'That for the words 'any law' the words 'any reasonable law' be substituted."

The amendment was negatived.

**Mr. President** : Then we take up the new article 302AAA, *i.e.*, amendment No. 450. Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed. "Contempt of Court" must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

**The Honourable Dr. B. R. Ambedkar** : I will move an amendment straightaway, Sir, I move :

"That after entry 15 in the Concurrent List, the following entry be added :

'15A. Contempt of Court."

**Mr. President** : I do not think there can be any objection to that.

**Mr. Nazirudin Ahmad** : There may be many more such things.

**Mr. President** : May be, but they will come up in time.

So, I will put this to vote.

The question is :

"That after entry 15 in the Concurrent List, the following entry be added :-

'15A, Contempt of Court."

The amendment was adopted.

Entry 15A was added to the Concurrent List.

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**New Article 302AAA**

**Mr. President** : Then we take up Amendment No. 450.

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

"That after article 302AA, the following new article be inserted :-

| | |
|---|---|
| 'Special provisions as to major ports and aerodromes, | "302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification:- |

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

(a) 'major port' means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(b) 'aerodrome' means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation'."

Sir, the reason for moving this article is that certain difficulties have been experienced in regard to what are called international aerodromes, in trying to fit in transit passengers internationals who come in there, but who may not ordinarily for the time, being, come within the scope of the particular laws of the province in which the aerodrome is situation. The idea, I understand is that Santa Cruz Aerodrome in Bombay and Dum Dum in Calcutta are now to be treated as international aerodromes. It is possible that other aerodromes will also be treated as coming under the same category, before long. For instance, if there is absolute prohibition law in regard to liquor in any province, the moment the passenger lands and if he has some liquor with him, he would be coming within the scope of this law of the province, whereas it is only proper that he should come within the scope of the law of the State only when he goes out of the aerodrome into the area covered by the State. Again, there are certain specified security regulations that may be necessary in the aerodromes, but which may not fit in with the scheme of security regulation current in the State. For instances, in military aerodromes the security regulations are very strict because the entire aerodrome is under military control. In the case of civil aerodromes the position is a little different. The Central Government which controls them will have to depend largely on local laws so far as security arrangements and other similar mattes are concerned and it may be necessary not merely to have a preventive staff whom the Central Government is empowered to have by fiscal legislation but also have a special police with special powers for the purpose of dealing with international traffic and those who interfere with it.

The same contingency will apply to major ports, also particularly to new ports that come into being in areas which were formerly called Indian States. There are some difficulties in future. This is merely enabling provisions to permit the President the limited power to get over the difficulties that might arise which would not necessitate the provinces to alter their laws to suit the special circumstances of a port or aerodrome. It will help the provinces to make a law irrespective of the fact that there

is a major port or aerodrome situated in the State and it helps the Centre to control those areas if it desires to do so by passing laws in addition to those existing in the provinces or modifying those laws to suit the special circumstances of the case. Instances might be quoted against the utility of an article of this nature but their validity is limited. There are possibilities of more instances of a different nature arising in the future. I repeat that this is an enabling provision which does not seek to interfere with the powers of the provinces at all. Major ports and aerodromes are admittedly under Central control for all purposes and the Centre is also empowered to have additional legislative control by means of Presidential action.

The purpose of the amendment is simple one and I am told which is very necessary in regard to the administration o the aerodromes and major ports concerned with international traffic. I hope the House will accept it.

**Mr. Naziruddin Ahmad** : Will there be no changes necessary in the Seventh Schedule ?

**Shri T. T. Krishnamachari**: No Major ports and aerodromes are Central subjects.

**Mr. President** : Prof. Shibbanlal Saksena has given notice of an amendment. He is not in his place and therefore it is not moved.

**Shri. R. K. Sidhva** : Sir, I cannot understand how this article is described as a simple one and merely a consequential change is sought to be made.

**Shri R. K. Sidhva** : The Mover said that it is simple article concerned with international traffic and should be approved by the House.

Sir, the preamble does not state why the President should be empowered with extraordinary powers and over rule any law which Parliament may make regarding aerodromes and major ports. These come within the Union List, I do not see why clause (a) provides an law made by Parliament or by the Legislature of a State. I do not think any State is empowered to make laws regarding aerodromes and major ports.

Sir, if this article is meant for emergencies such as was and so on. I can understand it. During the last two World Wars, entry to the aerodromes and major ports was prohibited to the public and many restrictions were imposed regarding traffic therein. I can understand that. But I cannot understand why when Parliament in the ordinary course make laws, such laws should be superseded by the President. What are the reasons for empowering the President to do so ? No case has been made out for this. Today, in the international airports if any passenger comes from foreign countries he is subjected to search. His luggage and even his person are searched. There are both men and women inspectors at the Custom House for this purpose. All these restrictions are there now and so I do not think there is any need to give the President this power. As I said, I can understand the need for this power in an emergency. But, why when laws enacted by Parliament are there for the purpose ordinarily, should the President have power to overrule those laws? In emergencies the position will be different, I agree, I have personal experience of it. Even relatives of persons embarking or disembarking at ports are not allowed access. Such

restrictions are there and have been there is times of emergencies. I do not see any necessity for vesting this power in the President. Instead of this, however, I would suggest the following provision : - "Notwithstanding anything contained in this Constitution, the President may by public notification direct as from such date as may be specified any law may be made in the event of an emergency or war." If these lines are added this article would get a different meaning and may be necessary. Otherwise it will mean you want to deprive Parliament of the power of making laws. I want an explanation as to why the words "Legislature of State" are put in. Has any State power to make laws concerning aerodromes ?

**The Honourable Dr. B. R. Ambedkar** : Sir, I think my Friend Mr. Sidhva has entirely misunderstood the position. If he will refer to List II, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organization of air traffic. The power given under 35 is for the purpose delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned it is part of the territory of the province and consequently any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. therefore, the proposal in this article is this that while it retains the areas covered by the aerodromes and by the ports as part of the area of the provinces it does not exclude them it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc, a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is not invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II, so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

**Mr. President** : I shall now put amendment No. 450 to the vote. The question is :

"That after article 302AA, the following new article be inserted:

| | |
|---|---|
| Special provisions as to major ports and aerodromes | "302AAA (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification – |

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect

subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

(a) 'major port means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(b) 'aerodrome' means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation."

The motion was adopted.

Article 302AAA was added to the Constitution.

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**Mr. President** : Then we go to the next item, article 306A.

**Shri T. T. Krishnamachari** : May I suggest that we pass over the next item for the time being and take up Schedule III-A ?

**Mr. President** : Yes we may take that up.

**Schedule III-A**

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

That after Schedule III, the following Schedule be inserted :

**"SCHEDULE III-A**

**[ARTICLES 4(1) & 67(1a)]**

**ALLOCATION OF SEATS IN THE COUNCIL OF STATES**

To each Sate or Sates specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or States, as the case may be.

**TABLE OF SEATS**

**THE COUNCIL OF STATES**

**REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE**

| | States | Total Seats |
|---|---|---|
| | 1 | 2 |
| 1 | Assam .. .. .. .. .. | 6 |
| 2 | Bengali .. .. .. .. .. | 14 |
| 3 | Bihar .. .. .. .. .. | 21 |
| 4 | Bombay .. .. .. .. .. | 17 |
| 5 | Koshal-Vidarbh .. .. .. .. | 12 |
| 6 | Madras .. .. .. .. .. | 27 |
| 7 | Orissa .. .. .. .. .. | 9 |
| 8 | Punjab .. .. .. .. .. | 8 |
| 9 | United Provinces .. .. .. .. | 30 |
| | Total .. .. | 144 |

## REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

| | States and Groups of States | Total Seats |
|---|---|---|
| | 1 | 2 |
| 1 | Ajmer .. .. .. | 1 |
| 2 | Coorg .. .. .. | |
| 3 | Bhopal .. .. .. | 1 |
| 4 | Bilaspur .. .. .. | 1 |
| 5 | Himachal Pradesh .. .. .. | |
| 6 | Cooch-Bihar .. .. .. | 1 |
| 7 | Delhi .. .. .. | 1 |
| 8 | Kutch .. .. .. | 1 |
| 9 | Manipur .. .. .. | 1 |
| 10 | Tripura .. .. .. | |
| 11 | Rampur .. .. .. | 1 |
| | TOTAL | 8 |

## REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

| | States | Total Seats |
|---|---|---|
| | 1 | 2 |
| 1 | Hyderabad .. .. .. .. | 11 |
| 2 | Jammu & Kashmir .. .. .. .. | 4 |
| 3 | Madhya Bharat .. .. .. .. | 6 |
| 4 | Mysore .. .. .. .. | 6 |
| 5 | Patiala & East Punjab States Union .. .. | 3 |
| 6 | Rajasthan .. .. .. .. | 9 |
| 7 | Saurashtra .. .. .. .. | 4 |

| | | | |
|---|---|---|---|
| 8 | Travancore-Cochin .. .. .. .. | | 6 |
| 9 | Vindhya Pradesh .. .. .. .. | | 4 |
| | TOTAL .. .. | 53 | |
| | TOTAL OF ALL SEATS .. | 205 | |

Sir, these are three tables, one relating to the States specified in Part I, the second relates to States specified in Part II and the third relates to States specified in Part III, and the total number of seats allotted happens to be 205. I would explain, Sir, that the relative article in the Constitution happens to be 67, clauses (1), (2), (3) and (4), and, as honourable members will realise, that under clause (1) the maximum has been fixed at 250, out of which twelve members, shall be nominated by the President and the rest will be representatives of the States. The basis of the scheme envisaged in these tables is the decision of the Union Constitution Committee at a meeting held on the 1st December, 1948 at which the following Members of this House were present :

The Honourable Shri Jawaharlal Nehru.

The Honourable Shir Jagjivan Ram.

The Honourable Dr. B. R. Ambedkar.

Shri K. M. Munshi.

Prof. K. T. Shah.

Shri T. T. Krishnamachari, and

Mr. B. H. Zaidi.

If I may be permitted, I will read the relevant portion of the Committee's report.

"The Committee did not go into the details of the revised scheme of allocation of seats in the Council of States prepared by office, as owing to mergers of various types the position of the Indian States is still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The Committee while reiterating their previous decision that the representation of units in the Council of States shall be on the scale of one representative for every million of the population up to five millions of the population plus one representative for every additional two millions of the population there-after, considered it unnecessary to adhere to the other decision that the maximum number of representatives from anyone unit shall be limited to twenty-five. It was found that only two States, namely Madras and United Provinces would be affected by the imposition of such a limitation and that an abrogation of this limit while securing uniformity would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67(1) of the Draft Constitution. "

Sir, it is on the basis of this report made by the Union Constitution Committee that one seat should be allotted to every million up to five millions and thereafter one seat for every additional two millions, that this total has been worked out, and, as honourable Members will see, the total number comes to 205 plus twelve to be nominated by the President, *i.e.* 217. We still have thirty-three seats in hand before reaching the maximum number mentioned in article 67(1).

I would like to say why this is necessary because we could have adopted a different scheme even though it may be in contravention of the recommendations of the Union Constitution Committee. It may be, as honourable Members of the House will understand, that there is a further splitting up of the Units in Part I. If that will be the case, the number will naturally be increased because by every splitting up of the Units, the commitments will increase by at least five. These reallocations by reason of action taken by future Governments under article 3 of this Constitution may necessitate the raising of this number 217 to a still higher figure, and therefore provision has been made by following the system indicated by the Union Constitution Committee's report, *viz.* one seat for every millions up to five million and one seat for every additional two millions thereafter, which, I think, is a very fair arrangement and will also freedom of action so far as the future is concerned. I would not claim any infallibility so far as these, figures are concerned. May be that the thing might be arranged in some other manner. For instance, regrouping in regard to States in Part II may be taken exception to. It is a matter of opinion.

I think on the whole the scheme is fair, but should honourable Members of this House or people outside have any objection, of course those objections will be examined and those objections will be placed before you and if you will permit me, the necessary amendments will be moved at a later stage, but I do not think that in the face of the arrangement placed before the House any serious alteration would become necessary between now and the Third Reading stage.

I would like to mention another factor that by reason of making this amendment, I would also have to make three consequential amendments, because of certain variations that have occurred. For one thing, article 67(1a) refers to Schedule III-B. An amendment will be necessary in regard to this particular sub-clause in the article. An amendment would also be necessary in article 4 because while taking into consideration article 4 we had omitted to mention along with the First Schedule the Schedule relating to the Table of Seats in the Council of States. Article 4 reads thus:

"Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary."

Any alteration of the First Schedule will entail the alteration of Schedule III. The first Schedule and the Third Schedule have got to be taken together. I will move an amendment later for putting in Schedule III-A in article 4. These amendments will moved subsequently if the amendment that I have now moved for the incorporation of Schedule III-A containing the Tables of Seats in the Council of States is accepted by the House.

**Shri H. V. Kamath** : I do not know why my esteemed friend once again referred to my honourable Colleagues as "people inside the House".

**Mr. President** : He said "honourable Members and people outside".

The question is :

"That after Schedule III, the following Schedule be inserted :

## SCHEDULE III-A

## [ARTICLES 4 (1) & 67 (1a)]

## ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each state or states specified in the first column of the table of seats appended to this schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that state or states as the case may be.

## TABLE OF SEATS

## THE COUNCIL OF STATES

## REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

| 1<br>states | 2<br>Total seats |
|---|---|
| 1 Assam .. .. .. .. .. | 6 |
| 2 Bengal .. .. .. .. .. | 14 |
| 3 Bihar .. .. .. .. .. | 21 |
| 4 Bombay .. .. .. .. .. | 17 |
| 5 Koshal-Vidarbh .. .. .. .. | 12 |
| 6 Madars .. .. .. .. | 27 |
| 7 Orissa .. .. .. .. | 9 |
| 8 Punjab .. .. .. .. | 8 |
| 9 United provinces .. .. .. .. | 30 |
| TOTAL | 144 |

## REPRESENTATIVES OF STATES FOR THE BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

| 1<br>States and Groups of states | 2<br>Total Seats |
|---|---|
| 1 Ajmer | 1 |
| 2 Coorg .. .. .. .. .. | |
| 3 Bhopal .. .. .. .. .. | 1 |
| 4 Bilaspur .. .. .. .. .. | |
| 5 Himachal Pradesh .. .. .. .. | 1 |

| | | |
|---|---|---|
| 6 | Cooch-Behar .. .. .. .. | 1 |
| 7 | Delhi .. .. .. .. .. | 1 |
| 8 | Kutch .. .. .. .. .. | 1 |
| 9 | Manipur .. .. .. .. .. | 1 |
| 10 | Tripura .. .. .. .. .. | |
| 11 | Rampur .. .. .. .. .. | 1 |
| | TOTAL | 8 |

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

| 1 | 2 |
|---|---|
| States | Total seats |
| 1 Hyderabad .. .. .. .. | 11 |
| 2 Jammu & Kashmir .. .. .. .. | 4 |
| 3 Madhya Bharat .. .. .. .. | 6 |
| 4 Mysore .. .. .. .. | 6 |
| 5 Patiala & East Punjab States Union .. .. | 3 |
| 6 Rajasthan .. .. .. .. | 9 |
| 7 Saurashtra .. .. .. .. | 4 |
| 8 Travancore Cochin .. .. .. .. | 6 |
| 9 Vindhya Pradesh .. .. .. .. | 4 |
| TOTAL | 53 |
| TOTAL OF ALL STATES | 205.'" |

The motion was adopted.

Schedule III-A was added to the constitution.

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

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

I have also explained the need for this amendment. I hope the House will accept the amendment.

**Mr. President :** This is also consequential. The question is :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

The amendment was adopted.

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

"That in clause (1) of article 4, after the words 'First Schedule' the words figure and letter ' and schedule III-A' be inserted."

I have also explained the need for this amendment. I hope the House will accept the amendment.

**Mr. President :** This is also consequential. The question is :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

The amendment was adopted.

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

"That in clause (1) of article, 4, for the words 'incidental and consequential provisions' the words and brackets 'supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States to be affected by such law) be substituted."

This is a modification of the words which we now seek to supplant. There is nothing intrinsic in this amendment which seeks to vary a principle which has been incorporated in article 4.

**Mr. Naziruddin Ahmad :** Does it enlarge the scope of the original text ?

**Shri T. T. Krishnamachari :** Only to the extent that article 4 is an operative clause/ in regard to article 3, and the enlargement is restricted only to the extent that is absolutely necessary.

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

"That in clause (1) of article 4, for the words 'incidental and consequential provisions' the words and brackets 'supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the legislature or Legislatures of the State or States to be affected by such law)' be substituted."

The amendment was adopted.

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**Part XVIII.**

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

"That for Part XVIII, the following Part be substituted :

'**PART XVIII**

SHORT TITLE, COMMENCEMENT AND REPEALS

Short title. 313A. This Constitution may be called the Constitution of India".

**Shri B. Das :** You have to say "of India, that is Bharat".

**Shri T. T. Krishnamachari :** We have used the word India as we have used it in other placed in the Constitution.

"314. This article and articles 5, 5A , 5AA, 5B, 303, 311, 331A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution.

Commencement.

315. The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and, all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect:

Repeals.

Provided that nothing in this article shall affect the provisions of the Abolition of Privy Council Jurisdiction Act, 1949."

Sir, the first clause 313A is a formal one. The second clause relates to clause 314 which in the draft Constitution has been left more or less blank after the words "This Constitution shall come into force on.....". This clause puts in articles 5, 5A, 5AA and 5B relating to Citizenship, article 303 (Definitions) and articles 311, 311A and 312A and 312F which are transitory provisions. 311 relates to the election of the provisional Parliament, 311A to the provisional President, and 312F relations to the provisional Parliament so as to determine the method to be followed for the by-elections and the rules to be followed for that purpose. These have been put in as the articles will have to come into force immediately. The remaining articles will come into force on the appointed day, which is the 26th of January 1950.

So far as 315 is concerned, this more or less follows the scheme in the draft Constitution with this exception that we have found it necessary to provide that the operation of the Privy Council Jurisdiction Act passed by this House shall not be

affected by this repeal. I do not think there is any need to explain the purport of these articles as they are self-explanatory.

**The Honourable Shri K. Santhanam :** What about the appointment of a Commission for the delimitation of constituencies ?

**Shri T. T. Krishnamachari :** That we have not put in, I would like to add this. There may be, for instance, the question of delimitation of constituencies under article 290. This must be preceded by a legislation by the provisional Parliament. I do not think anything could be done in that regard between now and the 26th of January 1950. I will mention here another matter, if I may do so with your permission. These are the articles that to us now appear as being necessary to be put in article 314. The position will be examined at greater length. Actually, I understand the Law Ministry attached to the Government of India is going through the whole matter and is carefully scanning the provisions of the Constitution that will have to come into force before the appointed date. Should we feel that anything should be added to these articles we shall seek your permission and the permission of the House to incorporate them at a later stage. At the moment these are the only articles affected as far as we can see by going through the articles and scrutinising the meaning of those articles. But other consequential matters might arise, and if they should arise on a scrutiny and examination of the articles by us we shall certainly bring fresh proposals before the House with your permission.

**Mr. President :** There are certain amendments relating to the original article, I shall take them up if the Members want them, and if they fit in with the amendment as now put in. There are three here. One is by Dr. Deshmukh. He is not here; so it is not moved. the next one is by Mr. Brajeshwar Prasad. He too is not here. So it is also not moved. Then there is again an amendment relating to 315 by Dr. Deshmukh. So, it is not also moved. Are there any others?

**Shri H. V. Kamath :** I have certain amendments in Vol. II of the printed list.

**Mr. President :** You may move them, but I think we may take these form the beginning. First 314. There are certain amendments. One is by Mr. N. Ahmad regarding numbering of the Chapter. It is verbal and need not be moved. Mr. Prakasam is not here. Mr. Lari is no longer a member. There is no other amendment to 314. To 315 there is one by Mr. Kamath - 3325. He may move it.

**Shri H. V. Kamath** : Mr. President, I refer to amendments 3325 and 3327 of Printed List, Vol. II. I do not propose to move 3325 because the article as now moved by my honourable Friend Mr. Krishnamachari has made an alteration in 314 regarding the date on which the Constitution will come into force. My amendment which refers to the date of commencement of the Constitution has therefore no validity now. Amendment 3327 is a verbal or formal one. The House will see that the marginal heading of article 315 is "Repeals" and in conformity with that, I thought it would be more correct to state at the end of this article instead of the words "shall cease to have effect" - "shall stand repealed". Of Course, I am not a lawyer or an authority on matters of constitutional terminology and phraseology. I shall be content with leaving this matter to the collective wisdom of the Drafting Committee.

But, Sir, I would like to make a few observations in regard to the amendment just now moved by my honourable Friend Mr. Krishnamachari, No. 463. The first point is with regard to article 315 as moved by him. This refers to the Indian Independence Act, 1947. If the House will compare this with the original draft of this article, they will see that the words "insofar as its provisions are repugnant to this Constitution" are a fresh insertion. The original draft was silent on this point. I would like to know what exactly is the significance of these words. Do we not state categorically, clearly and unambiguously that with effect from the date of commencement of this Constitution the Indian Independence Act stands repealed, and of course the Government of India Act and what not? When this Constitution comes into force, then all other laws that were in force till that date automatically become null and void. Therefore, these words "insofar as its provisions are repugnant to this Constitution" are wholly unnecessary and should be deleted. I am sorry I had no time to give notice of an amendment.

As regards article 314, it refers to the date of commencement of this Constitution. Certain articles have got - and quite rightly so, - to come into force at once. I have nothing to say on that point. But about the second part of this article which says that the rest of the Constitution shall come into force on the 26th January 1950. I made a suggestion some time ago that, granting with all my heart that the 26th of January has got a sanctity all its own in our national calendar, we might still have another day, and it might very aptly and in the fitness of things signify, the advent of our complete freedom and republican status. We may christen it the "Republic Day". The 26th January would still be regarded as "Independence Day", the day on which we took the famous pledge of independence. But in all humility I suggest that we might have a "Republic Day' which we may observe like other days in our national calendar. I have no objection if the "Independence Day" and the "Republic Day" syn-chronise, but I think it would add more importance to our national calendar if we had "Independence Day" on the 26th January and another day in January or December as "Republic Day". As a matter of fact, if it were possible, we might have December 9th, 1949, as the Republic Day, because we began this historic Assembly on the 9th December. But perhaps it is not quite possible to get all these things ready by then, so I would suggest a day in January and have it as "Republic Day" to be celebrated like "Independence Day" or "Gandhi Jayanti" or other national days. I would request the House to consider this little submission of mine to the effect that we might as well state that the remaining provisions of this article shall come into force on the midnight of the 25/26th January 1950. Just as in August 1947 we celebrated or we welcomed the advent of freedom on the night of 14/15th August 1947, it would be in the fitness of things if we state here definitely that the remaining provisions thereof shall come into force on the midnight of 25/26th January 1950, and if that were adopted today, it would have the way for the celebration of another historic ceremony.

I do not know what the astrologers will have to say about this matter, because last time when they were consulted, there was a conflict of opinion about the auspiciousness of the date.

**Mr. President :** They offered their opinion without being consulted.

**Shri H. V. Kamath :** They were consulted by friends outside and they were not quite agreed whether it was wholly auspicious. I do not think we are always bound by the opinions of astrologers, but other things being equal, we might as well celebrate it on the midnight of 25/26th January 1950.

I hope Mr. T. T. Krishnamachari has been listening to me and that he will try his best to answer the suggestions that I have made.

**Mr. Naziruddin Ahmad :** I am not moving my amendment, but with regard to the amendment that has been moved by Mr. T. T. Krishnamachari, I have some difficulty about the proposed article 315. Article 315 tries to state that the Indian Independence Act, insofar as it is repugnant to this constitution, shall cease to have effect. I however think that this should be covered by the old article 307. I do not know what has become of it; whether it is proposed to move it or not. But article 307 in the Draft Constitution.....

**Mr. T. T. Krishnamachari :** Another article 307 has been moved and accepted and is part of the Constitution.

**Mr. Nazirudding Ahmad :** This article 307 would cover 315. I am referring to the old article, and I suppose that the new article 307 is substantially of the same effect.

**Shri T. T. Krishnamachari :** Except clause (2).

**Mr. Naziruddin Ahmad :** Clause (1) says : "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until....."

So, "all laws in force in the territory of India" would also include the Indian Independence Act 1947.

**Shri T. T. Krishnamachari :** It is expressly mentioned.

**Mr. Naziruddin Ahmad:** It is not necessary: otherwise you should mention all the other existing Acts which would be covered. The Indian Independence Act is completely in the hands of the Indian Legislature. That Act states that from the appointed date, all laws relating to the Indian administration and all British laws applicable to India, should no longer be affected or modified or dealt with in any way by the British Parliament but this should be dealt with specifically by the Indian Legislature. If that is so, I fail to see how the Indian Independence Act is an Act which requires a special mention. That is certainly within our competence. The British Parliament has no longer any jurisdiction over that. They have enacted a self-denying ordinance and that is certainly a law in force in the territory of India. Those laws which are now existing will have to be adopted under article 307. I do not know how far the office has proceeded with it, because on the 26th January we expect a complete Adaptation Order, fully ready, to be applicable on that date. On and from that date all laws, inconsistent with the present Constitution should be clearly adapted to suit the Constitution.

I think the word "Repeal" in the marginal note is inapplicable because we are not repealing the Independence Act: we are merely trying to say that insofar as it is inconsistent with the present Constitution it shall cease to have effect. We really modify the Act or adapt it to suit the present Constitution and that purpose would certainly be served by article 307. I, therefore, oppose article 315. All that we want is

not the repeal but really an adaptation.

With regard to article 314, there is one expression which is coming up before the House repeatedly, namely, "the date of the commencement of this Constitution". Sometimes we say, "the commencement of the Constitution". On other occasions we say "the date of the commencement of this Constitution." I think the words 'the date of' are absolutely unnecessary and tautological. We mention here the "26th day of January 1950". which date is referred to in this article as the "date of" the commencement of this Constitution. The 26th day of January 1950 is certainly a 'date of' and if that is referred to as the commencement of this Constitution the words 'date of' are absolute unnecessary. The use of this expression has been rather indiscriminate in many places that they occur, and in any places they do not occur. I should think these words should be deleted by the drafting Committee so as to make the expression absolutely neat and clear and yet complete.

I would like to know what progress has been made in the adaptation of the existing laws because this is extremely important and things should be ready on the 26th January. This will affect courts, offices and various other persons. We should have a completely adapted series of Acts, as was done in the case of the government of India Act, all the Acts were adapted and an Adaptation Order was printed and circulated before time so as to be ready on the date that the Constitution came into effect, that is, on the 1st April, 1937.

I should like to know what progress has been made already, because if that is not taken in hand, there may be an impasse and confusion. So this requires clarification and if we have taken that in hand, then article 315 will be absolutely unnecessary.

**The Honourable Shri K. Santhanam** : Sir, I have just two points to make with reference to amendment No. 463. I think before any other article is brought into operation, it is desirable to have at least the Preamble and article 1 also to be brought into operation because all the other clauses refer to India and so before article 1 comes into operation, I do not think it is quite right that other articles should be brought into operation. I suggest that the Preamble and article 1 also may be added. These articles should be brought into immediate operation while the rest may come into operation on the 26th of January.

**Mr. Naziruddin Ahamd :** The difficulty would be that the Preamble has not yet been accepted by the House.

**The Honourable Shri K. Santhanam :** It will have to be accepted before the Constitution is complete. I am only suggesting this.

**Shri R. K. Sidhva :** May I know why you want the Preamble to be made applicable immediately ?

**The Honourable Shri K. Santhanam :** Preliminary to bringing the whole Constitution into force, we are bringing some provisions of the Constitution into force and the object of the Constitution and the name of the country must be there before any part of the Constitution can be brought into force. You may consider that suggestion for what it is worth.

In proposed article 315 there are provisions what are hardly consistent with the dignity of the new Constitution. It says : "The Indian Independence Act, 1947, insofar as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) act, 1946, and all other enactment amending or supplementing the Government of India Act, 1935, shall cease to have effect." The Independence Act to the extent it is not repugnant to the provisions will continue in existence and be in force. I think the entire Independence Act must be repealed. The only fundamental law must be the Constitution. The validity of all other laws must be derived from the Constitution. When the Government of India Act, 1935 was passed, all the previous Acts were completely repealed. I do not think we should leave the Indian Independence Act as if it is continued together with the Constitution as a fundamental law of the country so that it can be argued in the Supreme Court that a certain provision of the Indian Independence Act, because it is not repugnant to the provisions of the Constitution will continue in force. Our Supreme Court should not derive any authority from the Indian Independence Act; it should derive its authority only from the Constitution. I think this is an elementary principle which is necessary for the dignity of the whole Constitution. We should not say that our Constitution consists of the Constitutions which we have enacted and the Indian Independence Act to the extent it is not repugnant to the provisions of the Constitution. So I think this is a matter of importance and I suggest that Mr. Alladi and others should put their heads together and see that we do not enact a clause which is likely to be detrimental to the dignity of the Constitution we are making.

**Shri B. Das :** Mr. President, Sir, in article 314 it says : "This article 311 will come into force at once." when the article 311 was passed I understood that those members of provincial legislatures that are Members of this House will continue till the 26th of January, 1950. I wish it should be made clear that all members of provincial legislatures, that our comrades and colleagues here will remain with us until the 26th of January, 1950 when the Republic will be declared. I hope no mistake will be made on that quarter if we accept the present article 314 (Interruption). I respectfully request you to examine article 311 and I want to know whether our colleagues here from the provincial legislatures will continue to remain with us till the 26th January, 1950 when the Republic will be declared. Otherwise if that is not contemplated, I oppose the inclusion of article 311 here.

**Shri R. K. Sidhva :** It is clear.

**Shri Alladi Krishnaswami Ayyar** (Madras : General) : Mr. President, I just want to say a word or two in regard to the first objection of my honourable Friend Mr. Santhanam. I might point out that in the Draft Constitution, article 315, there is no reference to the retention of any revision of the Dominion Act after our Constitution comes into force. I would read the language of the said original article. "The Indian Independence Act, 1947 and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect." On a careful consideration I am inclined to agree with Mr. Santhanam, namely, that there is no question of the retention of any of the provisions of the earlier Act after our new Constitution comes into force. No doubt we might give a fresh lease of life to certain laws which were passed under the old Constitution and adopt them, so to speak, as the law under our Constitution. That is necessary and that provision has been made. I might also point out we were particularly anxious that the Constitution which we are making or passing must not be traceable to section 7 of the Independence Act and we

took the view that there is no necessity of even the Governor General's assent being required for the new Constitution. The new Constitution will not be a constitution passed under or in pursuance of the wide and comprehensive powers given under section 7 or 8 of the Indian Independence Act. Therefore, when once we pass a Constitution, use our own free will, independent of and without reference to any earlier Act, there is no need of mentioning that the independence Act will continue to be in force to any extent whatever. I might mention that even when an Act like the government of India Act of 1935 was passed it was in pursuance of an Act of Parliament and the earlier Government of India Act was treated as repealed, excepting in so far as the provisions of the earlier government of India Act were in terms adopted and continued by particular sections of the Government of India Act. Under those circumstances there is force in the suggestion of Mr. Santhanam, but they are in the nature of a drafting amendment. If permission is given that might be dropped at a later stage. The reason why I am mentioning this is that having emerged from the Drafting Committee, it is only fair that it should be amended again by the Drafting Committee. There will be no difficulty whatever in regard to that point.

Then some technical point was raised by my honourable Friend, Mr. Kamath, with regard to the words 'cease to have effect''; for the very reason for which he has been fighting we advisedly put in the express words "cease to have effect". On the point as to repeal, we are to remember we are an independent body. The Independence Act emanated from another Parliament. There is no question of our repealing another Act. That is why advisedly the draft Constitution contained the express provision "cease to have effect". Therefore, consistent with the ideas of my honourable Friend Mr. Kamath, who always stands for the independence of this country, for the Constitution not having reference to anything emanating from the British Parliament, it is appropriate and fitting that the expression 'cease' should be there instead of the word 'repealed'.

Then, Sir, lastly the point mentioned by Mr. Santhanam : one regarding the coming into force of the Preamble and secondly, that India shall be a Union. I think, if I may say with respect to my honourable Friend who is always careful about his points, there is no force in that objection. So far as the Preamble is concerned, though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the Preamble in a Constitutional statute, there is no such thing as the Preamble immediately coming into force. The Preamble will come into force in all its plentitude when the Constitution comes into force. There is no reason to say that the Preamble will come into force earlier than when the Constitution comes into force.

Secondly, I do not think we can bring into force the article that India shall be a Union because India does not immediately become a Union of States as it is understood throughout the Constitution. A Union must be understood with the entire constitutional mechanism that has been created under the Constitution which we are passing. We cannot conceive of a body or soul without limbs. If the limbs do not begin to operate how can a Union come into existence. So far as that point is concerned, even Homer nods and there is no force in the objection raised by Mr. Santhanam that the article must come into force immediately.

**Mr. President :** There was one point raised by Mr. Das with regard to article 311.

**Shri T. T. Krishnamachari :** That is very clear, Sir.

**Shri Alladi Krishnaswami Ayyar :** I have not caught the point.

**Shri Kuladhar Chaliha** (Assam : General) : Sir, I want to understand from the Drafting Committee how you can reconcile article 311(3) with article 314. Article 314 says that it shall it come into force at once. These Members will have to vacate immediately I think. I want to have an answer from Mr. Krishnamachacri. If that is the consequence, we cannot support this.

**The Honourable Shri K. Santhanam :** This will come into effect when the Third Reading is passed.

**Mr. President :** That is exactly the point raised by Mr. B. Das also.

**Shri T. T. Krishnamachari :** Sir, in regard to the point raised by Mr. B. Das and Mr. Kuladhar Chaliha, I would like to say this. Article 311(3) says:

"If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the legislature of a Governor's province then, as from the date of commencement of this Constitution the seat of such member shall, unless he has ceased to be a member of that Assembly earlier, become vacant."

Here, article 314 says that the date of the commencement of the Constitution is 26th of January 1950. Even though these articles are to come into force immediately, the date of the commencement of the Constitution will be the operating factor. I do not think there is any doubt about that. I can tell honourable Members this. The idea is that Members who have double membership remain Members until the 25th of January. (Interruption). Honourable Members will please hear me patiently. We will have to examine the position again if instead of the words 'date of commencement of the Constitution' 'the words 'appointed date' would suit better. Because, the appointed day happens to be the 26th of January. The position will be examined by Dr. Ambedkar and the Drafting Committee and if it is felt that the position of the Members will in any way be prejudicially affected, I will give this assurance to this House, that we will try to safeguard it by a suitable amendment and I think honourable Members need have no fear in that matter.

**Dr. B. Pattabhi Sitaramayya** (Madras : General) : I should like to know what was the object with which this was included. The date of commencement of the Constitution being evident and the tenure continuing till that date, what was the object of including this article mentioning the articles which are immediately coming into force? Probably it is to bring the elections into operation. If so, can you have an implied purpose and a declared purpose which are different from each other. This must be re-examined.

**Shri T. T. Krishnamachari :** The honourable Doctor has really put his finger on the point. The point is that, notwithstanding the fact that the vacancies have not occurred until the 25th of January, elections will have to be held so that the new Members will be enabled to take their seats on the 26th of January, on which date the vacancies will definitely occur. The idea is to enable the President of the Constituent

Assembly to hold these elections notwithstanding the fact the actual vacancies will occur later. The wording of article 311 is clear. Both articles 311 and 312F permit the President of the Constituent Assembly to make appropriate rules for the purpose of enabling elections to be held on the supposition that the seats will become vacant on the 25th of January. The position as the doctor has understood is correct and the position is also perfectly clear I do not think any Member will be prejudicially affected by the fact that these articles are being brought into effect immediately from the time the Constitution is finally passed, or the Third Reading has been passed. If we do not do it, the President of the Constituent Assembly will not be empowered to take any action under articles 311 and 312 F.

With regard to the wording of article 315, I must bow to the superior wisdom of my honourable Colleague Mr. Alladi Krishnaswami Ayyar. If he now feels that the wording is not as it should be, I suppose the matter has definitely to be reconsidered. I would only say this, When experts differ, the layman is literally at sea. The reason why we made this change in the draft article is because of the advice that has been given to us by the Constitutional Adviser of this honourable House which is in these terms. "--This article provides without any qualification that the Indian Independence Act, 1947 and certain other Parliamentary enactments shall cease to have effect. There are, however, certain provisions of the Indian Independence Act which would not cease to have effect. For example, there is no reason why the provision of that Act stating that His Majesty's Government in the United Kingdom have no longer any responsibility as respects the government of any of the territories which immediately before August 1947 were included in British India, that the suzerainty of His Majesty over the Indian States lapses, etc., should not continue to remain in force. There is nothing in this provision that is repugnant to the new Constitution. hence the proposed amendment.' My honourable Friend Mr. Alladi Krishnaswami Ayyar holds the view that as this Constitution is completely independent in character, it acts on its own volition and therefore all the other enactments that preceded it must automatically cease to have effect. I quite agree. But, this is the opinion that was given to us by the Constitutional Adviser and it is only on the lines of this opinion that we put in these words "in so far as its provisions are repugnant to this Constitution".

I had originally thought of suggesting that we might, in order to make the meaning of this particular article clear, split it up into two and call it 315 (1) with the following words : "The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution", Then put the figure (2) and put the following words after it. "The Government of India Act, 1935 including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act", And thereafter, put these words below, which shall apply to both (1) and (2) : shall cease to have effect". In view of the position taken up by my honourable Friend Mr. Alladi Krishnaswami Ayyar, I would suggest with your permission that the House do pass this article in this form and we will have the position re-examined.

My honourable Colleague, the Chairman of the Drafting Committee is not here. We shall have the position re-examined and if necessary, at the Third Reading Stage, when we are convinced that these words "in so far as its provisions are repugnant to this Constitution" should be eliminated, we shall eliminate them at the Third Reading Stage.

I therefore suggest that we shall pass this article in the present form and if any change is necessary, we shall take adequate legal advice and the eminent lawyer members of the Drafting committee will examine it. We will put my honourable colleague Mr. Alladi Krishnaswami Ayyar against Dr. Ambedkar and Mr. Munshi and we will probably be able to arrive at a settlement so far as the wording is concerned. I do hope that.....

**The Honourable Shri K. Santhanam :** Would it not be better that the opposite course is adopted ?

**Shri T. T. Krishnamachari :** I have suggested one course. My honourable Friend Mr. Santhanam takes the opposite view. It is for the House to decide whether my view is proper or the opposite view. I would also suggest that before we finalise the wording of the article, we shall have the benefit of the views of Sir B. N. Rau about this matter. We shall immediately write to him about this matter and ask him if he would revise his view in the light of the expression of opposite views in the House. Therefore, I suggest that this article be accepted by the House in its present form, subject to this condition that the whole thing will be re-examined and if on examination we find that the objections mentioned by my honourable Friend Mr. Santhanam and supported by my honourable Colleague have any validity, the article will come before the House in a revised form.

So far as the objection to the wording "cease to have effect" is concerned, which my honourable Friend Mr. Kamath wants to be supplanted by the word "repealed", I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar has answered him adequately. The House need, therefore, have no qualms in accepting the wording 'cease to have effect'.

**Shri H. V. Kamath** : What about the two suggestion that I made in regard to a separate Republic day and also about the midnight ceremony ?

**Shri T. T. Krishnamachari :** That is a matter for the appropriate authorities and not for the Drafting Committee.

**Mr. Naziruddin Ahmed :** Is it proper to accept this subject to reconsideration? If these controversial matters are left over for the Third Reading, other matters will have no time. I suggest it should be dropped. It is included in 307.

**Mr. President:** That again is a controversial matter. In some form it has to be passed today so that the Second Reading may be completed. If any question arises for revision, that may be done at the Third Reading stage, and as Mr. Krishnamachari said they will have the matter re-examined and if we find that any amendment is necessary, we shall take that up at that stage. If we leave it also, then we could not bring anything new at that stage.

**The Honourable Shri K. Santhanam:** If the words 'In so far as its provisions are repugnant to this Constitution, are omitted, it will have unanimous acceptance and there is nothing to prevent them in re-introducing those words if they are found essential. Now we are asked to take it in a form which we dislike and it is said that they will consider it later. There is no difficulty for the Drafting Committee to re-

introduce the words if it is considered essential.

**Mr. President**: It is really a matter for the House to decide. I will put the two views separately.

The question is :

"That for Part XVIII, the following Part be substituted :

**PART XVIII**

**SHORT TITLE, COMMENCEMENT AND REPEALS**

'313. This Constitution may be called the Constitution of India'. "

The amendment was adopted.

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

"This article and articles 5, 5A, 5AA, 5B, 303, 311, 311A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution."

The amendment was adopted.

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**Article 315**

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

"That in proposed article 315 the words 'in so far as its provisions are repugnant to this Constitution be deleted."

The amendment was adopted.

**Mr. President :** Of course it is understood that it subject to re-examination.

**TheHonourable Shri K. Santhanam :** Yes, It is appreciated.

**Shri H. V. Kamath:** I leave my amendment in the printed list to the wisdom of the Drafting Committee. That need not be put to vote.

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

"That proposed article 315, as a amended, stand part of the Constitution."

The motion was adopted.

Article 315, as amended, was added to the Constitution.

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**Article 306A**

**Mr. President :** We go to 306A.

It is suggested that we had better begin the Preamble. It may be moved.

**Shri T. T. Krishnamachari :** It is not necessary to move it. The Preamble may be taken into consideration.

**Mr. President :** The Preamble is moved. I shall have to take up the various amendments to the Preamble now. I have a large number of amendments - many of them printed in the printed list.

**Maulana Hasrat Mohani** (United Provinces : Muslim ) : I understand that you have already decided that the Preamble will be taken up last. How is it that there are some articles remaining undiscussed and you pass to the Preamble?

**Mr. President :** Not many articles left.

**Maulana Hasrat Mohani :** Even one article - unless you finish the articles, you cannot take up the Preamble.

**Mr. President :** Very well, let us take up 306A.

**The Honourable Shri Satyanarayan Sinha** (Bihar : General): Sir, are you taking up the Preamble ?

**Mr. President :** No, Maulana hasrat Mohani objects to the Preamble being taken up before all the other articles are finished.

There is one more article of which notice was given and it has been standing over, amendment No. 472 by Mr. Naziruddin Ahmad. And I understand it is the same as another article of which notice was given by Pandi Thakur Das Bhargava.

**Pandit Thakur Das Bhargava:** Sir, it was held over on the 3rd June, by your

order.

**Mr. President :** Then shall we take it up now? Which of them shall we take up. Mr. Nazirudding Ahmad's or that of Pandit Thakur Das Bhargava ?

**Pandit Thakur Das Bhargava :** Sir, I beg to move that.....

**Shri R. K. Sidhva :** Sir, there are other articles also of which notice has been given by other Members.

**Mr. President :** There is no other amendment by the Drafting Committee.

**Shri R. K. Sidhva :** But there may be other Members who may have amendments besides these two.

**Mr. President :** Amendments for the addition of new articles ?

**Shri R. K. Sidhva :** Yes.

**Mr. President** : I do not think they will arise now.

**Pandit Thakur Das Bhargava** : Sir, I understand Shri Gopalaswami Ayyangar has just come and so I may be allowed to move, after he has done.

**Mr. President :** There are so many articles of which notice was given and which are dropped now. We have dealt with the whole Constitution from every point of view and we cannot begin now taking up new articles. I know Pandit Thakur Das Bhargava's amendment was held over, but it has been covered by other amendments.

**Pandit Thakur Das Bhargava :** It is not covered, Sir.

**Mr. President :** Very well. We take up article 306A now. Mr. Gopalaswami Ayyangar.

**The Honourable Shri N. Gopalaswami Ayyangar :** (Madras : General) : Sir, before I read out the motion. I would request your permission, Sir, not to move item 379, but to move item 451 instead.

Sir, I move:

"That with reference to Amendment no.379 of List XV (Second Week), after article 306, the following new article be inserted:

'306A. (1) Notwithstanding anything contained in this Constitution,

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and

(ii) such other matters in the said List as, with the concurrence of the Government of the State, the President may by order specify;

*Explanation.* - For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers..."

I am making, Sir, with your permission, a change here. Instead of the word "appointed" I am substituting the words, "for the time being in office" - "under the Maharaja's Proclamation, dated the fifth day of March, 1948."

**Pandit Hirday Nath Kunzru :** We could not hear the honourable member correctly.

**The Honourable Shri N. Gopalaswami Ayyangar :**

*"Explanation.* - For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the council of Ministers, for the time being in office, under the Maharaja's Proclamation, dated the fifth day of March, 1948."

I have there substituted the words "or the time being in office," for the word "appointed".

"(c) the provisions of article 1 of this Constitution shall apply in relation to the State.

(d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify;

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State;

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification."

Sir, this matter, the matter of this particular motion, relates to the Jammu and

Kashmir State. The House is fully aware of the fact that the State has acceded to the Dominion of India. The history of this accession is also well know. The accession took place on the 26th October, 1947. Since then, the State has had a chequered history. Conditions are not yet normal in the State. The meaning of this accession is that at present that State is a unit of a federal State, namely, the Dominion of India. This Dominion is getting transformed into a Republic, which will be inaugurated on the 26th January, 1950. The Jammu and Kashmir State, therefore, has to become a unit of the new Republic of India.

As the House is aware, accession to the Dominion always took place by means of an instrument which had to be signed by the Ruler of the State and which had to be accepted by the Governor-General of India. That has taken place in this case. As the House is also aware, Instruments of Accession will be a thing of past in the new Constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of Accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself; and, in the case of practically all States other than the State of Jammu and Kashmir, their constitutions also have been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution provided.

**Maulana Hasrat Mohani :** Why this discrimination, please?

**The Honourable Shri N. Gopalaswami Ayyangar :** The discrimination is due to the special conditions of Kashmir. That particular State is not yet ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other States. *(Cheers)* At present it is not possible to achieve that integration. There are various reasons why this is not possible now, I shall refer again to this a little later.

In the case of the other Indian States or Unions of States there are two or three points which have got to be remembered. They have all accepted the Constitution framed for States in Part I of the new Constitution and those provisions have been adapted so as to suit conditions of Indian States and Unions of States. Secondly, the Centre, that is the Republican Federal Centre will have power to make laws applying in every such State or Union to all Union Concurrent Subjects. Thirdly, a uniformity of relationship has been established between those States and Unions and the Centre. Kashmir's conditions are, as I have said, special and require special treatment.

I do not want to take much of the time of the House, but I shall briefly indicate what the special conditions are. In the first place, there has been a war going on within the limits of Jammu and Kashmir State.

There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still unusual and abnormal. They have not settled down. It is therefore necessary that the administration of the State should be geared to these unusual conditions until normal life is restored as in the case of the other States.

Part of the State is still in the hands of rebels and enemies.

We are entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement. That can take place only when the Kashmir problem is satisfactorily settled.

Again, the Government of India have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people, through the instrument of a constituent assembly, will determine the constitution of the State as well as the sphere of Union jurisdiction over the State.

At present, the legislature which was known as the Praja Sabha in the State is dead. Neither that legislature nor a constituent assembly can be convoked or can function until complete peace comes to prevail in that State. We have therefore to deal with the Government of the State which, as represented in its Council of Ministers, reflects the opinion of the largest political party in the State. Till a constituent assembly comes into being, only an interim arrangement is possible and not an arrangement which could at once be brought into line with the arrangement that exists in the case of the other States.

Now, if you remember the viewpoints that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. Article 306A is an attempt to establish such a system.

I shall now proceed to take the House through the provisions of this article. As honourable Members will remember, the constitution of Indian States is mainly governed by article 211A of this Constitution which applies the Constitution to Indian States, subject to the modifications contained in Part VI-A read with the Schedule. So far as that provision in concerned, I have already indicated to you that the provisions regarding the Constitution of other States could not at present be applied to Jammu and Kashmir. Therefore, clause (1) (a) of this article says that the provisions of article 211A of this Constitution shall not apply to the State of Jammu and Kashmir.

The Second portion of this article relates to the legislative authority of Parliament over the Jammu and Kashmir State. This governed primarily by the Instrument of Accession. Broadly speaking, that legislative power is confined to the three subjects of defence, foreign affairs and communications, but as a matter of fact these broad categories include a number of items which are listed in the Instrument of Accession. I believe they number some twenty to twenty-five. Now, these items have undergone a change in description, in numbering, in arrangement, as amongst themselves, in List I and List III of the new Constitution. It is therefore necessary that the items mentioned in the Instrument of Accession should be brought into line with the changed designations of entries in Lists I and III of the new Constitution. So, clause (1) (b) of article 306A says that this listing of the items as per the terms of the new Constitution should be done by the President in consultation with the government of the Sate.

Clause (b) (ii) refers to possible additions to the List in the Instrument of Accession, and these additions could be made according to the provisions of this article with the concurrence of the government of the Sate. The idea is that even before the Constituent Assembly meets, it may be necessary in the interests of both the Centre and the State that certain items which are not included in the Instrument of Accession would be appropriately added to the List in that Instrument so that administration, legislation and executive action might be furthered, and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State. That is provided for.

Then, there is the Explanation, which defines what the Government of the State means. The Government of the State is defined both in the Constitution which is now supposed to be in force in the Jammu and Kashmir State as well as in the Proclamation which the Maharaja issued on the 5th March, 1948. The terms of the Proclamation, to the extent that they are inconsistent with the provisions of the Constitution Act of the State, will prevail over that Constitution Act, and therefore it is that in this Explanation it is the Proclamation which is referred to. Under the terms of that Proclamation the Maharaja constituted an interim popular Government, and he said: -

"I hereby ordain as follows :-

> (1) My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed, Sheikh Mohd. Abdullah as the Prime Minister with effect from the 1st day of March 1948.

He proceeds -

> "The Prime Minister and other Ministers would function as a Cabinet and act on the principle of joint responsibility."

Then there was no Legislature functioning, and so he instituted a kind of responsible Government with a Prime Minister and colleagues who would own collective responsibility for their acts and regard themselves as jointly responsible for all the acts of the Government. Now, that is brought out in this Explanation.

**The Honourable Shri K. Santhanam :** The Explanation says that the Maharaja will be recognised by the Union instead of by the President.

**The Honourable Shri N. Gopalaswami Ayyangar :** Perhaps we may leave it to the Third Reading. As you know the scheme of the Constitution Act is that the Rajpramukh must be recognised by the President. So, this also says that the Maharaja of Jammu and Kashmir should be a persons recognised for the time being by the Union.

As regards the Council of Ministers, this Proclamation set up a system under which this Council was to be established, *viz.*, that the Maharaja first finds the Prime minister and then on his advice appoints his colleagues, and the Explanation as now amended by me says that whatever Council of Ministers is in being at the time will, along with the Maharaja to whom they are responsible give their concurrence or give their advice on such matters as are referred to them under this article.

Clauses (c) and (d) refer to the provisions of the Constitution other than the matters listed in Lists I and III. These various provisions have been divided into certain categories. The first according to this draft is that article 1 of the Constitution will automatically apply. As you know, it describes the territory of India, and includes amongst these territories all the States mentioned in Part III, and Jammu and Kashmir is one of the States mentioned in Part III. With regard to the other provisions in the Constitution, these will apply to the Jammu and Kashmir State with such exceptions and modifications as may be decided on when the President issues an order to that effect. That Order can be issued in regard to subjects mentioned in the Instrument of Accession only after consultation with the Government of the State. In regard to other matters, the concurrence of that Government has to be taken.

Now, it is not the case, nor is it the intention of the members of the kashmir Government whom I took the opportunity of consulting before this draft was finalised - it is not their intention that the other provisions of the Constitution are not to apply. Their particular point of view is that these provision should apply only in cases where they can suitably apply the only subject to such modifications or exceptions as the particular conditions of the Jammu and Kashmir State may require. I wish to say no more about that particular point at the present moment.

Then we come to clause (2). You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the State for the purpose of framing its Constitution. In other words, what we are committed to is that these additions are matters for the determination of the Constituent Assembly of the State.

Now, you will recall that in some of the clauses of this article we have provided for the concurrence of the Government of the State. The government of the State feel that in view of the commitments already entered into between the State and the Centre, they cannot be regarded as final authorities for the giving of this concurrence, though they are prepared to give it in the interim periods but if they do give this concurrence, this clause provides that that concurrence should be placed before the Constituent Assembly when it meets and the Constituent Assembly may take whatever decisions it likes on those matters.

The last clause refers to what may happen later on. We have said article 211A will not apply to the Jammu and Kashmir State. But that cannot be a permanent feature of the Constitution of the State, and hope it will not be. So the provision is made that when the Constituent Assembly of the state has met and taken its decision both on the Constitution for the State and on the range of federal jurisdiction over the State, the President may on the recommendation of that Constituent Assembly issue an order that this article 306A shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issues any order of that kind the recommendation of the Constituent Assembly will be a condition precedent. That explains the whole of this article.

The effect of this article is that the Jammu and Kashmir State which is now a part of India will continue to be a part of India, will be a unit of the future Federal Republic

of India and the Union Legislature will get jurisdiction to enact laws on matters specified either in the Instrument of Accession or by later addition with the concurrence of the Government of the State. And steps have to be taken for the purpose of convening a Constituent Assembly in due course which will go into the matters I have already referred to. When it has come to a decision on the different matters it will make a recommendation to the President who will either abrogate article 306A or direct that it shall apply with such modifications and exceptions as the Constituent Assembly may recommend. That, Sir, is briefly a description of the effect of this article, and I hope the House will carry it.

(Amendment Nos. 459, 460 and 461 were not moved)

**Shri Mahavir Tyagi :** (United Provinces : General) I am not in concurrence with the wording of the clauses, but I do not wish to move the amendments.

(Amendment No. 462 was not moved)

**Mr. President :** There is one more amendment of which notice was received this morning. That is by Shri Mahavir Tyagi to the effect 'that in amendment No.451 of List XX (Second Week), in the proviso to clause (3) of the proposed new article 306A" for the word "recommendation" the word "consultation" be substituted.

**Shri Mahavir Tyagi :** I am not moving that too.

**Mr. President :** The article is now open to discussion.

**Maulana Hasrat Mohani :** Sir, I want to make it clear at the very outset that I am neither opposed to all these concessions being granted to my Friend Sheikh Abdullah, not am I opposed to the acceptance of the Maharaja as the ruler of Kashmir. And if the Maharaja of Kashmir gets further powers and concessions I will be very glad. But what I object to is this. Why do you make this discrimination about this Ruler ? My. Ayyangar has himself admitted here that the administration of Kashmir State is not on a very good basis .....

**The Honourable Shri N. Gopalaswami Ayyangar :** That is a wrong statement. I never said so.

**Maulana Hasrat Mohani :** That it will assume independence afterwards. But may I ask a question? when you make all these concessions for Kashmir I most strongly object to your arbitrary act of compelling the Baroda State to be merged in Bombay. The administration of Baroda state is better than the administration of many other Indian P*rovinces. It is scandalous that you should compel the Maharaja of Baroda to have his raj* merged in Bombay and himself pensioned off. Some people say that he himself Voluntarily accepted this meger. I Know it is an open secret that he was brought form England and compelled against his will.....

**Mr. President :** Maulana, we are not concerned with the maharaja of Baroda here.

**Maulana Hasrat Mohani :** Well, I would not go into any detail. But I say that I object to this sort of thing. If you grant these concessions to the Maharaja of Kashmir you should also withdraw your decision about the merger of Baroda into Baroda into Bombay and allow all these concessions and many More concessions to the Baroda ruler also.

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

"That with reference to Amendment No.379 of List XV (Second Week), after article 306, the following new article be inserted : -

'306A. (1) Not withstanding anything contained in this Constitution.

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir.

(b) the power of Parliament to make laws for the State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India are the matters with respect to which the Dominion Legislature may make laws for the State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify;

*Explanation :-* For the purposes of this article, the government of the State means the person for the time being recognised by the union as the maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers, for the time being in office, under the Maharaja's Proclamation, dated the fifth day of March, 1948.

(c) the provisions of article 1 of this Constitution shall apply in relation to the State;

(d) such of the other provision of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the preceding clause of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification'."

The motion was adopted.

Article 306A was added to the Constitution.

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**Mr. President :** These are all the amendments that we have had from the Drafting Committee. There are certain amendments printed in the List of Amendments and probably some others in some one or other of the numerous lists subsequently circulated. The question is whether we take up any of those amendments. We have gone through the whole Constitution article by article and clause by clause at great length and I do not think we can re-open any of those things at this stage by bringing in fresh amendments. There is one amendment by Pandit Thakur Das Bhargava, No.472, on which Mr. Naziruddin Ahmad has given notice of an amendment, and this was included in List I of Fifth Week. It was not by itself an amendment. It was a long article and it related only to one paragraph of that article. I think this very point has been covered by article 109, which we have passed. Article 109 confers original jurisdiction on the Supreme Court and Article 121 lays down that the Supreme Court will have its own rules of procedure, while article 25 deals with the remedies given to a party to have Fundamental Rights enforced in court. I think these three articles between themselves cover everything contained in the amendments of Mr. Naziruddin Ahmad and Pandit Bhargava. I therefore rule out of Pandit Bhargava's amendment

We shall now take up the Preamble.

**Preamble**

**An Honourable Member :** May I suggest that the Preamble be taken up when we meet again in November for the Third Reading ? By that time, the Drafting Committee will also have submitted its final report to this House.

**Maulana Hasrat Mohani :** I object to that, because unless you get the Preamble passed today, how could you produce any report on the Second Reading?

**Shri K. M. Munshi :** Once in my life I support the Maulana Saheb !

**Mr. President :** I think we should get the Preamble also passed today. The Constitution as a whole has to be passed in its Second Reading and the Preamble forms part of the Constitution. Therefore, the Preamble cannot be postponed.

If necessary, we shall sit in the afternoon and dispose of it, unless we can do it within fifteen minutes that remain before one o'clock.

I find there are quite a good number of amendments to the Preamble in Vol. I of

the Printed List Many of them bring in certain matters really not germane to the Preamble but by way of introduction of the Preamble. But I find that Maulana Hasrat Mohani's amendment is one of substance and seeks to bring in altogether new ideas. Therefore, I would ask him if he wishes to move his amendment first.

**Maulana Hasrat Mohani :** I have three amendments. I want to move them separately, not in one bundle.

**Mr. President :** Which one do you want to move first ?

That for amendment No.8 of the List of Amendments (Volume I), the following be substituted :-

That in the Preamble, for the words "We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic" the following be substituted :-

> We, the People of India having solemnly resolved to constitute India into a Sovereign Federal Republic.

*or alternatively*

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic."

I shall just now give my reasons for proposing these amendments. In view of the proverbial shortness of public memory, I want first to remind the Members about a very fundamental fact that has been brought into the present Constitution and in the Draft prepared by Dr. Ambedkar. I refer to Volume IV No.6 of the official report of the proceedings of this Assembly - list 738, Part I: Federal territory and jurisdiction. Under "name of territory and federation" it is said that the Federation hereby established shall be a sovereign independent republic known as India. So it is clearly laid down that we will have only a Federation and it will be a federation of Indian republics. But my friend, Dr. Ambedkar has cleverly, I suppose, dropped the word "Federal" altogether and the word "independent" also has been dropped and he has aid "democratic State". I objected to that when I spoke the other day.

**Shri Deshbandhu Gupta :** (Delhi): On a point of order : the effect of these amendments if passed would be that the whole Constitution will have to be recast.

**Maulana Hasrat Mohani :** Who will be responsible for that ?

**Shri Deshbandhu Gupta :** To move such an amendment at this stage is out of order and it should therefore be disallowed.

**Maulana Hasrat Mohani :** I should submit that I tried my best in the very beginning to stop you. I said that when you are going to decide the fate of India you should first make up your mind to find out and declare what kind of constitution you are going to frame. But I was ruled out. Of course I said if you do not accept my suggestion then you should not grumble, when the Preamble is presented; should I not raise any objection? Then I will not listen to you if you say because we have

passed such and such a thing .....

**Shri Deshbandhu Gupta :** May I have your ruling?

**Maulana Hasrat Mohani :** I say that you are responsible for preventing me from getting this thing discussed in the very beginning and therefore if you have to redraft the whole Constitution it does not matter. I shall insist on it. I have every right to propose any amendment in the Preamble, and if you find you have already passed something quite different, let me tell you that the Preamble will not be subject to your erroneous decisions and you will have to correct those decisions and it may take a year or two. But it does not matter. But unless and until you conform to the accepted principles prevalent all over the world, I think it will be ridiculous to pass this so perfunctorily.

**Shri Deshbandbu Gupta :** May I draw the attention of the Chair to the point of order moved by me? I am serious about it.

**Mr. President :** He is moving amendment No. 453 which runs thus:

"That in the Preamble for the words 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted: -

'We, the people of India, having solemnly resolved to constituted India into a Sovereign Federal Republic'. "

Or

'We, the people of India having solemnly resolved to constitute India into a Sovereign Independent Republic'. "

So far as this amendment is concerned, I do not see anything in it that is out of order.

You are taking only this one, Maulana Sahib ?

**Maulana Hasrat Mohani :** No, no. I will propose the other one when the time comes.

**Mr. President :** At present you are moving this one?

**Maulana Hasrat Mohani :** Yes. But I am not giving up the other amendment.

**Mr. President :** You are not taking up any other at the present moment. You have moved amendment No. 453.

**Maulana Hasrat Mohani :** Yes - this and the other one.

**Mr. President :** Which other one ? We have only one amendment.

**Maulana Hasrat Mohani :** The alternative !

**Mr. President :** That does not make any difference.

**Dr. B. Pattabhi Sitaramayya :** You said before that if there are alternative amendments and one of them is moved, the other one would be blocked.

**Mr. President :** I do not see much difference between the two amendments. They are more or less the same. Therefore whether the one or the other is accepted does not matter.

**Dr. B. Pattabhi Sitaramayya :** So, if they are the same, only one can be accepted.

**Mr. President :** Whichever he moves. that I will put to the House.

**Maulana Hasrat Mohani :** So I halve read out the official report. I refer to volume IV.....

**Mr. President:** The object of putting the Preamble last was that the Preamble may be in conformity with the Bill as accepted.

**Maulana Hasrat Mohani:** When I wanted the Preamble discussed at the very beginning you said we will not allow you to discuss it. I, therefore, pointed out that I was suspicious that when you had passed all the other articles according to your wishes, if any one else proposed anything about the Preamble you would say that it was not possible to go back on what we had passed it is now a settled fact and you will then rule me out of order. You gave me a promise that you would not do that and I have that in the printed report.

**Dr. B. Pattabbi Sitaramayya:** Well, you have been good enough to disallow the point of order but he admits the point of order and therefore he must be ruled out now.

**Maulana Hasrat Mohani:** What is the point of order?

**Mr. President:** Maulana Sahib, you are referring to something that I promised. I just want to have that.

**Maulana Hasrat Mohani:** I will read out to you what you said on a previous occasion. I have here also an admission on the part of Dr. Ambedkar himself. I refer you to the printed report, volume 7, no. 6, page 418 where he says that he will not object to any amendment being proposed at this stage.

With regard to yourself, I refer you to volume 4, No. 6 on page 733. That was the occasion when the report on the proposed Union Constitution was presented by Pandit Jawaharlal Nehru. I raised an objection at that time and you said that "you need not

obstruct him just now". You said I could raise this objection afterwards. "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". Then you said "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". I objected and said that I would not allow this report to be considered and then you said that I can raise my objection afterwards and for the present I may, allow Pandit Jawaharlal Nehru to proceed with; this report and it was on that understanding that I refrained from saying all these things at that time.

**Mr. President:** Far from giving a promise I definitely refused to give a promise. I read the relevant portion of the debate: "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".

**Maulana Hasrat Mohani:** I have been given some sort of promise. Very well, Sir. According to that report the Committee appointed for framing the constitution was given a clear directive that the Constitution should be framed in accordance with the Objectives Resolution passed by this Assembly. It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes. He wants the Objectives Resolution to be in conformity with his erroneous decision. He has reversed the order and this is what I object to most because it has changed the character of the Constitution. As I pointed out here, what was the object of the Objectives Resolution and the Report. They said that it will be a Federation of sovereign Independent Republics. Mark this plural form "Republics". Now he has reversed the whole thing. He has dropped the word 'Federation'; he has dropped the word Republic and he has dropped also the word, 'independent' for some ulterior motive which I am not going to disclose at this moment. I reserve it for a future occasion when I will throw it in his face when the time comes. For the present I say that according to the Objectives Resolution and according to the instructions given by Pandit Jawaharlal Nehru they should at least change this article in this way, that the spirit of what he suggested may be included in the article proposed by Dr. Ambedkar. He in fact, accepted this thing; he drops the word 'independent'. For the word 'independent' I want to put the word 'Federal' that is, a sovereign federal Republic; it does not matter if it is not a Republic. When I say a Sovereign Federal Republic, it means a Republic and the State units of that will also be Republics or it will be a Federation. I say 'No'. He takes that word only because it implies also a sort of a unitary system, and whatever he wants he has reversed and changed the whole character of this Constitution. We mean and the Objectives Resolution means that India will be made a Federation of Independent Republics and he now says "No". India will be transformed and in the place of the British Empire you will create an Indian Empire which will consist only of States which will have got no power and in the States you have also included and brought down the Provinces also. Formerly, I thought that the States will get the benefit of this inclusion but you have brought down the provinces also and you have deprived them of everything and even the sort of provincial autonomy has been taken away and in fact you have allowed nothing for the Provinces. You decided that you will have elected governors for the provinces. I objected to the word 'governors' in the very beginning and when Pandit Jawaharlal

Nehru said "I cannot satisfy the Maulana; he is a very deep man. He is afraid of this word 'Governor', I suggested that instead of the word 'Governor' we may put the word "president'' also in regard to the provinces. They said that they need not do that. I did not press that matter to the provinces. They said that they need not do that. I did not press that matter at that time but now I find on hearing the explanations given by Dr. Ambedkar that he has reversed the whole picture and he has let the cat out of the bag. He has clearly said: "What will be India that is Bharat? It will be a Union of States". What does this mean? You have discarded the word 'Republic'; you have discarded the word "Federation"; you have discarded the word "Independent", and my honourable friend, Dr. Ambedkar says: "Well, what does it matter? It does not matter when we say Republic. It is immaterial whether you call it independent or not''. I say if this is immaterial why is he so anxious to change that word 'independent' into 'democratic'? There is something secretly going behind the scenes and I pointed out on a previous occasion that when Pandit Jawaharlal Nehru changed his mind and went to England to have some sort of connection with the British Commonwealth, then he thought that we will have a Republic and also 'independent'. So he wanted to create a loophole for himself because he can now say: "We are already a Republic". We are not an independent Republic. What sort of a Republic are we? Some sort of Republic that these European countries, these imperialists, who are past-masters in this jugglery of words, have coined new phrases; and what are these new phrases? Holland has invented a phrase a Republican Dominion' and France has coined a new word for Vietnam which says that it will be a colonial Republic. We admit that Vietnam is a Republic and Holland says that they have accepted Indonesia as a Republic but it says it is a Republican Dominion. Instead of the Dominion it will be included in an imperial regime and that fraud was brought about by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here?

You said that we have got the word Republic. You have dropped the word Federation. You will also say that of course Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth because they accept we are independent. But, what sort of independence? It will be a republican dominion. Because if it is a real republic and not a republican dominion, you should have nothing to do with any king or Emperor directly or indirectly in any manner. When once Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth, I think he has forfeited his right to call India as a Republic. It is not a republic. If it is a republic, it is a republican dominion, as I said just now.

So, my alternative proposal is this. Either introduce the word 'Federal' instead of the word "Democratic". It will make something clear. If you do not want to introduce this word 'federation', if you are afraid of it, I will grant a concession to Dr. Ambedkar and you stick to the original wording of the Objectives Resolution which is given here. It will be "Independent Sovereign Republic". I say, drop this word 'democratic' and keep to the actual words used in the Objectives Resolution. If you use the words "independent Republic'' my object will be served. I come forward and say that whatever has been done by Pandit Jawaharlal Nehru is absolutely a false policy.

**Mr. President:** Does any one else wish to say anything about this amendment? I will put it to the vote. First alternative.

The question is:

"That in the Preamble for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:-

> 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Federal Republic'."

The amendment was negatived.

**Mr. President:** I shall put the second alternative.

The question is:

"That in the Preamble, for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:-

> 'We, the people of India, having solemnly resoled to constitute India into a Sovereign independent Republic'".

The amendment was negatived.

**Mr. President:** We shall take up the other things when we meet at six o'clock.

The Assembly then adjourned for lunch till six p.m.

The Assembly reassembled after lunch at 6 p.m., Mr. President (The honourable Dr. Rajendra Prasad) in the Chair.

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**Mr. President:** We have to take up the other amendment now. There is one in the name of Maulana Hasrat Mohani, No. 9.

**Maulana Hasrat Mohani:** Mr. President, I move:

"That in the preamble, for the words 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the words 'We, The People of India, having solemnly resolved to constitute India into a Union of Indian Socialistic Republics to be called U. I. S.R. on the lines of U. S. S. R.' be substituted".

**Shri Deshbandhu Gupta:** May I now raise the point of order again and submit that it is out of order because it goes counter to the Constitution we have passed?

**Mr. President:** A point of order has been raised that the whole Constitution that has been framed and accepted by this house is inconsistent with this amendment of the preamble and therefore it should be ruled out of order.

**Maulana Hasrat Mohani:** It was for this very point I requested you to save me from this sort of maneuvering. I am not going to repeat the same things. The other day I proposed this very thing in connection with article I. What I am going to propose today is on a different basis. If you find me repeating the same argument, you can declare me out of order but if I say something quite new which has nothing to do with my amendment to the First article of the Constitution, I think I am entitled to some indulgence on your part. As I showed in my statement earlier, you gave a sort of promise that you will not rule me out abruptly or without any consideration. Of course if you still think that I have nothing new to say and you find me repeating, you can rule me out; but if it is something quite different from what I said in connection with article 1, then of course I do not see any reason why my amendment should be ruled out of order.

**Dr. B. Pattabhi Sitaramayya:** May I know whether the vote that was taken this morning was a vote to reject Maulana's amendment? There was no positive vote on the wording of the preamble?

**Mr. President:** I did not take any.

**Dr. B. Pattabbi Sitaramayya:** Therefore all that was done was to reject this amendment to substitute 'independent' or 'Federal' for the word 'Democratic'.

**Mr. President:** Maulana: what I have to decide is not whether you are going to repeat or not. The point is whether this is in order or not. The objection is that it is inconsistent with the whole Constitution we have passed. What have you to say about that?

**Maulana Hasrat Mohani**: I do not know how it is inconsistent. Because the words in the preamble are 'Sovereign Democratic Republic'. I say that instead of these you can say 'Union of independent Republics'. Where is the inconsistency? I do not find any inconsistency in that.

**Mr. President:** Do you really suggest that the Constitution we have passed is on the lines of U.S.S.R.?

**Maulana Hasrat Mohani:** I am not going to say anything of the kind. I do not say we should go and merge in the U. S. S. R. or that you should adopt the same Constitution; but what I want to say is that we should work out our Constitution along the lines and on the pattern of Soviet Russia. It is a special pattern and also republican pattern and also it is of a centrifugal pattern.

**Shri Jai Narain Vyas** (Rajasthan): May I enquire if the honourable Member is making a speech or replying to the point of order?

**Mr. President:** He is replying to the point of order.

**Maulana Hasrat Mohani:** When I propose this that we are not going to merge ourselves with Russia or we are not going to adopt the Constitution of U. S. S. R. I am only suggesting that the Constitution and the Preamble we are adopting here in this

Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is any thing inconsistent in that. What are those considerations? What are the fundamental principles of the U.S.S.R.? They are three. First that it will be federal constitution. Secondly that it will be a centrifugal federation, and at the same time, the Centre, after getting some central powers, it again delegated those powers to their constituent units, declaring that they…..

**Mr. President:** I think it will save time if I allowed Maulana Sahib to move his amendment, without giving any ruling. So you had better finish your speech.

**Maulana Hasrat Mohani:** Some of my friends here, whenever they hear the word "Soviet", say, "He is an agent of the Soviet Government, and he is in the pay of the Soviet Government." I do not think anybody in this world can accuse me of that kind of thing.

**Mr. President:** Nobody has said that in this house.

**Maulana Hasrat Mohani:** They are the henchmen of the Soviet, they carry out the orders they receive from the Soviet Government. I have no connection with them. I have got no connection with the Communist party of India even, because I refused to join them on the ground that once they made the mistake of saying that we have got a common ground with England because we are both fighting Nazism. I said then, and I say it now, "Anybody who helps any foreign Government, especially the British Government, under any terms or for any motive, I say that he is wrong".

**Mr. President:** Maulana Sahib, let me remind you that we are not concerned with biographical details. You will please speak on your amendment.

**Maulana Hasrat Mohani:** I am not going to say anything to which anyone can take objection. I have nothing to do with the Soviet Government or the Soviet Constitution. I want only our Constitution and our Preamble to follow the lines adopted by the Soviet Government, and those are the three lines which I have mentioned. That is to say, our Constitution must be federal, and also along with being federal, it must be centrifugal, that the Constituent States or Republics should willingly hand over certain central powers to the Centre. And after that, to obtain the goodwill of the constituent units, they again, I mean the Soviet Government again, gave freedom to their constituent units or republics. They said, "If you find at any time that the Centre is deciding something against your interest, you are at liberty to differ from the Centre". And therefore, they gave them the simultaneous right, and if they found anything going wrong, any proposal of the Centre, they could at once go out and they said that even when the war was raging. They said to all those Muslim republics of the U.S.S.R., "If you like, you can go and fight on whichever side you want. If you do not like to fight for us, we do not press you. What was the result? The U.S.S.R. took them into its confidence and the result was not a single Muslim went against the Soviet Republic. Everyone fought, whole heartedly with the Soviet Government. What was the reason for this? They did so, because they found they had been taken into the confidence of the U.S.S.R. They were not made to leave the Soviet group. Why should they leave them? They were also cautious. They would never propose anything which might obviously go against the interest of their Constituent units.

So by adopting this conciliatory attitude they have attained that kind of from and that kind of freedom and that kind of success that has never been known in the world before. I say, Sir, that we should also follow the same policy, and we should also adopt the same attitude. We should also take out minorities into our confidence. Instead of doing that, you are going to outcaste them altogether. You are passing anything you like, without the slightest consideration for the interests of even your political minorities. You do not care a fig about us. You see, your Bengal Government and your Madras Government have declared the Communist Party to be unlawful, on the ground that the Communists have adopted some unlawful means, that they are fighting, killing, murdering and looting. Well, I say that the same thing can be said by the Communists. They can say, "You do not allow us any scope, you do not allow us to take an independent and constitutional attitude, and you……

**Mr. President:** May I remind you, that we are not in the Legislative Assembly, but we are here in the Constituent Assembly, and we are not concerned with what is happening in the country at the present moment.

**Maulana Hasrat Mohani:** Very well, Sir, I have only a few sentences more to speak in this connection and I am not going to take very long over them.

Supposing you say that the Communists can fight a free election in the next election, with joint electorates and all that, and without any restriction. But how are they going to do that? Supposing the Communist party wants to adopt this constitutional means, will you allow them to issue their manifesto, which must certainly be against your principles? Will you allow them to have their agents for the elections? Will you allow them to have their own workers who will approach every voter? You will not do anything of that kind. Once they issue their manifesto, you will at once send them to the prison. So it is a question of whether the hen came first or the egg came first. You imprison them because they adopt violent means, and they say, "We are forced to resort to violent means because you do not leave us any scope for constitutional means".

**Mr. President:** Maulana Sahib, you are not speaking on your amendment.

**Maulana Hasrat Mohani:** Very well. I have only to request Dr. Ambedkar and this house to adopt the same conciliatory attitude to all political minorities and to adopt the same principles as have been adopted by the Soviet Union. I am not going to ask you to join the Soviet Union or to adopt their Constitution. With these few words, I propose my amendment and request Dr. Ambedkar to accept it.

**Mr. President:** Does anyone wish to say anything about this amendment?

**Honourable Members:** No.

**Mr. President:** Then I will put it to vote.

The question is:

"That in the Preamble for the words 'We, the People of India, having solemnly resolved to constitute India

into a Sovereign Democratic Republic' the words 'We The people of India, having solemnly resolved to constitute India into a union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R. be substituted".

The amendment was negatived.

**Mr. President:** Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this preamble. In some others, the name of Mahatma Gandhi 'is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in, or both together. Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor mahatma Gandhi admits of a discussion in this House. *(Hear, hear).*

**Shri H. V. Kamath:** Mr. President, may I move my amendment No. 430?.

**Mr. President:** If it is moved it may have to be voted upon.

**Shri Deshbandhu Gupta:** Sir, before Mr. Kamath moves his amendment, may I draw the attention of the house to the fact that when the Assembly passed the Objectives Resolution solemnly, all Members standing, the Prime Minister at that time had made an appeal in these words:

yet,

"It is a Resolution and it is something much more than a Resolution. It is a declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication……. and I wish this house if I may say so respectfully, should consider this Resolution not in a spirit of narrow legal wording, but rather look at the spirit behind that Resolution".

The Preamble is no less important and the Prime Minister's remarks are equally applicable to same. I, therefore, appeal to Mr. Kamath that this may be borne in mind.

**Mr. President:** May I just point out to Mr. Kamath one thing? In the Schedule III which we have passed an oath or affirmation is prescribed for Ministers and others who have to take office. We have put the thing in the alternative form, such as 'Swear in the name of God' or, ''Solemnly affirm' so as to give freedom of choice to the believers and the non-believers to take the oath or the affirmation. Now here, would you like this thing also to be in the alternative form?

**Shri H. V. Kamath:** Here we are not individuals. Here we are all the people of India. There is much difference between the two.

**Mr. President:** The people of India includes individuals. If you insist upon moving your amendment I cannot prevent you. But I would suggest to you not to insist upon it.

**Shri H. V. Kamath:** Mr. President, I move……

**Shrimati Purnima Banerji** (United Provinces: General). Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. Let us not try to invoke his name in vain. It should not be brought up in this form and the members compelled to vote one way or the other. The name of God is invoked by every nation upon earth and god is an Impartial Entity and he should be allowed to remain so. With these words, I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God.

**Shri H. V. Kamath:** I regret I cannot accept the appeal. I shall move amendment No. 430 standing in my name. Sir, I move:

"That in amendment no. 2 of the list of Amendments (Volume I), the following be substituted for the proposed preamble:-

'In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizen

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation;

In our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution".

**Dr. B. Pattabhi Sitaramayya:** The amendment is only in the first line, you see, Sir?

**Mr. President:** It is exactly the same as the Preamble except that it begins with 'In the name of God'.

**Honourable Members:** No speech, please.

**The Honourable Shri K. Santhanam:** I rise to a point of order. The amendment moved must have a meaning.

**Mr. President:** It is not a point of order really.

**Shri H. V. Kamath:** I can reply to Mr. Santhanam. My amendment means, in the name of God we do this and that. No long speech is needed to commend this motion. Besides invoking the name of God, I have taken a little liberty with only one word, and that is, I have changed the word 'its' citizens to 'her' citizens.

**Shri A. Thanu Pillai:** (Travancore and Cochin State): may I rise to a point of order, Sir? If Mr. Kamath's amendment is accepted, - of course I am a believer in God-would not that amount to compulsion in the matter of faith? Is it not out of order to move a motion like that? It affects the fundamental right of freedom of faith. A man has a right to believe in God or not, according to the Constitution. In that view this amendment should be ruled out, though I am myself a staunch believer in God.

**Shri H. V. Kamath:** My reply to Mr. Thanu Pillai is that we are passing this in the name and on behalf of the people of India. All that we have done here in this Assembly has been in the name and on behalf of the people of India.

**Shri Rohini Kumar Chaudhuri** (Assam: General): May I move an amendment to that of Shri Kamath that, instead of 'In the name of God', would he be pleased to accept 'In the name of Goddess'? *(laughter).*

**Shri H. V. Kamath:** Mr. President, all that we have done in this House has been done on behalf of and for the people of India, and all decisions have been taken here by the vote of the House. Weather this becomes a matter for the vote of the House or not, I am sure in their heart of hearts the people of India for whom we have been working and toiling here for the last three years would endorse this amendment in *toto.* That is so far as the point raised by Mr. Pillai is concerned.

I have taken only a slight liberty with the text of the Preamble. As I have pointed out, I am sticking to the wording of the Objectives Resolution moved by Pandit Jawaharlal Nehru in December, 1946. In the first part of it, the future with reference to the governance of the country the words used are "*her* future governance", *her* being apt for the motherland. That being so, we should say 'her' and not 'its' citizens in the preamble. I would leave this however to the Drafting Committee.

As regards the substance of the motion I do not propose to make a long speech. In this august House, the first Constituent Assembly of India, of our Bharata Varsha, in this land, ancient but ever young, which has through the ages renewed itself at the Divine Fountain, let us consecrate this Constitution by a Solemn dedication to God in the spirit of the Gita.

*Yatkaroshi yadashnasi*

*Yajjuhoshi dadasi yat*

*Yattapasyasi kaunteya*

*Tatkurushwa madarpanam.*

Whatever our shortcomings, whatever the defects and errors of this Constitution let us pray that God will give us strength, courage and wisdom to transmute our baser metal into gold, through hard work, suffering and sacrifice for India and for her people. This has been the voice of our ancient civilisation, has been the voice through all these centuries, a voice distinctive, vital and creative, and if we, the people of India, heed that voice, all will be well with us.

**Shri V. I. Muniswamy Pillay** (Madras: General): I strongly support the motion moved by Mr. Kamath.

(Prof. Shibban Lal Saksena rose to speak).

**Mr. President:** Do you want to move any amendment?

**Prof. Shibban Lal Saksena:** Yes, Sir; No. 3.

**Mr. President:** Does anyone wish to speak on this amendment which has been moved by Mr. Kamath?

**Shri M. Thirumala Rao** (Madras: General): Are you allowing Mr. Saksena to move his amendment? I want to speak a few words on Mr. Kamath's amendment.

**Mr. President:** We are now on Mr. Kamath's amendment.

**Shri Mahavir Tyagi:** May I remind Dr. Ambedkar of the promise he made to me on another occasion. May I read a few line, Sir? Sir, on the 15th November, 1948 when the question was discussed, Dr. Ambedkar had asked me to remind him about this question of sovereignty, I said-

"I hope……..that his draft means that it (sovereignty) vests with the people, and his explanation may well go down into the records for future reference".

He replied-

"Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble".

**Mr. President:** That is not the point. At the present moment we are on Mr. Kamath's amendment, not on that. We are not dealing with that question now.

**Shri Mr. Thirumala Rao:** It is unfortunate that Mr. Kamath has not seen his way not to press his amendment to a vote. This is a thing of such vital importance and affects the life of the whole nation, that it should not be subjected to the vote of a House of three hundred people whether India wants God or not. We have accepted that God should be there in the Oath, but for those who do not believe in God, there is an alternative there, but there is no possibility of a compromise which can provide for both the things in the Preamble. Therefore, I think it would be better that Mr. Kamath withdraws his amendment and does not subject God about whom he spoke in such

reverent terms to the vote of the House, and if it comes to the vote, it will not be fair to ourselves and to the nation.

**Dr. B. Pattabhi Sitaramayya:** May I request that that amendment may be disposed of first before we take up anything else?

**Pandit Hirday Nath Kunzru:** It is a matter of the deepest regret that a matter that concerns our innermost and most sacred feelings should have been brought into the arena of discussion. It would have been far more consistent with our belief in the highest truths and our determination to adhere firmly to them that we should not seek to impose our own belief on others. I recognise the sincerity of Mr. Kamath and of those who agree with him, but I do not see why in a matter that vitally concerns every man individually, the collective view should be forced on anybody. Such a course of action is inconsistent with the Preamble which promises liberty to thought, expression, belief, faith and worship to everyone. How can we deal with this question in a narrow spirit? We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours.

**Shri Rohini Kumar Chaudhuri**: Sir, I am at one with my friend, Pandit Kunzru, in objecting to the amendment which has been moved by my friend Mr. Kamath. Sir, I have great admiration for my friend, Mr. Kamath. I am one who has unbounded confidence in him so far as political affairs are concerned. I must confess that I am very sadly disappointed in him this evening. By this amendment, he shocked the feelings of many when he stoutly refused to accept the amendment which I proposed. Sir, it is not a matter of laughter with me. I believe in a Goddess. I belong to Kamrup where the Goddess Kamakhya is worshipped.

**An Honourable Member:** God includes Goddess.

**Mr. President:** It is bad as it is that we have brought in the name of God in our discussion. We should not become flippant about it.

**Shri Rohini Kumar Chaudhuri:** We should remember that when we started our political movement, we started it with the singing of Bande Mataram. What does Bande Mataram mean? It means an invocation to a Goddess. It means belief in a Goddess. Sir, we who belong to the Sakthi cult, protest against invoking the name of God alone, completely ignoring the Goddess. That is my submission. If we bring in the name of God at all, we should bring in the name of the Goddess also. As I said, this amendment should not have been brought. But as it has been brought, this is my point of view.

**The Honourable Shri Satyanarayan Sinha** (Bihar: General): Sir, the question may now be put.

**Pandit Govind Malaviya** (United Provinces: General): Sir, I wish to say a few words.

**Mr. President:** There are so many others who are wanting to speak. But it has

now been suggested that the matter be closed.

**Pandit Govind Malaviya:** It has been said that we should not impose our will on any section. I hope the other section of the House also will not do that. I wish, with your permission to say a few words on this matter.

**Mr. President:** But closure has been moved. I shall put the closure motion to vote.

The question is:

"That the question be now put".

The motion was adopted.

**Mr. President:** Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

**The Honourable Dr. B. R. Ambedkar:** He may be asked to withdraw it.

**Mr. President:** I suggested to him not to move it. It rests with him to withdraw it.

**Shri H. V. Kamath:** I am not withdrawing it.

**Mr. President:** He says he does not withdraw it.

The question is:

"That in amendment No. 2 of the List of Amendments (Volume 1), the following be substituted for the proposed preamble:-

'In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens,

Justice, social economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation;

in our Constituent Assembly do hereby adopt, enact and give to ourselves the Constitution'".

**Shri H. V. Kamath:** I claim a division.

**Pandit Govind Malaviya:** I want a division on this question.

**Maulana Hasrat Mohani:** I also want a division on this question.

**Pandit Govind Malaviya:** I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The Assembly divided by show of hands.

Ayes: 41

Noes: 68.

The amendment was negatived.

**Shri H. V. Kamath:** This, Sir, is a black day in our annals. God save India.

**Pandit Govind Malaviya:** Sir, it is so vital a matter and I again beg of you that we might have a division on this matter.

**Mr. President:** I have had the division now.

**Shri A. Thanu Pillai:** Sir, Mr. Kamath should not have made that statement, and he should withdraw it.

**Mr. President:** I may tell Pandit Govind Malaviya this. I have got here in our Rules the following:

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

In all matters requiring to be decided by the members of the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.

Votes may be taken by voices or division and shall be taken by division if any member so desires".

Here I have taken the voices and then I have adopted the particular method of division by asking members to raise their hands, instead of asking them to rise in their places. I think I have substantially fulfilled the requirement of the Rules.

**Shri Mahavir Tyagi:** On a point of order, sir, the President has already once laid down, by means of a Standing Order, as to what will be the method of Division. I have

not got the Order with me because it was issued separately. In that Standing Order it is mentioned in so many words that when a Member calls a Division the President shall get all the doors closed and say "Ayes to the Right. Noes to the Left". And then the Members will file past by the side of the Tellers. That Standing Order was issued during the session and the requirement of that Standing Order has not been fulfilled.

**Mr. President:** You have not read the rule rightly. Paragraph (4) of rule 30 says: "The Chairman shall determine the method of taking vote by division". I have followed that.

**Shri Mahavir Tyagi:** My point is once the standing order was issued, it cannot be changed verbally.

**Mr. President:** Is it suggested that paragraph (4) of Rule 30 is superseded?

**Shri H. V. Kamath:** That has been amplified and clarified in your office circular.

**Mr. President:** It does not require any clarification. It is very clear. The Chairman shall determine the method of taking voice by division:

"If in the opinion of the person presiding a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the Members who are for 'Aye' and for 'No' respectively to rise in their places and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman there and then declares the determination of the House, the names of voters will not ordinarily be recorded".

**An Honourable Member:** The word "division'' has got a particular meaning in point of phraseology. Claiming of division means that names will have to be recorded. It is not mere counting of hands. That is the practice followed in the Legislative Assembly.

**Mr. President:** We are not concerned with the procedure in other places,. Our procedure is governed by our own rules and I have taken the division in the sense intended by that order. That is my final ruling.

**Pandit Govind Malaviya:** I have no doubt about the rules. They are quite clear. It is for the Chair to decide the manner in which the views of the House should be obtained. I did not have any doubt in my mind when I made the request to you. But since it is so important a matter about which many of us feel so very keenly, I leave it to you to decide whether anything more should be done. If you are satisfied that what has been done is not enough then in view of our request and our feeling, if you could consider it feasible to have some other method for a division adopted, we shall be very grateful.

**Mr. President:** I am perfectly satisfied that I have got the view of the House correctly and that is all I am concerned with. We shall go to the next item.

**Pandit Govind Malaviya**: There was an amendment in my name on this point.

You have decided that only Mr. Kamath's amendment will be moved, but my amendment is quite different. It does not bring in the name of God and it is possible that it may not be offensive to anybody.

**Mr. President:** I am now going to take the amendments as they are on the Order Paper. I will see what is to be done about your amendment when we come to it. Prof. Shah is not here; so his amendment is not moved. Then Mr. Saksena's amendment.

**Prof. Shibban Lal Saksena:** Sir, I beg to move:

"That for the Preamble, the following be substituted:-

> 'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa, and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,
>
> We, the People of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist Republic, and to secure to all its citizens:

JUSTICE, social, economic and political,

LIBERTY of though, expression, belief, faith and worship,

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity and freedom of the individual and the unity of the country and the Nation:

> In our Constituent Assembly this;……..day of Vikrami Samvat 2006 (the 26th day of January, 1950 A.D.) do hereby enact, adopt and give to ourselves this Constitution'".

I have been very much pained to see the attitude of some of our friends regarding the introduction of the holy name of God and the Father of the Nation at the beginning of our Constitution. While they have a right to have their say, other people also have a full right to have their say. This country has always prided on its discoveries in the realm of the spirit and we are now afraid even to put in God's name at the commencement of our Constitution. I am one of those who think that we have produced a great piece of work by preparing this Constitution. There may be some defects in it. But I am sure we have done some very great things. It is only meet and proper that the name of God and the name of the Father of the Nation should be put at the beginning of our Constitution. I am sorry that some people should have thought that we are forcing it on them. There are other Constitutions in the world –the Irish Constitution, for instance-wherein in the very beginning in the Preamble God has been mentioned and homage has been paid to the martyrs who won their freedom. I have therefore been very much pained to feel that some Members merely at the mention of the name of God or the Father of the Nation feel that something is sought to be forced upon somebody. If they feel that way, they are at liberty to have their opinion, but why force others who feel intensely in the matter to eliminate God's name? I greatly

regret the attitude of my friends. I hope they will reconsider it. This Constitution will probably build our country on a new pattern and on the basis of the ideals set by the Father of the Nation. It is therefore meet and proper that we should humble ourselves before God and pay homage to the Father of the Nation by incorporating their names in the very beginning of the Constitution.

**Shri Brajeshwar Prasad** (Bihar: General): Mr. President, I rise to oppose the amendment moved by my friend Prof. Shibban Lal Saksena. I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution. The foundation stones of this Constitution are the decisions of the American Supreme Court. It is the Government of India Act, 1935, repeated again. If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in the rotten Constitution.

**Mr. President:** I will now put this amendment to vote.

**Acharya J. B. Kripalani** (United Provinces: General): May I request the Mover of the amendment to withdraw it? It is not behoving us to vote on this amendment. We must be very sparing of the use of the name of the Father of the Nation. My friend Shibban Lal knows that I yield to nobody in my love and respect for Gandhiji. I think it will be consistent with that respect if we do not bring him into this Constitution that may be changed and reshaped at any time.

**Prof. Shibban Lal Saksena:** Sir, in response to the appeal of Acharya Kriplani, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly withdrawn.

(Amendment No. 4 was not moved).

**Pandit Govind Malaviya:** The amendment of which I had given notice ran thus:

"That in the Preamble, for the words 'We the people of India' the following be substituted:-

'By the grace of Parameshwar, the Supreme Being, Lord of the Universe (called by different names by different peoples of the world).

From whom emanates all that is good and wise, and who is the Prime Source of all Authority,

We the people of Bharata (India),

Humbly acknowledging our devotion to Him,

And gratefully remembering our great leader Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom, and".

**Dr. P. S. Deshmukh:** I rise to a point of order. The essence of this amendment is in two respects. It introduces the name of God and it brings in the name of Mahatma Gandhi. Both of these issues have been decided by this House. In one case there has been some debate and voting; in the other case the honourable Gentleman has withdrawn the motion. I therefore urge that this amendment should be ruled out of order since the main ingredients in that amendment have been already decided by the House.

**Pandit Govind Malaviya**: If the words which I had been noted, it would have been seen that I had said that I was reading the amendment which I had intended to move. I had said that "it ran thus and thus''. If the House had borne with me for a moment, I was going to say, Sir, that this was the amendment of which I had given notice, but in view of the discussion which had just taken place what I wished to move now was:

I would delete the last portions referring to Mahatma Gandhi and others, and would also delete the word Parameshwara at the beginning. That was what I was going to say to meet the point of view which has been expressed.

**The Honourable Dr. B. R. Ambedkar:** They have been disposed of!

**Pandit Govind Malaviya:** Then the amendment would read:

"By the Grace of the Supreme Being, Lord of the Universe, called by different names……..".

**Maulana Hasrat Mohani:** Is he proposing some new amendment? I rise to a point of order. He is out of order. He is proposing something new.

**Pandit Govind Malaviya:** Then it will satisfy even the unreasonable point of view which has been expressed here. We will not be referring to 'God' as such or to anybody's particular God because my amendment says "called by different names by different peoples of the world" and yet we would be able to put into our Preamble something which has been the most distinctive and permanent feature of the thought and belief, of the tradition, of the culture and of the history of the entire life of the people of this country from time immemorial. I submit, Sir, that we have come here as representatives of the people of India. Honesty demands that we should record here what may be their view. In this Preamble, Sir…….

**Mr. President:** I shall decide the point of order. The first point is whether it is covered by the amendment which has been defeated. I think it is covered.

**Pandit Govind Malaviya:** Even after the deletions, if you think so, I shall take my seat.

**Mr. President:** By simply omitting the word Parameshwar you do not take out of the amendment which has been defeated.

**Pandit Govind Malaviya:** I thought the objection of some of our friends was to the word "God". I shall obey your Ruling, Sir.

**Shri Mahavir Tyagi:** I do not want to move my amendment No. 11 but I want to ask Dr. Ambedkar if he is going to keep to the promise he had made.

**Mr. President:** That is a different matter.

**Shri Mahavir Tyagi:** He told me to remind him at the time when the Preamble was being discussed.

**Mr. Naziruddin Ahmad:** If there is a breach of promise, then my friend should go to Court!

**Shri Mahavir Tyagi:** It is not a question of promise. I was assured according to the proceedings, by what Dr. Ambedkar had stated about the investment of sovereignty. I had moved an amendment and he had replied that the meaning was "vested in the people" but it was not defined in so many words I had insisted that it be ascertained. Dr. Ambedkar said: "You doubt that it vests with the people. I might tell my friend that I shall not have the least objection".

**Mr. President:** Is there any amendment?

**Shri Mahavir Tyagi:** But this is for the Drafting Committee to do it.

**Shri Satish Chandra** (United Provinces: general): There is an amendment No. 452 in list XXI to the same effect, standing jointly in the names of Shrimati purnima Banerji and myself.

**Shri Mahavir Tyagi:** If you permit me they might accommodate it in the Drafting Committee.

**Mr. President:** I understand there is an amendment to that effect. We shall have to take it up when we come to it.

Amendment No. 14: There are several amendments with regard to the name. Those do not arise now.

Does any Member who has given notice of the amendments printed in the first volume wish to move his amendment?

**Honourable Members:** No.

**Mr. President:** I shall go to the supplementary list. There are amendments in the supplementary printed list and I take it that no Member wants to move any of those amendments either.

**Honurable Members:** No, no.

(At this stage Shrimati. Purnima Banerji rose to speak).

**Mr. President:** Yours is one of these recent amendments, but I am now thinking of the old printed list.

Then we come to amendment No. 452.

**Shri Brajeshwar Prasad:** There is amendment No. 313 previous to that in List XIII second page.

**Mr. President:** Yes, you can move it.

**Shri Brajeshwar Prasad:** Mr. President, Sir, there are eight amendments standing in my name. I refer to amendments Nos. 313,314,316 and 317,318,319,320 and 323. Sir, I would like to move only one amendment.

I refer to amendment No. 313. Mr. President, Sir, I move:

"That for amendment No. 1 of the List of amendments (Vol. 1), the following be substituted:-

'That for the Preamble the following be substituted:-

"WE THE PEOPLE OF INDIA, having resolved to constitute India into a CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

1.an adequate means of LIVELIHOOD

2.FREE ND COMPULSORY EDUCATION

3. FREE MEDICAL AID

4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India".

**Dr. P. S. Deshmukh:** What about a camel and motor cycle?

**Shri Brajeshwar Prasad:** It is for you to suggest those things. Sir, this word secular has not found any place in our Constitution. This is the word on which the greatest stress has been laid by our national leaders. I do submit that this word ought to be incorporated in our Preamble because it will tone up the morale of the minorities and it will check the spirit of loaferism that is rampant in politics. I have laid stress on another word. I refer to the word 'Socialist'. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History. I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of

opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation.

Now I come to some other words which have found place in the Preamble. There seems to be a confusion of thought. I hold the opinion that the word 'liberty' and 'equality' do not go together. They are incompatibles. They are the enemies of one another, the one can only triumph at the expense of the other. With your kind permission, I would quote a small passage of a few lines from a booklet. I refer to the book entitled "Liberty *versus* equality'' by Muriel Jaeger:

"It is becoming more and more widely accepted that ownership is one of those liberties that infringe the liberty of others and so must be abolished, or drastically restricted. And at this point what one may call the "paradox of liberty" becomes acute. If every liberty that does, or may do, harm to one's fellow-men where taken away, there would be no liberty left. The abolition or restriction of private wealth implies some kind of public control. Public control means public planning, for the general good is the whole object of taking wealth out of private hands. This is well-worn platitude; but it is the details that interest us-the effect that the application of these platitudes will have upon our lives from day to day, from year to year, and from generation to generation."

"Public planning means that enterprise, labour, distribution must be strictly regulated. It means, therefore that that one's chance to choose one's occupation must be reduced, since the plan cannot possibly be worked unless enough labour is directed into the occupation where it is needed, regardless of whether enough people want to do that kind of work or not".

Sir, I would crave your indulgence for a few minutes.

**Mr. President:** Are you going to read the whole book?

**Shri Brajeshwar Prasad:** No, Sir.

**Mr. President:** I thought you said you would read one sentence, but at least you have read one paragraph.

**Shri Brajeshwar Prasad:** I have read a few lines; I wanted to finish one paragraph consisting of 12 lines.

I will just urge another point. I hold that liberty and equality are not merely incompatibles but they can be reconciled only in a class less society and here, I would again refer to another paragraph and I would like with your permission to read a few lines:

"As for the final goal, the Marxists, who are so severe with "Utopians", have always been rather pathetically vague. But so far as one can discover, they foreseen a state in which everyone will work cheerfully for the common good, any help himself to whatever he wants from the common stock, which will then be so ample that there will be no danger of any rivalry or clashing of interests. They think that this will be the natural result of a society 'without force and without subordination' and that good social habits will grow of themselves in a classless society, so that special state apparatus will become gradually superfluous. It appears from this that the ultimate Communist idea is complete Liberty combined with complete equality".

I do not want to place impossible ideals before the nation. Sir, it is only in a class-less society that we can achieve a reconciliation of the two, concepts of liberty and equality.

I have suggested that instead of these ideals laid down in the preamble we should have some pragmation ideals before us. If we succeed in providing an adequate means of livelihood, free and compulsory education, free medical aid and compulsory military training I would think that our efforts have borne fruit. I do not want to place impossible ideals before the nation which we know well that neither in our life-time nor in the life-time of our children or our grand children we will not be able to achieve. I would like to refer to another point before I conclude. I object to the word 'sovereignty' in this Preamble. I hold the opinion that the whole concept of Austrian sovereignty has been exploded. A legal concept must have some relation with real facts. If it is not so, it has got no value.

Sir, it is not right to say that the Government of Nepal is a sovereign State. It has got the right: it is sovereign and it can declare war against the U.S.A. The Government of the U.S.S.R. is free to liquidate the Communist Party of Russia. We know that both in the external and internal affairs the State is circumscribed by numerous factors. If the Govt. of Nepal declares war against America or the U.S.S.R. tries to liquidate the Communist Party. We know what the result would be. Therefore, I hold the opinion that we should not place any undue emphasis upon this word "sovereignty". I hold the opinion that this ideal is neither necessary nor desirable because sovereignty leads to war; sovereignty leads to imperialism. (Clapping and interruption).

**Mr. President:** I hope the honourable Member will take the hint.

**Shri Brajeshwar Prasad:** I have a right to demand protection from you. I can never be hood-winked in this way….. I will have my say and let honourable Members clap their hands, I will go on speaking and unless you ask me to close my speech, I will go on speaking. I cannot allow, Sir, without raising my voice of protest……

**Shri Mahavir Tyagi:** On a point of order, I hope you as the custodian of the rights of Honourable Members will see that Members are not shouted down like that.

**Mr. President:** There is no attempt at shouting him down. They only want to cheer him down. The honourable Member had better finish.

**Shri Brajeshwar Prasad:** Sir, I will now deal with only one aspect of the question. The word 'sovereign' has found a place in this Preamble. I am rather thick-skinned. I will never resume my seat. I will speak and then take my seat. I feel that this word 'sovereign' is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non-entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty.

We are sovereign. We are a sovereign State to the extent it is possible for a modern State to be sovereign. We do not aspire to rise to those Austinian heights because, as I have already stated, it is a frivolous concept, it is a mischievous concept. The deletion of the word 'sovereign will not in any way deter us from exercising the

functions of sovereignty which are vested in the Government of India. It will not detract one iota of sovereignty. But by the retention of this word 'sovereign', we are placing a false ideal, a mischievous ideal before the nation. Therefore, I am opposed to this Preamble. Let us have some pragmatic ideals, ideals which we may be capable of achieving in our own life time and in the life time of our children.

**Mr. President:** Does any one wish to say anything about the amendment? I shall put this amendment to vote.

The question is:

That the amendment No. 1 of the List of Amendments (Vol. 1), the following be substituted:-

That for the Preamble, the following be substituted:-

"WE THE PEOPLE OF INIDIA-having resolved to constitute India into a SECuLAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

1. an adequate means of LIVELIHOOD

2. FREE AND COMPULSORY EDUCATION

3. FREE MEDICAL AID

4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India".

The amendment was negatived.

**Mr. President:** We shall take up the amendment of which notice has been given by Shrimati Purnima Banerji, amendment No. 452.

**Shri H. V. Kamath:** On a point of order, may I submit, Sir, that I have not moved my amendment No. 2? This is with reference to my amendment. Therefore, it cannot arise.

**Shri Mahavir Tyagi:** On the point of order, may I submit, Sir.

**Mr. President:** The point of order has been raised. I am considering it. Let me find out what he has moved and what he has not moved.

**Shri Mahavir Tyagi:** On the point of order raised by my honourable friend Mr. Kamath. I beg to submit that on previous occasions, such amendments have been permitted in the House. When there was no occasion to give amendments because

they were time-barred, many of us took the opportunity of just hinging our amendments or connecting them with previous ones. If those Members did not move, it is not the fault of the other honourable Members who have come with their ideas and their amendments. Because there is no other chance of making the amendments relevant, with in the time, the only course left to them was just to relate their amendments to previous ones already given notice of. I would therefore submit, Sir, that at this fag end of the debate, you might kindly not give a ruling which will debar the moving of this amendment.

**Mr. Naziruddin Ahmed:** May I point out Sir, that this is not an amendment to another amendment, in which case it would have been barred by the rules, but an amendment "with reference to" some other amendment. Therefore, the amendment is in order.

**Mr. President:** I have as a matter of fact allowed amendments of this nature to be moved. So, I cannot rule this out.

**Shrimati Purnima Banerji:** Sir, I move:

"That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed preamble, the following be substituted:-

> "We on behalf of the people of India from whom is derived all power and authority of the Independent India…….

With your permission, Sir, I would like to drop the word "sovereign" here.

> "its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:-

Sir, my honourable friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore at this moment if members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from whom all power is derived and in whom all sovereign authority rests by merely believing that because they once to to the polls once in five years their sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life-breath of the Constitution which we have here framed. I do not

wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable friend Mr. Tyagi From the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borns my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

**Shri Mahavir Tyagi:** Sir, in supporting the amendment of my honourable Friend, Shrimati Banerji, I have to remind the House of the proceedings of 15th November, 1948, when a similar amendment was moved by me. It was worded like this that the sovereignty will vest in the whole body of people. It was discussed thread-bare and I was assured that the article to which I was moving that amendment was not the proper place for that amendment and I was promised that this amendment would be considered when the Preamble was discussed. Now is the occasion when I beg to remind the House of the promise the Chairman of the Drafting Committee gave me. I am keen that the residence of the sovereignty should be defined. I am more keen about it because up till today the sovereignty vests in His Majesty the King of England. There is an Englishman in whom we have vested the sovereignty for a century past. So if we do not say in so many word, as to where the sovereignty would vest in future it will go on vesting in an Englishman. We want to break it away from him. Therefore, we must definitely say that there is no more sovereignty attached to the King of England.

Then, I also do not want to let remain any doubt or danger of any Government, this or future, to bargain or barter away the sovereignty of the country in the name of Commonwealth or common brotherhood or common citizenship or whatever it be. So the sovereignty must be vested in so many words in the people as a whole. In China in their Constitution they have put it that the sovereignty vests in the whole people of China. Whether the Communists take China or not, the people will remain. People will not be animals if they become communists or if they adopt any party label. People will remain in India as well and the sovereignty will vest in the people of India. It must be defined so that the Government might not misuse it. It does not vest even in the Government. Government only represents the people. Because Dr. Ambedkar has agreed to put it in the Constitution, I do not want to dilate upon it and I hope he will kindly accommodate these words and make it clear once for all that the sovereignty vests in the people and not in any foreigner as it does today, nor in the state even though it has the title of being a "sovereign state".

**Acharya J. B. Kriplalani:** Mr. President, Sir, it was not my intention to speak but some friends wanted that at this last moment when practically we are finishing our Constitution I should speak a few words. Some of my friends said that I began, by a formal speech, the proceedings of this House and that I should, at this time of its Second Reading which is for all practical purposes the final reading, finish the proceedings.

Sir, you like a good host, have reserved the choicest wine for the last. This Preamble should have come in the beginning of the Constitution even as it is given in the beginning of the Constitution. There was a reason for that because it would have been before us in every detailed provision that we made in the Constitution. It would have cautioned us that we were not deviating from the basic principles which we have laid down in the Preamble. As I have sat in this House from day to day, I have seen that very often we have deviated from the basic principle laid down in the preamble

only recently we want against the great principle of democracy. This unfortunate land is divided into many castes and economic classes. There are innumerable divisions. I think it was the first time in the history of World's Constitutions that a new caste of administrators was created, and it was placed in a privileged position. It was placed in the position where even the chosen representatives of the people could not touch its special privileges as against the people. This, I submit, was going against the first basic principles of our Constitution.

Sir, I want, at this solemn hour to remind the House that what we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles and if I May say so, they are mystic principles. In fact these were not first legal and constitutional principles, but they were really spiritual and moral principles. If we look at history, we shall find that because the lawyers and politician made their principles into legal and constitutional form that their life and vitality was lost and is being lost even today. Take democracy. What is it? It implies the equality of man, it implies fraternity. Above all it implies the great principle of non-violence. How can there be democracy where there is violence? Even the ordinary definition of democracy is that instead of breaking heads, we count heads. This non-violence then there is at the root of democracy. And I submit that the principle of non-violence, is a moral principle. It is a spiritual principle. It is a mystic principle. It is a principle which says that life is one, that you cannot divide it, that it is the same life pulsating through us all. As the Bible puts it, "we are one of another," or as Vendanta puts it, that all this is One. If we want to use democracy as only a legal, constitutional and formal device, I submit, we shall fail. As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word "democracy". If we have not done that, we shall fail as they have failed in other countries. Democracy will be made into autocracy and it will be made into imperialism, and it will be made into fascism. But as a moral principle, it must be lived in life. If it is not lived in life, and the whole of it in all its departments, it becomes only a formal and a legal principal. We have got to see that we live this democracy in our life. It would be inconsistent with democracy to have it only in the legal and political field. Politically, we are a democratic people but economically we are divided into such classes that that the barriers cannot be crossed. If we have got to be democratic we have got to be economically so too.

I also say democracy is inconsistent with caste system. That is social aristocracy. We must do away with castes and classes, otherwise we cannot swear by democracy. And we must remember that economic democracy does not merely mean that there should be no classes, that there should be no rich and poor; but the State itself should live in a manner that is consistent with the life of the poor, if people happen to be poor. It is not economic equality if for pomp and pageant, we spend thousands and lakhs of rupees. It is again not democracy if at every corner of the Government House human beings are made to stand statue like and unmoving. Such things are against the dignity of the individuals. If we establish democracy, we have to establish it in the whole of our life, in all its departments, whether it be in administration, or in society or in the economic field. This we must know and understand.

Then we have said that we will have liberty of thought, expression, belief, faith and worship. We must understand the implications of this also. All these freedoms can only be guaranteed on the basis of non-violence. If there is violence, you cannot have liberty of thought, you cannot have liberty of expression, you cannot have liberty of faith or liberty of faith or liberty of worship. And this non-violence should go so far as

to make us not only what is popularly called tolerant of other people, but to a certain extent, we should accept their ideas as good for them. Mere tolerance will not carry us far. Many people are merely tolerant. Why? Because they are indifferent. They say "this man's worship is different from ours. It is wrong. The man is sure to go to hell; but let him, it is none of my business". That is not tolerance. That is intolerance, if violence is not used physically, it is because it is not possible always to use violence, but there is mental violence. We have to respect each other's faith. We have to respect it as having an element of truth. No religion in the world is perfect, and yet there is no faith without some element of God's truth.

Then we have said that there should be equality of status and opportunity. This implies that in our public affairs, we should be absolutely above board that there should be no nepotism, there should be no favouritism, there should be no "mine" and 'not mine'. This can be done. We can give equality of opportunity and equality of status only when what is considered as "Ours" is put behind and what is considered as "Not Ours" is put before. Unless we do these things, we will not be able to fulfil the aims of our Constitution.

Again I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, that there is one life pulsating through us all, or as the Bible says. "We are one of another". There can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived whether it is private life or it is public life, whether it is commercial life, political life or the life of an administrator. They have to be lived throughout. These things, we have to remember if our Constitution is to succeed.

Sir, one word more and I have done. I think the amendment proposed by Shrimati Purnima Banerji should be accepted, because it really describes the true position and as such it should be enunciated in the Preamble. On formal occasion, on great occasions, on important occasions, we have to remind our selves that we are here as the representatives of the people. More than that. We have to remind ourselves that we are the servants of the people. We often forget that we are here as the representatives capacity. We often forget that we are the servants of the people. It always happens that our language, because of our thoughts and actions, gives little countenance to this basic idea. A Minister says "Our Government" not "The People's Government". The Prime Minister says "My Government" not "The People's Government". Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly, that sovereignty resides in and flows from the people. (*Cheers*) I hope therefore, this House will carry Shrimati Purnima Banerji's amendment.

**Mr. President:** Are there some other people who want to speak?

**Mr. Naziruddin Ahmad:** Mr. President, Sir, the eloquent words of Acharya Kripalani require one explanation. He seems to think–and I speak with great respect-that the success of a democracy depends upon the introduction of some sweet and palatable words in the Constitution. I however, submit that the success of a democracy depends on how it is practically worked. It has nothing to do whatever with what we may state in the Preamble or in the Constitution. On the actual working of democracy its success depends.

**Honourable Members:** Closure, closure.

**Mr. President:** I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply.

**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, *viz*. that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

**Maulana Hasrat Mohani:** Then why don't you accept it?

**The Honourable Dr. B. R. Ambedkar:** I propose to show now, by a detailed examination, that my contention is true.

Sir, this amendment, if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory, if I may say so. Now, the declaratory part consists of the following phrase: We the people of India, in our Constituent Assembly, day, this month……. do hereby adopt, enact and give to ourselves this Constitution'. Those Members of the House who are worried as to whether this Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, his day, do hereby adopt, enact and give to ourselves this Constitution' Reading it in that fashion…….

**Shri Mahavir Tyagi:** Where do the people come in? It is the Constituent Assembly Members that come in.

**The Honourable Dr. B. R. Ambedkar:** That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum, that is quite a different question which has nothing to do with the point which we are debating whether this Constitution should have validity if it was passed by this Constituent Assembly or whether it will have validity only, when it is passed on a

referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

The point under debate is this: Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says: "we the people of the United States"-I am not reading the other parts--"We the people of the United States do ordain and establish this Constitution for the United States of America". As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met a Philadelphia to draw up the Constitution. (Honourable Members There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand, unless a man was an absolute pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. *('Hear, hear').*

**Maulana Hasrat Mohani:** I do not think. It is only a community.

**The Honourable Dr. B. R. Ambedkar:** That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned, I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that that is a right view to take Every independent country must have some kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less sovereign on that account. *(Interruption)*. I am taking the worst example. I know that some people have that sort of fear. *(Interruption).*

**Shrimati Purnima Banerji:** May I Sir……..

**Mr. President:** Let Dr. Ambedkar proceed. He has not insinuated anything.

**The Honourable Dr. B. R. Ambedkar:** I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore, I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect, in a form which would not fit in the Preamble as we have drafted, and therefore on both these ground I think there is no justification for altering the language which has been used by the Drafting Committee.

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

"That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed Preamble, the following be substituted:-

'We, on behalf of the people of India from whom is derived all power and authority of the Independent India, its constituent parts and organs of government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens".

The amendment was negatived.

**Mr. President:** There is no other amendment. The Preamble, as it is now open to discussion, if any Member wishes to say anything.

**Honourable Members:** The question may now be put.

**Mr. President:** If nobody is willing to speak, I shall put the Preamble to the vote. The question is:

"That the Preamble stand part of the Constitution".

The motion was adopted.

The Preamble was added to the Constitution.

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**Mr. President:** We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to all it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

**The Honourable Shri Satyanarayan Singha:** Sir, I move:

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

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

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

The motion was adopted.

**Mr. President:** I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the Second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes, and for recommending such formal or consequential or necessary amendments of the constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me with this, we now adjourn till such date as I may announce.

The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.

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*[Translation of Hindustani speech.]*