Mon., the 9th December 1946

The first meeting of the Constituent Assembly of India took place in Constitution Hall, New Delhi, on Monday, the 9th December 1946, at Eleven of the Clock.

ELECTION OF TEMPORARY CHAIRMAN

Acharya J. B. Kripalani (United Provinces: General): (in requesting Dr. Sachchidananda Sinha to take the Chair as temporary Chairman, said)-

*[Friends, at this auspicious occasion of historical importance I invite, on your behalf, Dr. Sachchidananda Sinha to be the temporary Chairman of this Assembly. Dr. Sinha needs no introduction. You all know him. He is not only the oldest among us but also the oldest parliamentarian in India, having served, as you know, as a member of the Imperial Legislative Council from 1910 to 1920. The entered the Central Legislative Assembly in 1921 not only as one of its members, but as Deputy President also. He was then entrusted with the portfolio of an Executive Councillor and Finance Member of the Government of Bihar and Orissa. So far as I remember Dr. Sinha was the first Indian who was ever appointed as a Finance Member of a Province. He has a particular taste for education having been Vice-Chancellor of the Patna University for eight years. Over and above all this, Dr. Sinha is the oldest Congressman among us. Up till 1920 he was a member of the Congress, being at one time its Secretary.

After the year 1920 when we started on a new way to gain freedom he parted company with us. He, however, never wholly left us. He has always been helping us. He never joined any other organization and his sympathies were ever with us. Such a person is entitled to be the temporary Chairman of this Assembly. His work is brief but it is all the same most important. It is inaugurating the proceeding of this House. As we begin every work with Divine blessings we request Dr. Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, (in your behalf, call upon Dr. Sinha to take the Chair.)

(Acharya J. B. Kripalani then conducted Dr. Sachchidananda Sinha to the Chair, which he then occupied amidst acclamation.)

MESSAGES OF GOODWILL
The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, I shall read out to you this morning three messages which have been received by me from responsible State Officials of America, China and the Government of Australia. The American Charge d'Affaires writes:

"My dear Dr. Sinha,

It gives me great pleasure to transmit herewith a copy of a telegram have just received from the Honourable Dean Acheson, the Acting Secretary of State of the United States.

The telegram received is as follows:

'TFrom the Acting Secretary of State,

Washington, D. C.

Dr. Sachchidananda Sinha,

Provisional Chairman of the Constituent Assembly, New Delhi. With the approach of December 9, I extend to you as Provisional Chairman of the Constituent Assembly, and through you to the Indian people,

the sincere good wishes of the United States Government and of the people of the United States for a successful conclusion of the great task you are about to undertake. India has a great contribution to make to the peace, stability, and cultural advancement of mankind, and your deliberations will be watched with deep interest and hope by freedom loving people throughout the entire world.' " (Cheers).

The next message is from the Embassy of the Republic of China--New Delhi.

Dr. Sachchidananda Sinha Provisional Chairman Constituent Assembly: 'On the auspicious occasion of the opening of the Indian Constituent Assembly I have the honour to extend to Your Excellency in the name of the National Government of China my heartiest congratulations. sincerely hope that your great Assembly will succeed in laying a solid foundation for a democratic and prosperous India.

WANG SHIH CHIEH,
The third and last message I have to read out to this Assembly is one from the Australian Government to the Members of the Indian Constituent Assembly.

"Australia has watched with keen interest and sympathy the course of events which have given the people of India their rightful place in the community of nations. The Australian Government, therefore, greets the opening of the Constituent Assembly as an outward sign of a new era for India and offers the delegates of the Constituent Assembly their best wishes for success in their task." (Cheers).

I am sure the House will authorize me and permit me to convey its thanks to the representatives of these Governments who have sent us such cheering and inspiring messages. I may further add that this is Every auspicious sign for the success of your work. (Cheers).

ELECTION PETITION FROM KHAN ABDUS SAMAD KHAN OF BRITISH BALUCHISTAN

The Chairman: The next thing which I have to bring to the notice of the House is that I have received an election petition from Khan Abdus Samad Khan of British Baluchistan challenging the validity of the election of Nawab Mohammad Khan Jogazai as a member of the Constituent Assembly representing British Baluchistan. The House will doubtless look into this matter, in due course, after the election of the permanent Chairman. But my ruling at this stage is that the gentleman declared elected will continue to be regarded as a Member of this House until the matter is disposed of, at a later stage, by the House, after the election of the permanent Chairman.

The next item on the agenda is the provisional Chairman's inaugural address. I will do my best to read out the whole of the address, but if I feel the strain too much, you will kindly permit me to hand over the typescript to Sir B. N. Rau, who has very kindly undertaken to read it for me. But I hope there will be no occasion for it.

CHAIRMAN'S INAUGURAL ADDRESS HON'BLE MEMBERS OF THE FIRST INDIAN CONSTITUENT ASSEMBLY:

I am deeply beholden to you for your having agreed to accept me as the first President of your Constituent Assembly, which will enable me to assist you in transacting the preliminary
business before the Ho such as the election of a permanent President, the framing of the Rules of Business, the appointment of various Committees, and settling the question of giving Publicity to, or keeping confidential, your proceedings—which will ultimately lead you to crown your labours by formulating a suitable and stable constitution for an Independent India. In expressing my sense of appreciation of your great kindness, I cannot conceal from myself that I feel comparing small things with great—that I am, on the present occasion in the position in which Lord Palmerston found himself when Queen Victoria offered him the highest Order of Chivalry, namely, the Knighthood of the Garter. In accepting the Queen's offer, Lord Palmerston wrote to a friend as follows:-

"I have gratefully accepted Her Majesty's gracious offer as, thank God, there is no question of any damned merit about the honour conferred on me."

I say I find myself more or less in the same position, for you have agreed to accept me as your President on the sole ground that I age, the senior-most member of this Assembly. Whatever the ground however, on which you have chosen to have me as your first President, I am nonetheless profoundly grateful to you. I have had, in my fairly long life, several honours conferred on me in recognition of my services as a humble worker in public interest, but I assure you that I regard your mark of favour as a signal honour, which I shall cherish throughout the rest of my life.

On this historic and memorable occasion, you will not grudge, I am sure, if I venture to address to You some observations on certain aspects of what is called a Constituent Assembly. This political method of devising a constitution for a country has not been known to our fellow-subjects in Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law, it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian constitution-makers, and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilise it to the best advantage in the interest of preparing a suitable constitution for a free and independent India.
The only other State in Europe, to the constitution of which we could turn with some advantage, is that of France, the first Constituent Assembly of which (called "The French National Assembly") was convoked in 1789, after the French Revolution had succeeded in overthrowing the French monarchy. But the French Republican system of Government had been changed since then, from time to time, and is even now, more or less, in the melting pot. Though, therefore, you may not be able to as much advantage from a study of the French system of constituent law as that of the Swiss, that is no reason why you should not seek to derive what advantage you can in the preparation of the task before you, by a study of it.

As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

I have referred above to the self-governing constitutions of the great Dominions of the British Commonwealth being based on, to a large extent, if not actually derived from, the American constitutional system. The first to benefit by the American system was Canada, the historic Convention of which country, for drawing up a self-governing constitution, met in 1864, at Quebec. This Convention drew up the Canadian Constitution, which was subsequently embodied in what is still on the Statute Book as the British North American Act, passed by the British Parliament in 1867. You may be interested to hear that the Quebec Convention consisted of only 33 delegates from all the provinces of Canada, and that Convention of 33 representatives issued as many as 74 resolutions, which were afterwards duly incorporated in total in the British North American Act, under the provisions of which the first self-governing Dominion of the British Commonwealth of Canada, came into existence, in 1867. The British Parliament accepted tile Canadian Convention's scheme in its entirety, except for making only one drafting amendment. I hope and pray, Hon'ble Members, that your labours may be crowned with a similar success.
The American constitutional system was more or less adopted in the schemes prepared for framing the Constitutions of Australia and South Africa, which shows that the results achieved by the American Convention held at Philadelphia in 1787, had been accepted by the world as a model for framing independent federal constitutions for various countries. It is for these reasons that I have felt justified in inviting your attention to the American system of constituent and constitutional law as one-which should be carefully studied by you-not necessarily for wholesale adoption, but for the judicious adaptation of its provisions to the necessities and requirements of your own country, with such modifications as may be necessary or essential owing to the peculiar conditions of our social, economic and political life. I have done so as according to Munro—a standard authority on the subject—the American Constitution is based on "a series of agreements as well as a series of compromises". I may venture to add, as a result of my long experience of public life for now nearly half a century, that reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India.

In commending to you for your careful consideration and acceptance, with reasonable agreements and judicious compromises, the fundamental principles of the American system, I cannot do better than quote the striking observations on the subject of the greatest British authority namely Viscount Bryce, who in his monumental work, called "The American Commonwealth", writes as follows, putting in a very few lines the substance of the fundamental principles of the American Constitution:-

"Its central or national- is not a mere league, for it does not wholly depend on the component communities which we call the States. It is itself a Commonwealth, as well as a union of Commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive officers. Still less are the minor communities, the States, mere sub-divisions of the Union, mere creatures of the National Government, like the counties of England, or the Departments of France. They have over their citizens an authority which is their own, and not delegated by the Central Government."

It may possibly be that in some such scheme, skillfully adapted to our own requirements, a satisfactory solution may be found for a constitution for an Independent India, which may satisfy the reasonable expectations and legitimate aspirations of almost all the leading political parties in the country. Having quoted the greatest British authority on the great, inherent, merits of the American Constitution, you will, I hope, bear with me a fairly long quotation from the greatest American Jurist, Joseph Story. In concluding his celebrated book,
called "Commentaries on the Constitution of the United States", he made certain striking and inspiring observations which I present to you as worthy of your attention. Said Story:--

"Let the American youth never forget, that they possess (in their Constitution) a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully-guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality if the work of man may justly aspire to such a title. It may, nevertheless, parish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are' created-these are the words which I commend to you for your consideration-by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them.,'

To quote yet one more leading authority on the almost ideal Constitution of America, James (at one time Solicitor-General of the United States) says in his highly instructive book, called, "The Constitution of the United States-Yesterday, Today, and Tomorrow"--

"Constitutions, as a governmental panacea, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time which has washed away the dissoluble fabric of many other paper constitutions, has left almost untouched its adamantine strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?

Hon'ble Members, my prayer is that the Constitution that you are going to plan may similarly be reared for 'Immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength, which will outlast and overcome all present and future destructive forces.

Having invited your attention to some aspects of the question of constitution-making in Europe and America, I may now profitably turn to some aspects of the question in our own
country. The first definite reference to a Constituent Assembly (though not under those words or under that particular name) I have found in a statement of Mahatma Gandhi, made so far back as 1922. Mahatmaji wrote:-

'Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives.'

The demand made by Mahatma Gandhi for a Constituent Assembly, composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders, but it was not till May, 1934, that the Swaraj Party, which was then formed at Ranchi (in Bihar), formulated a scheme in which the following resolution was included:-

"This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution."

The policy embodied in this resolution was approved by the All-India Congress Committee, which met at Patna-the capital of Bihar-a few days later, in May, 1934; and it was thus that the scheme of a Constituent Assembly for framing the Indian Constitution was officially adopted by the Indian National Congress.

The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared that-

"The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country."

In November, 1939, the Congress Working Committee adopted a resolution which declared that-

"Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential."
I may add that in the resolutions from which I have quoted above (those adopted at the Congress Working Committee of November 1939, and at the Faizpur session of the Congress of 1936) it was declared that the Constituent Assembly should be elected on the basis of adult suffrage. Since the Congress gave a lead on the subject in 1934, the idea of a Constituent Assembly had come to prevail largely as an article of faith in almost all the politically-minded classes in the country.

But until the adoption of the resolution on Pakistan, in March 1940, by the Muslim League, that political organization had not favoured the idea of a Constituent Assembly as a proper and suitable method for framing a constitution for this country. After the adoption of that resolution, however, the attitude of the Muslim League seems to have undergone a change in favour of the idea of a Constituent Assembly—one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus it may be stated that the idea of a Constituent Assembly, as the only direct means for the framing of a constitution in this country, came to be entertained and accepted by the two major political parties in 1940, with this difference that while the Congress desired one Constituent Assembly for India, as a whole, the Muslim League wanted two Constituent Assemblies, in accordance with its demand for two separate States in the country. Any way, whether one or two, the idea of a Constituent Assembly being the proper method for the framing of a constitution had clearly dawned by that time on public consciousness in the country, and it was with reference to that great mental upheaval that Pandit Jawaharlal Nehru declared that "it means a nation on the move, fashioning for itself a new Government of its own making, through their elected representatives".

It remains to add that the conception of a Constituent Assembly as the most appropriate method for framing the constitution of India had also found favour with the members of the Sapru Committee in the report of which, issued last year (1945), is formulated a definite scheme for the composition of a Constituent Assembly. We are meeting, however in Assembly today, under the scheme propounded by the British Cabinet Mission, which, though differing from the suggestions made on the subject by the Congress, the League, and other political organizations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically-minded classes in the country, but also by those not belonging to any political partly, as one well worth giving a trial, with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's scheme as that might lead me to trespass on
controversial ground, which I have no desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission, have been the subject of acute controversies between some of the political parties amongst us, and I do not want, there-fore, to rush in where even political angles might well fear to tread.

Hon'ble Members, I fear I have trespassed long on your patience, and should now bring my remarks to a close. My only justification for having detained you so long is the uniqueness of this great and memorable occasion in the history of India, the enthusiasm with which this Constituent Assembly had been welcomed by large classes of people in this country, the keen interest which matters relating to it had evoked amongst various communities, and the prospect which it holds out for the final settlement of the problem of all problems, and the issue of all issues, namely, the political independence of India, and her economic freedom. I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the great nations of the world. Let us not forget to justify the pride of the great Indian poet, Iqbal, and his faith in the immortality of the destiny of our great, historic, and ancient country, when he summed up in these beautiful lines: Yunan-o-Misr-o-Roma sabmit gaye jahan se, Baqi abhi talak hai nam-o-nishan hamara. Kuch bat hai ke hasti mit-ti nahin hamari, Sadion raha hai dushman daur-e-zaman hamara.

It means: "Greece, Egypt, and Rome, have all disappeared from the surface of the Earth; but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration, in spite of the fact that the heavens themselves had rolled and revolved for centuries, and centuries,, in a spirit of hostility and enmity towards us." I particularly ask of you to bring to your task a broad and catholic vision, for Rs the Bible justly teaches us--"Where there is no vision the people perish." (Applause).

NOMINATION OF DEPUTY CHAIRMAN

The Chairman (Dr. Sachchidananda Sinha): I have a proposal to make to you on purely personal grounds, and I hope You will kindly approve of it. For many years past, under medical advice, I have not been able to do any work in the afternoons, and I do not propose to sit after the luncheon recess. So for the time I am temporary Chairman, while the House is going on with the presentation of credentials and the signing of the register in the afternoon, I
propose to request the House to give me the assistance of a Deputy Chairman, and I propose that Mr. Frank Anthony be nominated by you. (After a pause). I declare the motion carried.

DEATH OF MR. PRASANNA DEB RAIKUT

The Chairman (Dr. Sachchidananda Sinha); Next, I am informed that a member of our Constituent Assembly, who had been duly elected, had passed away, Mr. Prasanna Deb Raikut from Bengal, and I desire on behalf of the Constituent Assembly to convey our condolences to his relations. I think I may take it as carried.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The Chairman (Dr. Sachchidananda Sinha): Now I think we shall start the formal business which is the presentation of credentials and the signing of the Register. I will present my credentials to myself. Though Hon'ble Members must pass through certain formalities, I have cut out from the procedure the coming of members to the platform to shake hands with the Chairman after signing the Register. We tested this matter yesterday, and found that it would take about a minute and a half, if not two minutes, if after signing his name each member were to ascend this platform by the circuitous route, and shake hands with the Chairman, and then return to this seat. So, I have thought that that formality may be dispensed with. The Secretary will now call out the names of Hon'ble Members, who will come up, present to him their credentials, sign the Register, and go back to their seats.

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

MADRAS

1. The Hon'ble Sri C. Rajagopalachariar.

2. Dr. B. Pattabhi Sitaramayya.

3. The Hon'ble Sri T. Prakasam.

4. The Hon'ble Dewan Bahadur Sir N. Gopalaswami Ayyangar.

5. Diwan Bahadur Sir Alladi Krishnaswami Ayyar.


8. Dr. P. Subbarayan.

9. Raja of Bobbili.


18. Sri B. Gopala Reddi, M.L.A.


20. Sri V. I. Muniswami Pillai, M.L.A.


22. Sri D. Govinda Doss, M.L.A.


25. Sri H. Sitarama Reddi, M.L.A.


27. Sri Kala Venkata Rao, M.L.A.

29. Shrimati G. Durgabai.

30. Sri P. Kakkan.

M.L.A.

31. Sri N. Sanjeeva Reddi, M.L.A.

32. Sri O. P. Ramaswami Reddiyar, M.L.C.

33. Sri C. Perumalswami Reddi, M.L.C.

34. Sri M. C. Veerabahu Pillai.

35. Mr. T. J. M. Wilson, M.L.A.

36. Sri P. L. Narasimha Raju, M.L.A.

37. Sri S. Nagappa, M.L.A.

38. Sri L. Krishnaswami Bharathi.


41. Dr. V. Subrahmanyam.

42. Sri C. Subrahmany.

43. Sri V. Nadimuthu Pillai.

BOMBAY

1. The Hon'ble Sardar Vallabhbhai J. Patel.

2. The Hon'ble Mr. B. G. Kher.

3. The Rt. Hon'ble Dr. M. R. Jayakar, P.C.
4. Mr. K M. Munshi.

5. Mr. Shankar Dattatraya Deo.

6. Mr. Narhar Vishnu Gadgil.

7. Mr. S. K. Patil.

8. Mrs Hansa Mehta, M.L.C.

9. Dr. Joseph Alban D'Souza, M.L.A.

10. Mr. M. R. Masani, M.L.A. (Central)

11. Mr. R. M. Nalavade, M.L.A.

12. Mr. B. M. Gupta, M.L.A.

13. Mr. S. Nijalingappa.

14. Mr. R. R. Diwakar,

15. Mr. S. N. Mane, M.L.A.

16. Mr. Khandubhai Kasanji Desai.

17. Mr. H. V. Pataskar, M.L.A.

18. Mr. Kanayalal Nanabhai Desai, M.L.A.

19. Mr. K. M. Jedhe.

BENGAL

1. Mr. Sarat Chandra Bose,

2. Dr. B. R. Ambedkar.

3. Mr. Kiran Shankar Roy, M.L.A.

4. Mr. Frank Reginald Anthony, M.L.A. (Central)
5. Mr. Satya Ranjan Baksi.

6. Dr. Prafulla Chandra Ghosh.

7. Sir Uday Chand Mahtab, K.C.I.E., M.L.A.

8. Dr. Suresh Chandra Banerjee, M.L.A.

9. Mr. Debi Prosad Khaitan, M.L.A.

10. Mrs. Leela Ray.

11. Mr. Damber Singh Gurung, M.L.A.

12. Dr. Syama Prasad Mookherjee, M.L.A.

13. Mr. Ashutosh Mallick, M.L.A.

14. Mr. Radhanath Das, M.L.A.

15. Mr. Promatha Ranjan Thakur, M.L.A.

16. Mr. Hem Chandra Nasker, M.L.A.

17. Mr. Somnath Lahiri.

18. Mr. Rajkumar Chakravarty.

19. Mr. Priyaranjan Sen.

20. Mr. Prafulla Chandra Sen.

21. Mr. J. C. Majumdar.

22. Mr. Surendra Mohan Ghose.

23. Mr. Arun Chandra Guha.

24. Mr. Dhananjoy Roy, M.L.A.

25. Mr. Dhirendra Nath Datta, M.L.A.
26. Mr. Prasunnadas Raikut Passed away before taking his seat in the Assembly.

UNITED PROVINCES

1. Acharya J. B. Kripalani.

2. The Hon’ble Pt. Govind Ballabh Pant.

3. The Hon’ble Shri Purushottam Das Tandon.


8. Acharya Jugal Kishore, M.L.A.

9. Mrs. Purnima Banerji, M.L.A.


15. Shri Banshi Dhar Misra, M.L.A.

16. Shri Bhagwan Din, M.L.A.

17. Shri Kamlapati Tiwari, M.L.A.

18. Shrimati Kamla Chaudhri.

20. Shri Harihar Nath Shastri, M.L.A.

21. Shri Gopal Narain, M.L.A.

22. Shri Feroze Gandhi.

23. Shri Jaspat Roy Kapoor.

24. The Hon'ble Pt. Jawaharlal Nehru.

25. The Hon'ble Mr. Rafi Ahmad Kidwai.


27. Shri Dayal Das Bhagat, M.L.A.

28. Shri A. Dharam Das, M.L.A.

29. Shri Gopi Nath Srivastava.

30. Shri Dharam Prakash.

31. Shri Ajit Prasad Jain, M.L.A.

32. Shri Ram Chandra Gupta, M.L.C.

33. Shri Pragi Lal M.L.A.

34. Shri Phool Singh, M.L.A.

35. Shri Masuria Din, M.L.A.

36. Shri Shibban Lal Saksena.

37. Shri Khurshed Lal.

38. Shri. Sunder Lall.

39. Shri Har Govind Pant, M.L.A.

40. Shri R. V. Dhulekar, M.L.A.
41. Shri Vishwambhar Dayal Tripathi, M.L.A.

42. Shri Venkatesh Narayan Tivary, M.L.A

PUNJAB


2. Sardar Harnam Singh.


4. Sardar Ujjal Singh, M.L.A.

5. The Hon'ble Mr. Mehr Chand Khanna.


7. Bakhshi Sir Tek Chand.

8. Sardar Prithvi Singh Azad, M.L.A.

9. pandit Shri Ram Sharma, M.L.A.


11. Dr. Gopi Chand Bhargava, M.L.A.

12. Chaudhri

Harbhaj Ram, M.L.A.

BIHAR

1. The Hon'ble Dr. Rajendra Prasad.

2. Mrs. Sarojini Naidu.

3. The Hon'ble Mr. Jagjivan Ram

4. The Hon'ble Mr. Shri Krishna Sinha.
5. Mr. Satyanarayan Sinha, M.L.A. (Central).


7. Dr. P. K. Sen.

8. The Hon'ble Mr. Anugrahnarayan Sinha.


10. The Hon'ble Rai Bahadur Sri Narain Mahtha.


13. Mr. A. K. Ghosh, M.L.A.

14. Mr. Bhagwat Prasad, M.L.A.

15. Mr. Boniface Lakra, M.L.C.

16. Mr. Rameshwar Prasad Sinha, M.L.A.

17. Mr. Phulan Prasad Varma, M.L.A.

18. Mr. Mahesh Prasad Sinha, M.L.A.

19. Mr. Sarangdhar Sinha, M.L.A.


21. Mr. Brajeshwar Prashad.

22. Mr. Jaipal Singh.

23. Mr. Chandrika Ram, M.L.C.

24. Mr. Kamleshwari Prasad Yadav, M.L.A.

25. Mr. Jagat Narain Lal, M.L.A.
26. Mr. Jadubans Sahay, M.L.A.

27. Mr. Guptanath Singh, M.L.A.

28. Mr. Dip Narayan Sinha, M.L.A.

29. Mr. Devendra Nath Samanta, M.L.C.

30. Dr. Sachchidananda Sinha, M.L.A.

C.P. AND BERAR

1. The Hon'ble Pt. Ravi Shankar Shukla.

2. Dr. Sir Hari Singh Gour.

3. The Hon'ble Mr. Brijlal Nandlal Biyani.

4. Mr. Rustom khurshedji Sidhwa, M.L.A.


6. Thakur Chhedilal, M.L.A.

7. Mr. Hari Vishnu Kamath.

8. Mr. Cecil Edward Gibbon, M.L.A.

9. Mr. Shankar Tryambak Dharmadhikar.

10. Guru Agamdas Agarmandas, M.L.A.

11. Dr. Punjbrao Shamrao Deshmukh.

12. Mr. B. A. Mandloi, M.L.A.

13. Mr. H. J. Khandekar.

14. L. S. Bhatkar, M.L.A.

ASSAM
1. The Hon’ble Srijut Gopinath Bardoloi.
3. Srijut Omeo Kumar Das, M.L.A.
4. The Hon’ble Srijut Basanta Kumar Das.
5. Srijut Dharanidhar Basu Matari, M.L.A.
7. Babu Akshay Kumar Das, M.L.A.

N.-W. F. PROVINCE
2. Khan Abdul Ghafrar Khan.

ORISSA
1. The Hon’ble Sri Hare-Krushna Mahtab.
2. Mrs. Malati Chowdhury.
3. Sri Biswanath Das.
4. Sri Bodhram Dube, M.L.A.
5. Sri Lakshminarayan Sahu, M.L.A.
6. Mr. B. Das.
7. Sri Nandakishore Das.
8. Sri Raj Krushna Bose, M.L.A.
9. Sri Santanu Kuram Das, M.L.A.
The Chairman (Dr. Sachchidananda Sinha): It has been brought to my notice that there is no Speaker in Sind as there is no legislature there now. Under the circumstances, the Secretary of the Assembly there, has signed the credentials certificates. They may be accepted.

SIND

1. Mr. Jairamdas Daulatram.

DELHI

1. The Hon'ble Mr. M. Asaf Ali.

AJMER-MERWARA


COORG

1. Mr. C. M. Poonacha, M.L.C.

The Chairman (Dr. Sachchidananda Sinha): If any Hon'ble Member’s name has not been called through oversight, he will stand and his-name will be called out. He will then come and sign his name in the Register.

(No one stood up.)

The Chairman (Dr. Sachchidananda Sinha): That finishes our, agenda for today. Therefore, there will be no sitting in the afternoon. The Assembly will meet tomorrow. A new agenda will be Prepared, which is not yet ready. I have asked the Constitutional Adviser's Office to circulate the agenda to Hon'ble Members, if possible by this evening, and I hope it may be done. If you so desire, the Assembly will meet at 11 A.M. or 11-30.

Many Hon'ble Members: 11 A.M.

The Chairman (Dr. Sachchidananda Sinha): We shall meet at 11.

The Assembly then adjourned till Tuesday, the 10th December 1946, at 11 A.M.
CONSTITUENT ASSEMBLY OF INDIA - Volume I

Tuesday, the 10th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman (Dr. Sachchidananda Sinha) in the Chair.

The Chairman (Dr. Sachchidananda Sinha) : If any Hon’ble Member has arrived since yesterday afternoon, who has not yet signed the Register nor presented his credentials, he may do so 'now.

(Nobody came forward).

The Chairman (Dr. Sachchidananda Sinha): I shall now take up item No. 2 which is the moving of a Resolution prescribing procedure for the election of a permanent Chairman. I understand that Acharya Kripalani will move this resolution. I invite him to do so.

PROCEDURE FOR ELECTION OF PERMANENT CHAIRMAN

Acharya J. B. Kripalani (United Provinces: General): Sir, with your permission, I propose to move the following resolution prescribing the procedure for the election of the permanent Chairman whom we propose to call as the President of the Constituent Assembly. The resolution thus:

"The Assembly hereby resolves that the following rules for the election of Chairman be adopted. (1) At any time before 2.30 P.m., today any member may nominate another member for election by delivering to the temporary Chairman or to a person appointed by him a nomination paper signed by the proposer and by a third member as seconder and stating (a) the name of the member nominated, and (b) that the proposer has ascertained that such member is willing to smallest number of votes shall be excluded from the election, and (2) At any time to be the temporary Chairman, the temporary chairman shall read of to the Assembly the names of the member a who have been duly nominated together with those of their proposers and seconders and, if only one member has been so nominated, shall declare that member to be duly elected. If more than one member has been so nominated the Assembly shall proceed to elect the Chairman by ballot on a date to be fixed by the temporary
Chairman. (3) For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote, if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly. (4) Where only two candidates are nominated, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing or lots. (5) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes, at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be: and such candidate shall be declared elected. (6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under rule (4) the determination as between the candidates whose votes are equal of the candidate who is to be excluded shall be by the drawing of lots’.

This resolution for the Procedure of election of the President needs no words from me to recommend itself to the House. These are the usual rules applied in a., legislative assemblies.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General) I beg to second the resolution.

The Chairman (Dr. Sachchidananda Sinha): The resolution has been duly moved and seconded. I shall put it to the vote now.

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, may I suggest some verbal alterations?

The Chairman (Dr. Sachchidananda Sinha): The Hon'ble Member is fully entitled to make any suggestions he desires, and we shall consider them after they have been noted down. Will the Hon'ble Member come to the rostrum before making his suggestions?

Dr. P. S. Deshmukh. (after having come to the rostrum) I suggest that in paragraph (1), line 4, the word "third" be substituted by the word "another", and that in paragraph 3, in the last but one line of that paragraph the word "and" in both places in that line be substituted by the word "or". I think these changes are, in my opinion, necessary.

The Chairman (Dr. Sachchidananda Sinha): Does, Acharya Kripalani accept these changes?
Acharya J. B. Kripalani: There is no objection.

Sri K. Santhanam (Madras: General) : It means that the seconder may mean a non-member.

The Chairman (Dr. Sachchidananda Sinha): I am not here to interpret it. Interpretation is a most dangerous thing. If the House will permit me. I shall read out the proposed amendments. The first amendment proposed is that in paragraph (1) for the word "third" the word "another" be substituted. Does Acharya Kripalani accept it?

Acharya J. B. Kripalani: So far as I am concerned I accept it; I have no objection.

The Chairman (Dr. Sachchidananda Sinha): Is there any objection on the part of any Hon'ble Member to the word "third" being changed into, it another"?

Sri M. Ananthasayanam Ayyangar (Madras: General)- I have got objection to this amendment. The inconvenience of accepting this change is this. There are already in the earlier portion of the paragraph the words " another member" in the second line of the paragraph, and if you accept the present amendment, it means that a person who is to be the Chairman, has himself got to be the seconder, and that is an absurdity. I therefore oppose this amendment. The original word "third" should. continue and there is no meaning in this amendment.

The Chairman (Dr. Sachchidananda Sinha): Do you desire that the original word in Acharya Kripalani's amendment should stand, and that no change should be made?

Sri M. Ananthasayanam Ayyangar: Yes.

Dr. P. S. Deshmukh: I see the objection to my amendment. and do not press it. But, I think it would sound far better if the first word "another" is changed into "a" and the word "third" altered into "another". I am afraid that it might look as if I am suggesting too many changes. But we are making a constitution, and I do not want. that anything should go out of this House....

The Chairman (Dr. Sachchidananda Sinha): It is not a matter of constitution at all. You first made one proposal that the word "third" be changed into "another". If you bring up another proposal before your first proposal is disposed of, that is not fair to the House. Now the only question before the House is, whether the word "third" as put down in Acharya Kripalani's resolution, should be changed into "another"- After this is disposed of, you may bring up any other proposal that you like.
Dr. P. S. Deshmukh: This is a consequential suggestion. I will read out to you....

The Chairman (Dr. Sachchidananda Sinha): No.

Acharya J. B. Kripalani: I think the thing as it stands is the best, I accepted the amendment in order to avoid a controversy.

The Chairman (Dr. Sachchidananda Sinha): If I may advise the House, I think there is no substantial difference in the meaning. The word may stand as it is, but it is for the House to decide.

The Hon'ble Sri C. Rajagopalachari (Madras: General): The mover of the amendment is under a misapprehension, I fancy. It is not a matter of elegance of language. The points that are covered by the words as they stand in the original Resolution are these. There should be a proposer distinct from the man proposed. Again, the other point is that the seconder should be distinct from either of these two. Therefore the word "third" is precise and necessary and any change will lead to a mistake.

An Hon'ble Member: When the mover of this Resolution has already accepted the amendment suggested, I don't think any further discussion is necessary.

The Chairman (Dr. Sachchidananda Sinha): But you may certainly permit the mover of a Resolution to change his mind subsequently. It would do no harm. You would not prevent him from doing that. I think as a result of this discussion, which we have had on this point, the word "third" may be left as it is.

An Hon'ble Member. Sir, it was moved formally by Acharya Kripalani that the name of the chairman should be the "President". That was not put to the vote. I don't know if it is necessary to put it to the vote, and if it has been adopted.

The Chairman (Dr. Sachchidananda Sinha): No. It has not yet been adopted. I have been advised by the Constitutional Adviser that according to the procedure in Parliament we have to use the word "Chairman" both for me, as the acting Chairman, and the permanent Chairman, but the Rules Committee, which will come into existence before long, will decide this matter. It will be opened to the Rules Committee to adopt the word "President". Therefore the word "Chairman" may be left as it is for the time being.
We shall now take up the third sub-section of Acharya Kripalani's resolution. "For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly."

The amendment is that the word "and", in the two places in this particular clause, should be substituted by the word "or". I should like to ask Acharya Kripalani whether he is prepared to accept that.

Acharya J. B. Kripalani: I submit that it makes no difference in the meaning, but "and" is more appropriate here.

The Chairman (Dr. Sachchidananda Sinha): I understand that you would prefer to adhere to the word "and" rather than have it changed into "or", though you say that practically they make the same thing?

Acharya J. B. Kripalani: Yes, Sir. I adhere to the words that are in the Resolution.

The Chairman (Dr. Sachchidananda Sinha): What is the sense of the House?

Some Hon'ble Members: "Or" is proper.

Many Hon'ble Members: No change.

The Chairman (Dr. Sachchidananda Sinha): The sense of the House seems to be that there is no need to change the word "and" into "or", and that the Resolution should stand as it is,

Mr. H. V. Kamath (C. P. and Bearer: General): Sir, I wish to say a few words on this Resolution. There is no provision for withdrawal of a contesting candidate.

The Chairman (Dr. Sachchidananda Sinha): I think the Hon'ble Member who has now come to address us wants to say that in an such rules there is provision for withdrawal of a member from an election contest. I think that is true. He says there should be-though necessity may not arise for it-but there should be a provision added that if any member nominated for election desires to withdraw himself from the contest he may do so at some time. I don't think there is any harm in adding that.
Mr. H. V. Kamath: With your permission, Sir, I wish to recommend the insertion of this clause "Where more than one candidate has been nominated, the Chairman will fix a date and time for the withdrawal of one or more of such candidates if he or they so desire."

The Chairman (Dr. Sachchidananda Sinha): Quite right. I shall try to put in clear language as well as I can, the substance of your suggestion. It may be added.

Well now, all the amendments having been disposed of, I put it formally to the House now that Acharya Kripalani's Resolution be carried.

The Resolution was adopted.

The Chairman (Dr. Sachchidananda Sinha): I declare Acharya Kripalani's resolution duly carried.

**PROVISIONAL ADOPTION OF CENTRAL LEGISLATIVE ASSEMBLY RULES AND STANDING ORDERS**

The Chairman (Dr. Sachchidananda Sinha): Now I would invite the Hon'ble Pandit Jawahar Lal Nehru to move the first of the three resolutions remaining to be moved.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Sir, I beg to move this formal resolution which I hope will facilitate the business of the House, namely-

"That the- Assembly do adopt, with such modifications as the Chairman may in his absolute discretion Permit, the Rules and Standing Orders of the Central Legislative Assembly pending the framing by the Constituent Assembly of its own Rules of Procedure."-'

As the House knows, this Constituent Assembly has started without any rules and regulations made by any outside authority. It has to make its own rules. I am later moving a resolution in the House asking for the appointment of a Committee to make the rules. Presumably that Committee will take two or three days to finish the work. Now we have to function during these few days before our own rules have been made. It is desirable therefore that we should have something to fall back upon. And the easiest method is to adopt the rules of the Central Legislative Assembly in their entirety, not absolutely, because then it might give rise to considerable difficulty. But we should adopt them and give the right to the Chairman to modify them, if necessary, to suit the occasion.
The Chairman (Dr. Sachchidananda Sinha): Win the Hon'ble mover kindly modify the words "the Chairman may in his absolute discretion permit" something to be done. I suppose it means the permanent Chairman.

The Hon'ble Pandit Jawahar Lal Nehru: Whoever is presiding at the time.

The Chairman (Dr. Sachchidananda Sinha): Very well.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): I second the resolution.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members may now offer amendments or suggestions, if any.

Sri Biswanath Das (Orissa: General): Sir, I wish to point out....

The Chairman (Dr. Sachchidananda Sinha): May I know if the Hon'ble Member is going to move any amendment?,

Sri Biswanath Das: I see certain difficulties in the wording of the Resolution. I wish him to consider the position and see if it is not possible or desirable to withdraw the Resolution.

The Chairman (Dr. Sachchidananda Sinha): I must apologise to you, but I could not follow What YOU said.

Sri Biswanath Das: I propose to point out certain difficulties, as I see them, in this, Resolution in its actual working.

The Chairman (Dr. Sachchidananda Sinha): In other words, you are objecting to the Resolution as drafted and moved.

Sri Bishwnath Das: Yes.

The Chairman (Dr. Sachchidananda Sinha) : Directly negativing the proposition? I hope the Hon'ble Mover will follow that. The speaker foresees, certain difficulties In the way of carrying out the Resolution moved 'by the Hor' ble Pandit Nehru and he, therefore though he does not use the word 'Oppose', is really opposing the Resolution.
Sri Biswanath Das: I am very sorry I have to undertake a job which is very unusual with me. Need I state in this connection that I have been a silent supporter of the lead given by the Working Committee and by the Hon'ble Pandit Jawahar Lal Nehru. But I see certain difficulties, in giving practical application to this Resolution. It proposes two or three things. Firstly, it says 'with certain modifications as the Chairman in him absolute discretion permits'; secondly, it says "the rules of, the Central Legislative Assembly may be given application". Sir, in the first Place, the Rules Committee is going to be appointed very shortly. I believe it, will, at best, take only two or three days to frame the rules and place them before the House. Let me hope that in the meanwhile we do not transact important business. Therefore the temporary proposals will not be very helpful despite the difficulties that are bound to arise in their application with various points of order.

Then, Sir, the Resolution leaves a lot of discretion to the Chair. I would appeal to my leader to consider whether It is not desirable and fair to leave the whole thing-the entire regulation of the business to the chair for two or three days within which period the regular rules will be framed and placed before the House. I suggest that if, in the meanwhile, the House proposes to do any business, let thy work be regulated by the Chair in his absolute discretion, is being permitted in the Resolution itself.

Thirdly, it is difficult for us to know the Procedure and the Rules and Standing Orders of the Central Legislature. For myself I do not know and I believe there are many Hon'ble Members here who have absolutely no knowledge of the Rules of Procedure of the Central Legislature. The rules differ in very important respects from Province to Province. It will take two or three days for members to acquaint themselves with the rules of the Central Legislature. Instead of putting the Hon'ble Members to this difficulty, I think it is better, to leave it to the Chair to regulate the business, if any, till such time as our own Committee frames rules.

Lastly, Sir each one of the 220 members of this House may have to be supplied with a copy of the Rules of the Central Assembly. I do not know whether the Central Legislature may be able to supply so many copies of the Rules now, at short notice. In view of these difficulties I believe there is no harm if Pandit agrees to withdraw this Resolution and leave the entire option to the Chair as it is proposed in the Resolution. I have nothing more to say. I am very sorry that I have to 'oppose' it as you, Sir, put it though it is not my purpose to do so.
The Chairman (Dr. Sachchidananda Sinha): I may inform Mr. Biswanath Das that, whatever term it might suit him to use, I, as Chairman, have no option but to call his attitude as one of opposition.

Sri Biswanath Das: That may be so; but I have not spoken in any spirit of opposition.

Shri Sri Prakasa (United Provinces: General): I would like to support the Resolution moved by the Hon'ble Pandit Nehru. If my Hon'ble Friend Mr. Biswanath Das were to read the Standing Orders and Rules of the Central Legislature he will find that they are almost perfect. They cannot be improved upon. I am sure when our own Committee has sat and deliberated in the matter, it will find that it cannot make any changes therein Sir, if your Secretary will circulate a copy of the Rules and Standing Orders of the Central Legislature to Hon'ble Members,-it does not cost very much--Mr. Biswanath Das and everyone else will find that the Rules that are good enough for the Central Legislature will be good enough for us also. I think it will be mere waste of time if we adjourn the business of this House in order to frame our own Rules of Business. I do not think you, Sir, as temporary Chairman, will find that these rules do not cover all possible contingencies that might arise in the course of our debate. I support my Hon'ble Friend, Pandit Jawahar Lal Nehru.

The Chairman (Dr. Sachchidananda Sinha): I am more concerned with knowing whether anyone is supporting Mr. Biswanath Das. (Laughter). I am concerned with the technical aspect of the question that the proposal of Mr. Biswanath Das has not even been seconded. I think, the sense of the overwhelming majority of the House is that Pandit Jawahar Nehru's Resolution be adopted.

Mr. N. V. Gadgil (Bombay: General): I want to make a request that all the members of the Constituent Assembly be supplied with a copy of the Manual of Rules of Business and Standing Orders of the Central Legislative Assembly.

The Chairman (Dr. Sachchidananda Sinha): I do not know whether there are as many copies available. We may not have; however, I shall try my best to meet your wishes.

I now put the Resolution of Pandit Nehru to the vote...... I declare it carried.

Now I shall request Pandit Nehru to move the next resolution, No. 6.

CONFIRMATION OF EXISTING ORGANISATION OF CONSTITUENT ASSEMBLY OFFICE
The Hon'ble Pandit Jawahar Let Nehru (United Provinces: General): Mr. Chairman, Sir, I beg to move the following resolution, namely.- "That this Assembly do confirm the existing Organisation of the Office of the Constituent Assembly, pending the final decision of this Assembly."

The House probably knows that for the last many months the Office of the Constituent Assembly has been functioning and has organised all that has gone before us, before the meeting of this Assembly. Much of their work has been completely behind the scenes and possibly few members realise the hard work that has preceded this meeting. In any event, the Office has to continue till the Assembly decides otherwise. Some kind of Office obviously the Assembly is going to have. It may choose to continue this Office, it may choose to expand it or to vary it but it must continue, and my Resolution is in a sense to legalise the continuation of this Office until such time as the Assembly thinks otherwise. I beg to move, Sir.

The Chairman (Dr. Sachchidananda Sinha): Is this Resolution seconded?

The Hon'ble Mr. M. Asaf Ali (Delhi): I have very great pleasure in seconding this resolution of Pandit Nehru.

The Chairman (Dr. Sachchidananda Sinha): I have very great pleasure in putting it to the vote. (Laughter). Am I not entitled to make any observation without provoking laughter? (Renewed laughter).

I would like to say, in support of your observations, Pandit Nehru, that in the few days that it has been my privilege to work with Sir B. N. Rau and his staff, I have received the greatest possible assistance, and I am sure they will continue to give the same valuable assistance to my successor...... I declare the Resolution carried.

Acharya Kripalani will now move resolution No. 7.

COMMITTEE ON RULES OF PROCEDURE

Acharya J. B. Kripalani (United Provinces: General): Sir, we have assembled here, having no Rules of Procedure. Therefore it was that Pandit Jawahar Lal Nehru moved his first resolution so that till we are able to make our rules, the rules that apply in the conduct of business in the Central Assembly may be applied in any resolution that we might discuss here before we have
made our rules. These rules require very careful consideration. For that purpose I propose that a Committee be appointed. I therefore beg leave to move the following resolution that

"This Assembly resolves- (1)to appoint a committee consisting of a Chairman and 15 others members to report on the following matters: (a) Rules of Procedure of the Assembly."

You will find in the copy you have got the words "Sections and Committees'. Sections and Committees are part of this Assembly, and the words therefore appear to me to be superfluous. I have therefore taken them off So- "(a) Rules of Procedure of the Assembly; (b)Powers of the Chairman; (c)organisation of the work of the Assembly, including the appointment and powers of Office-bearers other than the Chairman; and (d)Procedure for the declaration of the Committee;

(2)that the Chairman shall be the Chairman of the Committee; (3)that the Members of the Committee be elected in the manner prescribed in the Schedule; and (4)that, fending the decision of the Assembly in that behalf, the Chairman shall-- (a)fix the allowance of the Members of the Assembly; (b)in the case of the servants of the Government of India or any Provincial Government whose services are placed at the disposal of the Assembly fix their salaries and allowances in consultation with the Governments concerned; and (c)fix the salaries and allowances of all other persons recruited for the business of the Assembly.

Schedule

1. The Members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote. The election shall be conducted as nearly as possible in accordance with the regulations in force in this behalf in the Central Legislative Assembly.

2. The Chairman shall fix and announce a date and time for the holding of the election (if necessary) of the Members of the Committee.

3. Notice may be given by any member desirous of Proposing a member or members for election to the Committee. Notice shall be given in writing addressed to the Secretary and signed by the Member giving notice and shall be left at the Notice Office before 12 NOON on a day to be fixed by the Chairman. The member giving notice must satisfy himself that the Members he proposes are Willing to serve if elected."

After this I have added another paragraph. It runs as follows: It is not given in the paper you have got but it may be added:
"If within the time appointed by the Chairman any candidate proposed desires to withdraw his name, he shall be free to do.

4. If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman will appoint a further period within which the notice aforesaid may be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled.

5. If the total number of candidates nominated is equal to the number of vacancies to be filled, the Chairman shall declare all the candidates to be duly elected.

6. If the total number of candidates nominated exceeds the number of vacancies, an election shall be held in the manner prescribed in rule 1.

7. For the purpose of these rules, a member shall not be deemed to have been duly nominated or entitled to vote if he and his proposer have not signed the Assembly Register as members of the Assembly."

An Hon'ble Member. No seconder required for these nominations? All that is mentioned is the proposer and the candidate.

Rai Bahadur Syamanandan Sahaya (Bihar: General): The Rules just now proposed do not include a seconder. I just wanted to make it clear if a seconder is required for these nominations or a proposer will do.

The Chairman (Dr. Sachchidananda Sinha): Rai Bahadur Syamanandan Sahaya wants to know whether the nominations to be made to the election of the Committee will require only a proposer or also a seconder.

Acharya J. B. Kripalani: Sir, no seconder is necessary.

The Chairman. (Dr. Sachchidananda Sinha): Very good.

Mr. H. V. Kamath. (C. P. and Berar: General): I submit, Sir, that here again there is a pretty serious-lacuna with reference to the disposal of election petitions. This Assembly, in my opinion, Sir, must appoint a Tribunal for the disposal of election petitions, where such elections have been challenged by Hon'ble Members. For instance, yesterday, the Baluchistan
election was challenged. That was an the Agenda yesterday. But there is no provision for the appointment of a Tribunal.

The Chairman (Dr. Sachchidananda Sinha): The Committee, I understand, will frame certain rules for that purpose. I advise them to keep in mind, that they should frame rules also for going into election cases.

Dr. Suresh Chandra Banerjee (Bengal: General): Is it the intention of the Mover that the Rules should also apply to Sections? In my opinion 'Section' should be specifically mentioned here because you know there are difficulties with particular Sections.

Dr. Syama Prasad Mookherjee (Bengal: General): I also support the proposal made by Dr. Suresh Chandra Banerjee. I think it will be safer to accept it. If it is the intention of the Mover that the Rules Committee will also frame rules for Sections and Committees, it is desirable to include Sections and Committees specifically in the Resolution, so that it may read like this "Rules of Procedure of the Assembly, including Sections and Committees."

The Chairman (Dr. Sachchidananda Sinha): Dr. Syama Prasad Mookherjee is making a suggestion to you that you may kindly accept his proposal to include or add one word there.

Acharya J. B. Kripalani: I think that the Rules of Procedure of Assembly, Sir, include the ruler, for Sections and Committees and I do not see wily this superfluous addition be made in the draft as I have presented before the House.

Dr. Syama Prasad Mookherjee: May I just explain, Sir, that it is very necessary that the words 'including Sections and Committees' should be mentioned here? When the Sectional Assemblies will meet each may frame its own Rules of Procedure. The question may then arise whether the Constituent Assembly as such had the authority to frame Rules of Procedure for the Sections at all. Reference has then to be made to the Resolution which gave authority to the Rules Committee to frame rules and then the only mention which will be found will be that this Committee was appointed to frame Rules of Procedure of the Assembly. It will then be a question of interpretation whether the Rules Committee was at all entitled to frame rules for the Sections. If your intention is that this Rules Committee will also frame rules for the Sections, why not say specifically "including Sections and Committees' so that there- may not be any ambiguity or doubt whatsoever when Sections start doing their work.'
The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): I support the amendment of Dr. Mookherjee.

The Chairman (Dr. Sachchidananda Sinha): Have you any objection to substituting or adding that word 'including' there to make, as they contend, the sense clear still?

Acharya J. B. Kripalani: I think if there are additional rules necessary for the Sections, it will be laid down that the Sections will not make any rules inconsistent with the rules of the whole Assembly. Mr. submission, Sir, is that this Rules Committee will make general rules of a very broad nature and these will apply to Sections and Committees. If any Committee or if any Section wants any additional rules, they shall be made by it subject to this that such rules shall not be inconsistent with the general rules that this Committee has made. Therefore, I would like this section of the Resolution to stand as it is.

Sardar Harnam Singh (Punjab: Sikh): Mr. Chairman, I have got two points to put before this House regarding the Resolution proposed by Acharya Kripalani. One relates to para. 1(a) of the resolution. I agree with Dr. Syama Prasad Mookherjee that instead of the words in para. 1(a) of the resolution, "Rules of Procedure of the Assembly" it should be "Rules of Procedure of the Assembly, its Sections and Committees". That is my first proposal. The Cabinet Mission in their elucidations always referred to the Sections as Sections of the Constituent Assembly. Therefore, my proposal is that in para. 1(a) of the rule must be read as "Rules of Procedure of the Assembly, its Sections and Committees".

Now there is another matter. Acharya Kripalani, in moving the Resolution stated that the words, "Sections and Committees", were superfluous and therefore he was for deleting them. In the proposed Rules of Procedure for the Assembly, it is therefore understood that the Rules of Sections and Committee are included. One of the Committees that you will be setting up in this preliminary session is the Advisory Committee for certain purposes outlined in paragraph 20 of the Cabinet Mission's proposals. The Cabinet Mission have clearly stated that the Advisory Committee must have full representation of the minorities. Now, when the Rules of Procedure for that Committee are to be framed by a Committee which is to be elected by this House, according to paragraph 1 of the Schedule, I fear that minorities will not have any say in the Rules which are to regulate the procedure of the Advisory Committee. Therefore, my second proposal is that para. 1 of the Schedule, must read "Ten of the members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote" and I wish to add a second para. That second para. would be, "The remaining five shall be nominated by the Chairman of the Assembly so as to give adequate representation on the Committee to important minorities." Otherwise, I, fear the
work of the Advisory Committee might be regulated in such a way as may go to the detriment of some important Sections of this House, namely, the minorities. These are my two proposals and I submit that clause (1) may be amended as suggested ind an additional para. may be added to the Schedule as para. 2 and instead of seven paragraphs in the Schedule, we may have eight.

Mr. K. M. Munshi (Bombay: General): Mr. Chairman, I rise to support the amendment moved by Mr. Suresh Chandra Banerjee and supported by Dr. Syama Prasad Mookherjee. The business of this Assembly, to borrow the phraseology of the House of Commons, would naturally include the business of its Sections and Committees. Therefore, if the words stood as they are, "Rules of Procedure of the Assembly," there would be

strictly no need to mention Sections and Committees. There is no doubt about that. But at the same time, we have not yet a clarification of the State Paper about this matter and it would be extremely unwise, I submit, Sir, to omit the words "Sections and Committees" because that would show that this Constituent Assembly is not a self-determining and self-governing institution which we insist it is. We may lay ourselves open to the argument that any part or any section of it or any Committee of it can function independently or frame its own rules. Acharya Kripalani, him-. self mentioned that if we left the thing as it is, rules could be made, whereby we can lay down that the Sections and Committees will not have the power to make rules which are contrary to or inconsistent with the rules made by this Committee. That argument itself shows that it is competent for this Procedure Committee to regulate to some extent the procedure of the Sections and Committees. In view of the discussion which has already taken place here, it is much better that the words 'Sections and Committees' should stand rather than their absence lead to further discussion on the interpretation of our Resolution. I envisage a point of order. Suppose this Procedure Committee starts considering questions about Sections or even incorporating a rule, as Acharya Kripalani desired, a point of order is sure to be raised whether the word "Assembly" includes 'Sections and Committees'. At that time, it would be the Chairman of the Procedure Committee who will have to give the ruling. It is better that that point should not be left merely to the decision of the Chairman of the Procedure Committee, who may be the permanent Chairman. It should be laid down definitely by this House that the pointed out are Sections of the Assembly, and that they do not form independent bodies which can provide for procedure inconsistently with the rules of the Constituent Assembly. I therefore submit that it is necessary, particularly now as the question has been raised on the floor of this House, that the scope and extent of this resolution should be made clear by adding the words "Rules of Procedure of the Assembly including its Sections and Committees".
The Hon'ble Srijut Basanta Kumar Das (Assam: General): Mr. Chairman, Sir, much of what I was going to say has been anticipated, by Mr. Munshi. I would like to raise at this stage a point of order on the fundamental question as to whether this Constituent Assembly will have any right to scrutinize the work of the Sections and of, Advisory Committees. This is necessary, Sir, in view of the principle that underlies the amendment that has been moved for including the Sections and Committees within the scope of the Resolution. Different functions have been allotted to the Sections and to the Advisory Committees. A Section will Provincial Constitution and also a Group Constitution. The Advisory, Committee will advise on the fundamental rights of citizens, on the way as to how the interests of minorities are to be protected and as to the scheme to be formulated for the administration of Excluded Areas. Now whatever the Section and the Advisory Committees do, they may say that this Constituent Assembly, the Plenary Session will have no right to scrutinize their acts. I would therefore request you, Sir, to give a ruling on this point as to how far the Constituent Assembly will be entitled to give direction or to examine the work of the Sections and of the Advisory Committees. Therefore, Sir, before this Resolution is adopted and before all the points that have been discussed in connection with the Resolution and the amendments moved on it, are further discussed, I would like to ask from you a ruling on this point.

The Chairman (Dr. Sachchidananda Sinha): I have no desire that my ruling should be dragged into the Federal Court. Therefore, instead of giving a ruling which I have no desire to do. I shall invite Pandit Jawahar Lal Nehru to express his views

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Mr.

Chairman, Sir, this Resolution was considered to be a formal resolution but from the trend of the discussions held, it seems: there is a certain misapprehension in the minds of Hon'ble Members. Some hold strong views about it. Undoubtedly anything that is done in the Sections Will have to be considered by this House. I think the original draft was a Proper draft but when this matter was brought up in the shape of an ,amendment, then obviously it becomes entirely a different matter. There is opposition and an amendment has been asked to be carried out. If that becomes the expression of the view of the House because that amendment is opposed to the Resolution as originally drafted, it was supposed to give full powers to that Committee to consider the matter. Now an Hon'ble Member from Assam brought in the Advisory Committee into the picture. The Advisory Committee obviously and patently has to report to the Constituent Assembly. There is no doubt about it. I do not think anybody else will have any doubt about it and I take it that all Committees of this House should report to this House. Therefore I wish only to suggest to this 'Hon'ble House that this is hardly is
suitable time at this stage for us to consider the whole scope of this matter when the House is agreed on the main issue. I would therefore suggest that the mover of this resolution, Acharya Kripalani, do accept the amendment that has been put forward.

Acharya J. B. Kripalani: I accept the amendment.

Shri R. V. Dhulekar (United Provinces: General): [Mr. Chairman, I desire to the amendment that the intended, Procedure Committee .... ]

The Chairman (Dr. Sachchidananda Sinha): [May I respectfully ask whether the Hon’ble Member does not know English.]

Shri R. V. Dhulekar: [I know English, but I want to speak in Hindustani.]

The Chairman (Dr. Sachchidananda Sinha): [Many of the members such as Mr. Rajagopalachari do not know Hindustani.]

Shri R. V. Dhulekar: [People who do not know Hindustani have no right to stay in India. People who are present in this House to fashion out a constitution for India and do not know Hindustani are noteworthy. They had better leave.]

The Chairman (Dr. Sachchidananda Sinha): [please say what you wish to say.]

Shri R. V. Dhulekar: (I desire to move that the Procedure Committee should frame all rules in Hindustani which may be translated into English.]

The Chairman (Dr. Sachchidananda Sinha): [Order, order you are not permitted by me to address the House on the question of bi-lingualism, and printing of papers in two or more languages. You are completely out of order, You came to speak on the amendment to Acharya Kripalani’s resolution.]

Shri R. V. Dhulekar- My amendment is that the procedure committee should frame rules in Hindustani. They may then be translated into English. When a member, discusses a rule he will read its Hindustani version and demand a decision on the basis of that version and not English. I am sorry...]

The Chairman (Dr. Sachchidananda Sinha): Order, order,

Shri R. V. Dhulekar: I am moving an amendment to Acharya Kripalani’s resolution. As a member of the house I have a right to do so. I move that the Procedure Committee should
frame rules in Hindustani and not in English. As an Indian I appeal that we, who are out to
win freedom for our country and are fighting for it, should think and speak in our own
language. We have all along been talking of America, Japan, Germany, Switzerland and
House of Commons. It has given me a

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headache. I wonder why Indians do not speak in their own language. As an Indian I feel that
the proceedings of the House should be conducted in Hindustani. We are not concerned with
the history of the world. We have the history of our own country of millions of past years.]

The Chairman (Dr. Sachchidananda Sinha): Order, order

Shri R. V. Dhulekar: [I request you
to allow me to move my amendment.]

The Chairman (Dr. Sachchidananda Sinha): Order, order [I do not permit you to proceed
further. The House is with me that you are out of order.]

Acharya J. B. Kripalani: I submit that if it Will help the House to cut short the discussion, I
would accept what has been suggested.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): I want to say a few words on this
Resolution. I am not sure whether the views I am now putting before this Assembly will not
be regarded as too cautious, but I am bound to point out a few considerations which I want the
House to note carefully. These considerations are against the express mention of the words
"Sections and Committee". My view is no doubt actuated by a feeling of caution, which I
think is desirable at the present stage. Remember the word "Sections". You are asked by
express terms to legislate for them in advance of their future formation. Remember "Sections"
include 'B' and 'C' Sections. Remember further that in 'B' and 'C' Sections there is likely to be-
almost certainly to be--a preponderance of a certain group of men who are not present here
today and who may be present at the late when these Sections begin to function. That group
of men are not present here today under a feeling of suspicion, if not hostility. Would you like
to legislate for them in advance at this stage, or would you not let the matter remain where it
is, namely, that as the word 'Assembly' prima facie would include 'Sections' no rules can be
framed by Sections 'A', 'B' and 'C' which are in conflict with the rules of the Assembly? This
Would be the usual constitutional rule. Would you not rather let matters rest at this, or would
you go further and rub the point in by making an express mention of Sections implying there by that we here today in the absence of that group, make it obligatory by express words that the rules framed by the Assembly shall apply to the Sections. Such rubbing in is absolutely unnecessary, 'because the rules of the Assembly would prima facie include rules of the, Section Remember that this group of men is not present here today and is, besides, watching these proceedings with jealousy and suspicion to discover whether, you are taking anything out, of their hands and deciding it finally in advance of their arrival? If you do so may it not interfere with their future arrival here in a friendly and trustful atmosphere? 'I therefore suggest that the words as they stand in the original Resolution of Acharya Kripalani, may be accepted instead of going further to make an express mention of Sections, and Committees.

Mr. Debi Prosad Khaitan (Bengal: General): Mr. President, Sir, I had no desire to speak on this motion, but in view of one word used by Mr. Munshi in the course of the amendment, namely, to add the word "its" and the subsequent speech delivered by my estimable friend, Dr. Jayakar, I felt inclined to speak a few words. I shall first deal with the suggestion made by Mr. Munshi, namely, the inclusion of the word "Its". I hope, that the Hon'ble Mover of the amendment, Dr. Syama Prasad Mookherjee, will not accept that suggestion. The use of the word "its" in the course of this Resolution might put upon it an interpretation which is not intended either by Dr. Mookherjee of Acharya Kripalani. It might be interpreted to mean that the word "its" limits the scope to Committees appointed by the Assembly and not appointed by the Sections. Therefore, I suggest, Sir, that the amendment as moved by Dr. Syama Prasad Mookherjee, namely, "Assembly including Sections and Committees" be accepted by this House.

As regards the fear expressed by Dr. Jayakar, I would only suggest, as explained by Pandit Jawahar Lal Nehru and Acharya Kripalani, that this Assembly is one entitled to make rules governing the procedure not only of the Union Constituent Assembly as such but also governing the procedure of all Sections and Committees that may, be brought into operation by it. I have not the slightest doubt that, whether any group of members be present.in this House or not, this Assembly has got to proceed with its work in its entirety. Irrespective of the question whether that group decides to join or not to join, we have got to carry on our work, and I do hope that as time passes that group of men will see fit to serve the interests of the country as a whole by joining it and advising us how to shape the destiny of the country. But, so long as they are not here, I
repeat my submission that we should go on with our work, with our heart in it and looking to the interests of the country as a whole. I therefore hope that no fears will be felt or expressed. Let us include in this Resolution the words "Sections and Committees" to avoid future complications. I hope the House as a whole will accept that amendment.

Mr. S. H. Prater (Madras: General): Mr. Chairman, I would like completely to support what was being said by Dr. M. R. Jayakar. I feel that while this House might frame general Rules of Procedure it ought not at this stage to interfere with or frame rules for Sections. Dr. Jayakar has pointed out the implications of that, and it would be good politics to follow what Dr. Jayakar has said. We all want to do these things, but not at this stage. There is time for it. Therefore I wholeheartedly support that the Resolution as originally moved by Acharya Kripalani do stand.

Mr. Sarat Chandra Bose (Bengal: General): Mr. Chairman. I think it would conduce to clarity if the words suggested by my friend Dr. Suresh Chandra Banerjee, and which suggestion was supported by my friend Dr. Syama Prasad Mookherjee, were introduced into this Resolution and accepted by the House.

An Hon'ble Member: The words "including its Sections and Committees".

Another Hon'ble Member: Not "its".

Mr. Sarat Chandra Bose. The word "its" does not improve the position and I am quite satisfied if the words "including Sections and Committees" are introduced into the Resolution. Acharya Kripalani In moving the Resolution said that it was his intention that the Rules of Procedure of the Assembly should govern the Sections and Committees as well. But as the point has been raised from different sides of the House, whether it should be done or not done, I think it will settle all future disputes if we accept the addition of these words. I would desire to refer in this co to what Dr. Jayakar said. I do not think it would introduce any conflict at all in future if this Assembly were to lay down Rules of Procedure which would govern not only the main Assembly but its Sections and Committees as well. On the contrary, I feel that it would resolve many a conflict in advance. I do not desire to say more than this that if we are thinking that any conflicts would arise between the main Assembly and the Sections, we had better resolve the conflict here and now by introducing the words "including Sections and Committees".

The Chairman (Dr. Sachchidanands Sinha): I think we have discussed this long enough.
The Hon'ble Mr. B. G. Kher (Bombay: General): I have a suggestion to make .......

The Chairman (Dr. Sachchidananda Sinha): I hope the Hon'ble Member's suggestion will not be accompanied by a long speech.

The Hon'ble Mr. B. G. Kher: I am not very anxious to make a speech at all. We ought not to leave doubt in the minds of this Assembly or the world outside that, this Assembly is supreme in so far as its Sections and its procedure are concerned. After the debate and the various fears that have been now expressed, I think it would be impolitic to refuse to accept the words "Sections" as also "Committees". We are not at all certain to-day whether the Sections are coming in or whether the Sections are going to sit. A good way out of it would be to add the words "with power to co-opt", so that when other people do come, if these rules are not acceptable or if these rules are required to be amended, or if any suggestions are made, it would be possible to amend them. I suggest, therefore, that it would be best to give the Committee which we are now going to appoint power to co-opt so that they may from time to time be able to suggest amendments and alterations which could be afterwards confirmed, ratified or rejected by the House. So that I think we should at present accept the amendment of Dr. Sayama Prasad Mookhrjee with this further addition "with power to co-opt". If that is done, I feel that We shall meet the needs of the situation much better.

Mr. Jairamandas Daulatram (Sind: General): I do not wish to take much time of the House at this late stage of the debate. I will say very briefly whatever I have to say. I think everybody should take the stand that this Constituent Assembly is the supreme body. It must have the right to frame rules for its Sections and Committees. I do not think that it is wise to keep simply the word "Assembly" and then leave it to be interpreted that we intended the word to include Sections and Committees. "Intentions" and their "interpretations", as experience has shown us, are a dangerous thing! We ought to make everything as clear as possible. At the same time we have got, to deal with the possibility of those friends who are absent to-day joining us at a later stage. If that development does take place we may provide for it. Therefore, I support what my friend, Mr. Kher has said. At the same time, the word "including" is, in my opinion, inappropriate. If the original form is retained, then the little rubbing in which the word "including" involves would also be removed. Again we need not frame all the rules at once. It may be that with regard to the Sections, rules may have to be framed later, or we frame rules now with this understanding that if any changes or amendments become necessary, they will be made by the Procedure Committee, and if it has
got the power to co-opt additional members, all the difficulties and possible developments will have-teen met.

Acharya J. B. Kripalani: There seems to be some misapprehension about the scope of the work of this Committee and also the time for which this Committee will be in existence. As I pointed out, while submitting this resolution before you, the rules that are required to be made are for the conduct of business now and here. We have absolutely no rules, we are writing on a clean slate. I also said that the rules would be more or less such as guide the proceedings of all Assemblies, and these would be of a general nature. There is no doubt in my mind that more rules will have to be framed by Committees themselves and by Sections. They may be called by-rules or by any other name. This Committee will not frame exhaustive rules. As for the question of co-option, it need not arise at this stage. This Committee is not going to be permanent. When any section of the House that is absent today decides to come in, then, if they have any objection to the rules that have been framed, this House can always order that they be revised. Therefore this question of co-option also does not arise. I think it is a bad method to appoint a Committee and to give it powers of co-optic-n when that Committee has been formed by the method of the single transferable vote. I do not know, Sir, Whether you have admitted an amendment that ten people be selected by single transferable vote and five be co-opted from minorities. We have already made provision that the members of this Committee be selected by the method of the single transferable vote. That should bring in all Minorities. It is should be appointed by a body of ten people. Therefore I appose that amendment if you, Sir, have allowed it.

As for including the words 'including Sections and Committees' as there is a large body of opinion in favour of it, I accept it. (Cheers)

The Chairman (Dr. Sachchidananda Sinha)-: A resolution was moved by Acharya Kripalani. Dr. Suresh Banerjee has moved an amendment to it. There has been prolonged discussion over these and all aspects of the question have been fully thrashed out. Acharya Kripalani has now declared in his final reply that he accepts the amendment proposed by Dr. Suresh Chandra Banerjee. I

will now put the proposition to the vote of the House.

Sardar Ujjal Singh (Punjab: Sikh): What about the amendment about nomination by the President or co-option by members?
The Chairman (Dr. Sachchidananda Sinha): That has not been moved. I do not think I can permit at this stage any amendment the text of which is not before me.

The amendment before the House now is this: In clause (a), after the word 'Assembly', insert the words 'including Sections and Committees'.

The amendment was adopted.

Sardar Ujjal Singh: Sir, I move: "That in line 2, after the words '15 other members', the words 'with power to co-op', be added."

In moving this amendment my object is this: Under the method of proportional representation, certain important minorities may not be represented. Acharya Kripalani was pleased to say that that method had been provided to give representation to all minorities. Perhaps he has overlooked the fact that out of a House consisting of 212 members, you have to elect 15 and that if a group consists of only four or five members, it may not get representation at all. A member of that group may not get the necessary quota and it will not be possible for that group to find a seat on the Committee. The only means of giving representation to that small minority will be, either nomination by the President or co-option. With that end in view, I propose this amendment. I thought it would be quite suitable if this question of addition of members of certain groups that are unrepresented is left to the Chairman. That would be enhancing the power of the Chairman. But if that is not possible or acceptable to the House, I would suggest that this power be given to the Committee itself. A similar procedure exists in various bodies wherein it is not possible to give representation to the various interests to be represented. With these few words I move my amendment.

The Chairman (Dr. Sachchidananda Sinha): The Amendment proposed by the Mover is to the effect that, after the word 'Members' in line 2, the, words with powers to co-opt.' be added.

Sardar Harnam Singh (Punjab: Sikh): I suggest, Sir, that we add, if necessary not more than five'.

Ujjal Singh: I accept the amendment to my amendment.

Mr. S. H. Prater: I second the amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Mohanlal Saksena, who has given notice of an amendment, will kindly move it briefly.
Shri Mohan Lal Saksena (United Provinces: General): [I move the amendment that in para. 4 of Schedule.......]

The Chairman (Dr. Sachchidananda Sinha): [Which para. does the Hon'ble Member mean?]

Shri Mohan Lal Saksena: [I move that in para. 4 after the word 'Chairman" the following may be added:]

"To the members....................

[The present proposal is that if the number of nominated members is less than those of the elected members, a fresh nomination shall be allowed and the process shall continue such time as the number of nominated member fills up or exceeds the vacancies. The usual method of such cases is that if the number of nominated members falls, short, Members who are already nominated are taken as elected and for nominated seats, fresh proceedings are undertaken. This is the object of my amendment. I hope the House will accept it. Acharya Kripalani has greed to it]

The Chairman (Dr. Sachchidananda Sinha): The amendment proposed by Mr. Mohan Lal Saksena is that in paragraph 4 of the Schedule after the word "Chairman" the following words be added "shall declare the persons so nominated is duly elected and for the remaining vacancies".

Is any one seconding it?

An Hon'ble Member: I second this amendment, Sir. It is important and necessary.

Mr. F. R. Anthony (Bengal: General): I did not hear the last part, Sir.

The Chairman (Dr. Sachchidananda Sinha): You could not hear the last part. Sir B. N. Rau will kindly read it out.

Sir B. N. Rau (Constitutional Adviser): After the word 'Chairman' in paragraph 4 of the Schedule, the following words be added: "shall declare the persons so nominated as duly elected and for the remaining vacancies". if you like me to read the amended paragraph, I would be glad to do

The Chairman (Dr. Sachchidananda Sinha): Yes, Sir Narsing.
Sir B. N. Rau: The paragraph as amended reads: "If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman shall declare the persons so nominated as duly elected and for the remaining vacancies will appoint a further period within which the notice aforesaid may be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled”.

Mr. F. R. Anthony: On a point of information, Sir. I do not know exactly what happened to the amendment proposed by one of my Sikh colleagues.

The Chairman (Dr. Sachchidananda Sinha): That was carried.

An Hon'ble Member: "With power to co-opt not more than five” was carried.

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[ ] English translation of Hindustani speech.------------------------------------------------------------------

Acharya J. B. Kripalani: Sir, I was never consulted in the matter, whether I accept that or not.

The Chairman (Dr. Sachchidananda Sinha): You were never consulted on the amendment to your resolution?

Acharya J. B. Kripalani: I did not know that the amendment had come before the House. It was only proposed and seconded but that has not been carried by the House.

The Chairman (Dr. Sachchidananda Sinha): Carried by the good sense of the House.

Acharya J. B. Kripalani: Even that was not allowed. (Interruptions).

The Chairman (Dr. Sachchidananda Sinha): Order, order. The amendment was adopted.

Dr. P. C. Ghosh (Bengal: General): That was not put before, the House for voting at all. You simply stated from your Chair that it was carried.

The Chairman (Dr. Sachchidananda Sinha): The work of the House must necessarily be carried on with a certain amount of speed, and if the Hon'ble Member is not sufficiently vigilant, he will have to thank himself.

I am reading out the amendment of Mr. Mohan Lal Saksena. I hope I will not be charged with rushing the business of the House through again as has been done this time. I read it out once, and it was read out again by Sir B. N. Rau. If the House desires, I shall read it out again. In
paragraph 4 of the Schedule after the word "Chairman" the following words be added: (Interruption)........

When I am in the midst of addressing the House, I do not like to be interrupted. The amendment is: "the Chairman shall declare the persons so nominated as duly elected and for the remaining". Whatever it may mean, that is the amendment. Those who are in favour of it will kindly raised their hands to express their assent to the proposition. Will you kind, count, Mr. Iengar?

The Hon'ble Pandit Jawahar Lal Nehru: It is not necessary unless anyone is opposed to it, Sir.

Mr. H. V. R. Iengar (Secretary of the Constituent Assembly): 50 for. The Chairman (Dr. Sachchidananda Sinha): How many against it? Mr. H. V. Kamath: I have submitted a verbal amendment. May I come The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments 1. The amendment was- adopted.

Mr. H. V. Kamath: I have submitted a verbal amendment. May I come along?

The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments are more dangerous than other people's, formal amendments. You desire that in clause 1(c) after the word "appointment" add the word "functions". The clause will read as follows

"(c)Organisation of the work of the Assembly, including the appointment functions and powers of Office--bearers other than the Chairman."

Also that in Clause (d) after the word "filling". added the word "in". You, will kindly come along. You generally succeed in carrying your point by making very short speeches.

Mr. H. V. Kamath: Sir in clause (c) I desire that after the word appointment" the word "functions" may also be inserted so that the clause will now read thus: "including the appointment, function,

and powers of Office-bearers other than the Chairman".

The next amendment that I wish to make is in clause (d). With due deference to the framer of this Resolution, I submit, Sir, that the more correct phrase is "filling in" and therefore move that the clause should read-

"procedure for the declaration and filling in of vacancies in the Assembly."
and in the Schedule accordingly some corrections might have to be made wherever "fill" "filled" or "filling, occurs. I submit with due deference again, Sir, to the framer of the Resolution that the correct phrase is "filling in"

An Hon'ble Member: Why not "filling up"?

Another Hon'ble Member: I would like to make one amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Kamath's amendment, which I read out, and which he has again read out, has been duly seconded. Is there any serious opposition to it?

Mr. K. M. Munshi: We have not heard it.

The Chairman (Dr. Sachchidananda Sinha): I am a fairly loud speaker. If you did not hear me, I will again read it out once more.

Diwan Chairman Lall (Punjab: General): I am opposed to the use of the phrase "filling in" of vacancies. It is neither correct, nor is it found in the Rules of Procedure adopted by other Assemblies. The expression "filling of vacancies is perfectly correct. Again, in regard to the amendment of my hon'ble friend that after the word "appointment" the word "functions" should be included, there can be no difficulty about that although it. is obvious that the powers of Office-bearers will also include the functions of the Office-bearers. if it is sought to be made more clear, there can be no objection to it. The objection to the "filling of vacancies" cannot be accepted as I do not think we can start off with ungrammatical or unidiomatic expressions.

The Chairman (Dr. Sachchidananda Sinha): Mr. Munshi, I think, would like to have the proposition read out again.

In clause (c) of rule I after the word 'appointment' add 'functions' so that the clause will read 'the appointment, functions and powers of Office--bearers other than the Chairman.' The addition is pro'posed for the word 'functions' means between the words 'appointment' and 'powers.' The House, if T. am not wrong in interpreting its mood, is not unwilling to accept this amendment........ I declare it carried.

There is a second amendment of Mr. Kamath in Clause (d). After the word 'filling' add the word 'in' so, that it may read 'filling in of vacancies'. It is a question of filling in.

Many Hon'ble Members: No, no.
The Chairman (Dr. Sachchidananda Sinha): The sense of the House is against it. I, is no accepted. Any other amendments?

Mr. H. J. Khandekar (C. P. and Berar: General): In Clause 7 after the word 'he', there should be 'or she' because there are lady members in the house and nothing is mentioned about them. The meaning of "Member" conveys the impression that there are no lady members and therefore after the word 'he' there should be 'or she' and after the word 'his' should be 'or her'.

The Chairman (Dr. Sachchidananda Sinha): The amendment sought to be proposed that we should make out position clear as regards the lady members of this House by using the specific word 'she'. My ruling is that 'he' includes 'she'.

The Hon'ble Pandit Jawahar Lal Nehru: Sir, the Resolution as a whole has not been put to the vote.

The Chairman (Dr. Sachchidananda Sinha): That is what I was saying. The amendments having now been disposed of, I am putting to the vote, but not reading it for a second time the long Resolution. If he so desires, Acharya Kripalani may read it out again. We have discussed these fully, and I declare it carried with all the amendments made.

ANNOUNCEMENT REGARDING NOMINATIONS FOR CHAIRMAN AND COMMITTEE

The Chairman (Dr. Sachchidananda Sinha) have two announcements to make today. Firstly, the nominations for this Committee will be by 12 noon on the 11th of December in the Secretary's room (Mr. Iengar's). All nominations should be filed by 12 o'clock tomorrow at the latest, and the date and time for the election shall be 4 P.m. tomorrow In the Under Secretary's room. I do not know the reason why the Secretary's room is intended for One purpose, and the Under Secretary's for another. Perhaps the Secretary's room is larger, I do not know. The ballot boxes are there, and I shall be absent at the time. Mr. Anthony will kindly be present on my behalf.

The only other announcement I have got to make is about the nominations for the permanent Chairman. The nominations for that purpose, namely, for the election of the permanent Chairman, is fixed today at 2-30 P.m. in the Secretary's room, and if the election would be necessary, arrangements will be made for that. That finishes our work today. There is no work in the afternoon.
Mr. Sarat Chandra Bose (Bengal: General): As regards the nomination of a permanent Chairman, the Resolution says that the nomination paper has to be delivered to you or to a person appointed by you.

The Chairman (Dr. Sachchidananda Sinha): I have appointed the Secretary, Mr. Iengar, to receive the nomination papers.

Bakhshi Sir Tek Chand: Up to 2-30 today or tomorrow?

The Chairman (Dr. Sachchidananda Sinha): Today. It is now just 1 o'clock and one and a half hours remain for the purposes of nomination. The time for withdrawals shall be 2 P.m. today. Tomorrow the House will meet as it suit you at eleven or half past eleven.

Many Hon'ble Member: 11 o'clock.

The Chairman (Dr. Sachchidananda Sinha): The House is adjourned till Eleven of the Clock, on Wednesday, the 11th December 1946.

The Assembly then adjourned till Wednesday, the 11th December 1946, at 11 A.M.
Wednesday, the 11th December, 1946

The Constituent Assembly of India met in Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman Dr. Sachchidananda Sinha, in the Chair.

The Chairman: If any Hon'ble Member has not yet his credentials nor signed the Register, he may do so now.

(No nominations)

REPLY TO MESSAGES OF GREETINGS TO THE CONSTITUENT ASSEMBLY

The Chairman: Though it is not in the agenda, I thought it best, on my own responsibility, to bring before the House the reply which I pose to end to the Governments of the United States of America, the Republic of China, and the Australian Government, in reply to the messages received from them, through their representative in Delhi which messages I read out to you on the opening day of the session. MY' draft is Subject to your approval, of course.

"On behalf of myself, and of the Constituent Assembly of India, I desire to thank you most warmly for your exceedingly kind message of good will and good wishes which has been highly appreciated by the Constituent Assembly, and the country. It is a source of great encouragement to us to feel that the Government and the people of the United States, China and Australia (as the case may be) are watching our deliberations with keen and sympathetic interest; and we feel sure that their sympathy will stand us in good stead in evolving a democratic constitution for India."

Subject to your approval, Hon'ble Members. (Applause).

ELECTION OF THE PERMANENT CHAIRMAN

The Chairman: The next item of today's agenda is the election of the permanent Chairman.

I have received the following nomination papers --
"I propose the name of Dr. Rajendra Prasad, Member Constituent Assembly, the Chairmanship of the Constituent Assembly. I have secured the consent of the nominee.

Proposer.-J. B. Kripalani.

Seconded.-Vallabhbhai Patel.

I agree to the nomination. Rajendra Prasad."

This nomination paper is valid, and is in order. There is another nomination paper.

"I propose Dr. Rajendra Prasad as Chairman of the Assembly and I have ascertained that he is willing to serve if elected.

Proposer.--The Hon'ble Shri Harekrushna Mahtab.

I second the above. Nand Kishore Das."

This nomination also is in order.

The other two proposals received are invalid. One of them sent by the Hon'ble Mr. Prakasam was sent in beyond time, and I do not see the name of any seconder.

Similarly, I have got before me another proposal by Sir, S. Radha Krishnan. That also, I fear, is not in order, because it has got no seconder; and neither of these two documents (the one sent by the Hon'ble, Mr. Prakasam and the other sent in by Sir S. Radhakrishnan) has got any endorsement from Dr. Rajendra Prasad that he is willing to serve. However, as the other two proposals are perfectly valid and in order, and there is no other nomination paper before me, I hereby declare the Hon'ble Dr. Rajendra Prasad, as the duly elected permanent Chairman. (Cheers).

My next duty as temporary Chairman is to request that Acharya Kripalani and Maulana Abul-Kalam Azad Sahib will kindly approach, on behalf of the Constituent Assembly, the duly elected President of this House now, and bring him up to the platform to sit on the chair by my side. (Cheers).

(The Hon'ble Doctor Rajendra Prasad was conducted to the chair by Acharya Kripalani and Maulana Abul Kalam Azad Sahib.).


The Chairman: Now that the permanent elected Chairman of the House has taken his seat, it is open to Hon'ble Members to offer to him their congratulations. I call upon Sir S. Radhakrishnan to be the first speaker.

CONGRATULATIONS TO THE PERMANENT CHAIRMAN

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir, I consider it a great honour to be called upon to be the first speaker after the election of the permanent Chairman of the Constituent Assembly. I offer to him, on behalf of this House, our most respectful congratulations on the unique honour that has been conferred on him.

This Constituent Assembly has met here to frame the constitution, to effect the withdrawal of British control, political, economic and military and to establish a free independent India. If successful, this transfer of authority will be the biggest and the least bloody of all transfers in human history (Cheers).

The first Britisher to arrive in this country was a Jesuit Missionary in 1579. He was followed by merchants who came to trade but stayed to rule. In 1765 the authority was transferred to the East India Company. Later it was gradually subordinated to and replaced by the authority of Parliament and it has been continuing till now on the famous principle enunciated by Cecil Rhodes—the principle fundamental to imperialism, philanthropy plus 5 per cent. On that principle it has worked. Right through however there were protests against the British rule. All these protests became canalized when the Indian National Congress was established in 1885. It adopted mild methods till the advent of Mahatma Gandhi when it became aggressive and dynamic. In 1930 the Resolution for the Independence of India was passed at Lahore and we are now here to give effect to that resolution. The British are empirics from beginning to end. It was Lord Palmerston who said 'we British have no eternal principles, we have only eternal interests'. When they adopt any particular line of action you 'May take it that it is not a willing surrender of power or authority but it is response to the historic necessities of the case. When the discontent grew up they gave us the Morley-Minto Reforms and they introduced the principle of communal electorates and these communal electorates were intended to keep the people apart. The higher mind of Britain advised the local officials that they would betray the trust placed upon them if they foisted communal electorates. They would inject a poison into the very body politic which could be removed if at all, at the cost of a civil war. We
know how those anticipations are getting realized today. We had after that the Montford 'Reforms and then the 1935 Act, the Cripps’ proposals and now the Cabinet Plan. The latest Statement of His Majesty's Government on this question indicates how it is not in human nature to surrender power easily. (Hear, hear) Playing off one section against another is unworthy of a great people. It is much too clever to be permanent and would embitter the relations of this country and Great Britain. (Hear, hear). It is essential for the British to understand that if an act is done it must be done with the utmost grace. AR the same we are here assembled to draw up a constitution for future India. A constitution is the fundamental law of the nation. It should embody and express the dreams and passions, the ideals and aspirations of the people. It must be based on the consent of all, and respect the rights of all people who belong to this great land.

We have been kept apart. It is our duty now to find each other. We all deplore-speakers yesterday and day before yesterday deplored-the abstention of the representatives of the Muslim League from this Constituent Assembly. We take it that it will only be temporary, for their cooperation is absolutely essential for the success of any constitution which we may lay down. But in approaching these matters our attitude should be one of realism. Take the problems from which we suffer: our hunger, our poverty, our disease, our malnutrition-these are common to all. Take the psychological evils from which we suffer-the loss of human dignity, the slavery of the mind, the stunting of sensibility and the shame of subjection,-these are common to all: Hindus or Muslims, Princes or peasants.' The Chains may be made of gold but they-are still chains that fetter’ us. Even the Princes will have to realise that they are slaves in this country. (Hear, hear): If they have a sufficient sense of self-respect and exercise a little self-analysis, they will find how much their freedom is fettered.

Again, the, people,-Whether they are Hindus or Muslims, Princes or peasants,-belong to this one country. Earth and Heaven have combined to make them belong to one another. If they try to disown it, their.gait, their cast of countenance, their modes of, thought, their- ways of behaviour, they will all betray them. (Hear, hear). It is not possible for us, to think that we belong to different nationalities. Our whole ancestry is there.

It is essential for any constitution which is drawn up to make all the citizens realise that their basic privileges--education, social and economic are afforded to them; that there will be cultural autonomy; that nobody will be suppressed; that it will be a constitution which will be democratic in the true sense of the term, where, from political freedom we will march on to economic freedom and equity, Every- individual should feel that he Is proud to belong to this great, land.
Apart from all these, a nation does not depend on identity of race, or sentiment, or on ancestral memories, but it depends on a persistent and continuous way of life that has come down to us. Such a way-of-life belongs to the very soil of this land. It is there indigenous to this country as much as the waters of the Ganges or the snows of the Himalayas. From the very roots of our civilization down in the Indus Valley to the present day, the same great culture is represented among Hindus and Muslims, we have stood for the ideal of comprehension and charity all these centuries.

I remember how Anatole France went up to the Musse Guimet on the first of May 1890 in Paris and there in the silence and simplicity, of the gods of Asia reflected on the aim of existence-, on the meaning of life, on the values which peoples and Governments are in search of. Then his eyes fell on the statue of the Buddha. France felt like kneeling down and praying to him as to a God, the Buddha, eternally young, clad in ascetic robes, seated on the lotus of purity with hip two fingers upraised admonishing all humanity to develop comprehension, and charity, wisdom and love, prana and karuna. If you have understanding, if you have compassion, you will be able to overcome the problems of this world. Asoka, his great disciple, when he found his Empire inhabited by men of all races and religions said-

"Samavaya eva sadhuh.

"Concord alone is the supreme good".

India is a symphony where there are, as in an orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score. It is this kind of combination that this country has stood for. It never adopted inquisitorial methods. It never asked the Parsis or the Jews or the Christians or the Muslims who came and took shelter there to change their creeds or become absorbed in what might be called a uniform Hindu humanity. It never did this. "Live and let live"—that has been the spirit of this country. If we are true to that spirit, if that ideal which has dominated our cultural landscape for five or six thousand years and is still operating. I have no doubt that the crisis by which we are faced today will be overcome as many other crises in our previous history have been overcome. Suicide is the greatest sin. To murder yourself, to betray yourself, to barter away your spiritual wealth for a mess of pottage, to try to preserve your body at the expense of your spirit—that is the greatest sin. If we therefore stand out for the great ideal for which this country has stood, the ideal which has survived the assaults of invaders, the ideals to which the unheeding world today is turning its attention, if we are able to do it, the flame which has sustained us in overcoming foreign rule, will fire our efforts to build a united and free India.
It is not an accident that our temporary Chairman, Dr. Sachchidananda Sinha
and our permanent Chairman, Dr. Rajendra Prasad, both come from Bihar. They are both
impregnated with the spirit of the vihara—the invincibility of gentleness, the gospel of India.
The Mahabharata says:

Mrduna darunum hanti, mrduna hanti adarunam nasadhyam mrduna kinchit taksnaram
hi mrduth.

Gentleness can overcome the hardest things; it can overcome the softest things. There is
nothing impossible to be overcome by gentleness, and therefore the sharpest weapon we have
is gentleness.

Softness, gentleness, that is the greatest weapon which will wear out the highest kind of
opposition. We have not been true to It. We have betrayed and done wrong to millions of our
own fellow beings. It is now time for us to make atonement for all our past guilt. It is not a
question of justice or charity, it is atonement—that is how I would put it.

In Dr. Rajendra Prasad we have one who embodies this spirit of gentleness. (Cheers). He is
the soul of goodness, he has great patience and courage, he has--, suffered. It is not an
accident that this year which remarks the sixtieth year of the Indian National Congress, is also
the year of the opening of the Constituent Assembly. We have to remember with gratitude all
those great souls who worked and suffered for the freedom of this country, for the dawn of
this day. Thousands died, more thousands suffered privation, imprisonment, and exile, and it
is their suffering that has cemented and built up this great edifice of the Indian National
Congress. (Hear, hear). We have to remember them all, Rajendra Prasad is the suffering
servant of India, of the Congress, who incarnates the spirit for which this country stands. I
only hope that this spirit of amity, concord and harmony which has come down to us from the
image of Siva in the Indus civilization down to Mahatma Gandhi and Dr. Rajendra Prasad,
will inspire our efforts. (Applause.)

Shri Sri Prakasa (United Provinces: General): May I know who is the Chairman?

The Chairman (Dr. Sachchidananda Sinha): I am the Chairman.

The Hon'ble Diwain Bahadur Sir N. Gopalaswami Ayyangar (Madras: General): Mr.
Chairman, I desire to add my small tribute to Dr. Rajendra Prasad who has been elected
unanimously by this Assembly as the permanent Chairman. my tribute, I dare say, will sound
prosaic after the eloquence of my friend Sir S. Radhakrishnan, one of the foremost Indian orators in the English language.

Dr. Rajendra Prasad's election is a supreme mark of the unstinted confidence that this Assembly and the country as a whole repose in him. It is not so much an honour to him; he is really honouring us by accepting the invitation that we have extended to him. (Cheers). We have therefore really to felicitate ourselves on his allowing himself to be persuaded to take the Chair of this Assembly as permanent Chairman.

Dr. Rajendra Prasad is taking over a very onerous responsibility. His life has been a life of dedication,—dedication to the service of the country. It has been consecrated by unique sacrifice. It is unnecessary for me to speak of his great erudition, deep scholarship, wide knowledge of men and affairs,—qualities which fit him eminently for the task in which he will have need for requisitioning all this equipment in the solution of the many baffling and intricate problems that are sure to confront him. I have known him in person and have come into contact with him personally only during the last few days. That has made me regret that I had not known him earlier and more intimately than I do. But I have known about him, I had read about him, and during the few days that I have since seen of him. I have seen enough to realise that, while all his great qualities of brain and his knowledge have commanded and will continue to command the respect and admiration of his countrymen, what really has established and will maintain the unique hold he has on the affections of his countrymen, irrespective of community, class and creed, are his great human qualities. His innate courtesy, for instance, the manner of his approach to problems, which manner almost compellingly disarms in controversy people inclined to develop temper or heat, the soft word that turned away wrath—these will be inestimable assets in contributing to the success of the task that he has so willingly, perhaps after some reluctance, taken upon himself.

With his election to the Chairmanship, the Constituent Assembly may be said to have really started on its fateful career. Before it accomplishes its full task, It is bound to be confronted by situations and difficulties which will try the capacity even of so uniquely equipped a person as Dr. Rajendra Prasad. He will no doubt, and we have every confidence that he will, conquer them all. He will of course maintain the dignity and prestige of this Assembly and the privileges of its members—that goes without saying. But the most onerous of his tasks will be to defeat all attempts, direct or indirect, at weakening or whittling down the sovereign Powers of this Assembly. This is not the occasion for me to develop in any elaboration the proposition that, for the task which this Assembly has taken upon itself, it is sovereign in
every sense of the word. That its members have been brought together by a machinery employed by the present Government of India does not detract from that sovereignty.

(Hear, hear): The task of the Assembly is, in the not very elegant word that the Cabinet Mission has employed in its Statement, the 'settling' of the constitution for all India—all India, including not merely the Union but the units and, if this Assembly and its Sections should so decide, the Groups, if any, are to be formed at all.

The statement of the Cabinet Mission, I would describe as the law of the constitution of this Assembly. That constitution derives its authority not from the fact that its authors were three Members of His Majesty's Government but from the fact that the proposals made therein have been accepted by the people of this country. Any limitations on the powers of this Assembly which are indicated in that Statement are thus self-imposed imposed by ourselves on this Assembly; and the document, and its subsequent exposition by its authors have made it clear that this Assembly has got the constituent power of amending this constitution, of varying, or adding to what is provided for in that document, not excluding even what are declared to be its fundamentals.

The law of the constitution of this Assembly does not vest in any outside authority, Judicial or otherwise, the interpretation of any of its provisions. In one single instance alone does it require that the Chairman should obtain the advice of the Federal Court at the request of the majority of either of the major communities in the Assembly before he takes a decision on the issue. It follows therefore that the decision of all questions of interpretation of the law of the constitution of this Assembly will be in the Chairman's hands, subject to such directions as this Assembly itself may give. Reference to an outside authority for decision or even advice in respect of other matters could be made only on authority given by a decision of this Assembly and no such decision could be binding on this Assembly unless it has agreed to abide by it. The idea, therefore, adumbrated in a recent statement of His Majesty's Government, that 'either side', those are the words used, is free to ask an outside authority to decide matters of interpretation and that the Assembly should accept whatever decision it may give, cannot be implemented except on the authority of a resolution of this Assembly. (Hear, hear). The Suggestion made in this statement, if implemented without an affirmative resolution of this Assembly, would detract from its sovereign powers and I have no doubt that Dr. Rajendra Prasad will resist such an attempt to his utmost. (Applause):

I would, before closing, refer only to one other aspect of this idea of the sovereignty of this Assembly. the task before the Assembly is not merely one of settling of the
constitution, it also includes deciding the method of its implementation so far as India and her people are concerned. In other words, we have to take over power from those who are in possession of it: the method of that taking over of power will be one to be decided by this Assembly. The fact that His Majesty's Government claim to decide the mechanics of the transfer of power, to which in substance they are already committed, does not, in my view, detract from the sovereignty of this Assembly so far as its task is concerned. I do not wish to take any more of the time of this Assembly.

Sir, we are proud to have you as the permanent Chairman of this Assembly and we wish all success to you during your term of office in that capacity. (Loud cheers).

The Chairman (Dr. Sachchidananda Sinha): Two of the most eminent Members of this House, our greatest philosopher and educationist, Sir Sarvapalli Radhakrishnan, and the highly distinguished administrator, Sir N. Gopalaswami Ayyangar, have addressed the House congratulating Dr. Rajendra Prasad, and they have incidentally expressed their views on certain aspects of the question which Dr. Rajendra Prasad will be concerned with. I will now ask the other speakers who follow to speak briefly mainly about Dr. Rajendra Prasad (laughter) and leave the Constitution to take care of itself.

I will now call upon Mr. F. Anthony to address the House.

Mr. F. R. Anthony (Bengal: General): Mr. Temporary Chairman, it was only a few minutes ago that I was asked whether I would join in giving a message of welcome and congratulations to Dr. Rajendra Prasad. I very gladly and cordially accepted that invitation.

Sir, I have not had the privilege of knowing Dr. Rajendra Prasad personally, but I have known of him and it is not necessary for me to comment on his qualifications and his widely-known very able record of work. The Office to which he has been unanimously elected is not only a unique and high office, but I believe it is equally onerous also. It will be his continuing duty and care to hold the scales evenly between the different interests which go to make up this great country. What we require today in our leaders, more than anything else, is tolerance, breadth of vision and liberality of outlook. I believe, from what I have heard of Dr. Rajendra Prasad, that he is one of those leaders who possesses these qualities in a pre-eminent degree. I believe also that it is the natural and fervent impulse of every Indian, irrespective of community, to strive increasingly for the increasing greatness of our mother country. (Applause). I also believe that whatever difference of language, of community or of social life that must inevitably exist in a great country such as ours, leaders possessing the quality of liberality and breadth of vision will succeed ultimately in joining all these different
communities into one stream which will carry on its course, surging forward irresistibly, enabling this country to take her place, her rightful place in the vanguard of the great nations of the world. Finally, I believe I am expressing the consensus of opinion in this House when I express the belief that Dr. Rajendra Prasad will fill this high Office to which he has been elected not only with dignity, but with Distinction. (Applause).

Sardar Ujjal Singh (Punjab: Sikh): Mr. Chairman, Sir, I have very great pleasure in associating myself with the chorus of tributes paid to Dr. Rajendra Prasad on his unanimous election to the Presidentship of this Assembly. In fact, I believe, no better choice could have been made for the Presidentship of this unique and historic Assembly. By his unparalleled service and sacrifice, his learning, his ability, his gentleness and, above all, his spotless character, he has become the idol not only of the people of Bihar but of the whole of India. I feel certain that this House will have a sense of satisfaction that with Dr. Rajendra Prasad in the Chair, no limitations on the sovereignty of this Assembly will be allowed to be placed beyond those which we have already accepted. A man of his unimpeachable honesty, character and humility can command and, I feel certain, will command the confidence of one and all in this House. I know there is a party which is not present in this House today, but I can say that even that party whose members may be called Dr. Rajendra Prasad's political opponents, can rely upon his sound and good judgment and his impartiality in conducting the business of this House. Sir, I hope and trust that under his able guidance and inspiration this House will succeed not only in framing a constitution but establishing an independent and sovereign state of Indian Republic. I pray the God may give him strength to, carry on his onerous duties and heavy responsibilities as Food Member and as President of this unique and historic Assembly.

The Chairman. (Dr. Sachchidananda Sinha): I will now request Lt.-Col, Sir Kameshwara Singh, Maharajadhiraja of Darbhanga, to speak.

The Hon'ble Maharajadhiraj Sir Kameshwar Singh of Darbhanga (Bihar: General): Mr. Chairman, this is indeed a proud day for all of us. The accredited representatives of our countrymen have chosen Dr. Rajendra Prasad, an illustrious son of India, to be the custodian of the dignity and power of this august Assembly. In doing so, they have paid the highest tribute not only to his own greatness but also to our province whose brightest jewel he happens to be. I rejoice at this recognition. His character, ability, tact, scholarship, culture, services and sacrifices, and above all, his self-effacement in the cause of our motherland can never fail to attract people to him, and he commands as love, respect and admiration of even those who, strictly speaking cannot be described as his political adherents. I salute him as one
of those rare saints who are honoured by all even in their own homes. I realise that the task before him is stupendous. From bondage he shall have to lead this country to freedom. He shall have to help us to proceed on the right path and cross the innumerable hurdles that lie on our way. He shall have to protect us whenever there may be any encroachment on our rights and privileges from any quarter and make everyone feel the force of his justice, impartiality and firmness. Knowing as I do his personal charm, devotion to duty, broadmindedness, and other great qualities, I have no doubt that he will satisfactorily manage the affairs of the high Office-perhaps one of the highest offices in the gift of the people of this country-in which he has been, by common consent, installed. May God grant him health and long life so that he may successfully discharge his onerous duties, enjoy the fruit of his labours. Sir, I congratulate him, wish him luck, and hope that he will have the loyal cooperation of everyone of us who have assembled here to work under his guidance for the achievement, by peaceful means, of our cherisher goal, Swaraj.

The Chairman (Dr. Sachchidananda Sinha): Dr. Joseph Alban D'Souza.

Dr. J. A. D'Souza (Madras: General): After Chairman, I join with pleasure in the chorus of congratulations to Dr. Rajendra Prasad on his election as the permanent Chairman of this historic Assembly. The temporary Chairman, Dr. Sachchidananda Sinha, with his keen grasp of essentials, his happy diction and above all his entrancing and fascinating humour has finished his work magnificently during the last two days. He has navigated the good ship "Constituent Assembly" through the harbour, with waters none too easy. He has brought the ship on to the high seas of political constitution and handed it over to our permanent Chairman. I have said high seas of political constitution. What these seas are going to mean and what they are going to be, it is difficult for us at this stage to say or to define. There is no doubt that the permanent Chairman has before him a role of a most responsible nature.

I am and probably will always be an ardent believer in the true and good old saying, "every cloud has a silver lining". Clouds, varying in density, have appeared over the constitution of this Assembly. Yet, because of the silver lining I am confident of the future of India, proximate and remote.

Dr. Sachchidananda Sinha has stated that it will not be for those who succeed the first two speakers to refer to anything historical or constitutional. May I crave his permission to make one small reference? May I submit that this Constituent Assembly and the work it has before it-the framing of a constitution for India, was presaged if not prophesied more than a hundred years ago? I say "Presaged" and not "Prophesied" because a prophecy connotes something
favourable to the prophet as well as to the people but presaging signifies a sort of It was presaged more than a hundred years ago when Burke, referring to the imperial control of England over her Indian Empire, applied to It the doctrine of trusteeship. He declared that as soon as the child India comes of age the trusteeship must end.

The question therefore arises: Has India not come of age? Is India still a minor? When I cast a glance along the first benches of this great Assembly I note that there are great personalities who could play the role of a Churchill or a Roosevelt or a Stalin and not only play the role but even go one better. This is so far as the top ranks of the citizenhood of India is concerned. What about the lowest ranks, the ryot in the voltages? If our leaders were to go now to the ryot, who some years ago was steeped in abysmal ignorance in regard to his rights, privileges and needs, and speak to him of independent India, he would turn round and 'tell them: "if you are unable to achieve this for us, we shall do so on our own". He realises that it is due to him. He knows it is his birth-right.

This Constituent Assembly, to my mind, is a celebration of India's coming of age and as such it ought to be a subject matter over which all India, Hindus, Muslims, Sikhs, Christians, Parsees, Scheduled Classes and all, ought to join hands and work with one sole idea: of achieving, independency as early and as soon as it possibly can be obtained.

And in this work I am sure, the permanent Chairman we have selected will lead us and help us. During the short period he has worked in the Interim Government he has already given us an earnest of his capability by his masterly, control of the food situation in India. He has given it, an earnest of the zeal and ability with which he will conduct the affairs of the great Assembly: On behalf of you all I wish our permanent Chairman, health and energy in order to carry on with the stupendous work he has undertaken in accepting the Chairmanship of this Assembly,

Sir V. I. Munishwai Pillai (Madras: General): Mr. Chairman, I feel it a proud privilege to stand before this august Assembly and convey to you, Sir, the greetings and affectionate Congratulations on your unanimous election to the Chairmanship of this sovereign body. I convey to you, Sir, on behalf of the 60 millions of untouchable classes, the tillers of the soil and hewers of wood, who, have been in the lowest rungs of the ladder of political and economical Status of this country. It was in 1890, when one of our revered leaders of our Province sent in open letter to the Hon'ble Members of the House of Commons showing the helplessness of the untouchable classes but it was given to Mahatma Gandhi, Sir, in the year 1932 to chalk out in what way these communities could be helped. It was on that memorable occasion, Sir, that I came in contact with you and came to know the sympathy you have
towards these Scheduled-Castes. From that time, Sir, I know, as a matter of fact and all those who represent the Harijans in this august Assembly will bear testimony to the great services you have done to these Harijan communities. On behalf of these people, Sir, I feel that the position to which you have been elected will give equal status in the sovereign body and see that whatever constitution may be framed for this great continent, that the right place for the Harijan is given and I know you will hold this position with great honour and dignity and do justice to these Scheduled Classes- so that they may be equal in ill status with other communities. Sir, the 60 millions of untouchables form the backbone of Hinduism and I am sure, that in your deliberations in framing the constitution you will see that all the disabilities of the Harijans are taken note of and remedied in a manner that they may enjoy equal privileges in this great country.

Khan Abdul Ghaffar Khan (N.-W.F.P.: Muslim): [Mr. Chairman Brothers and Sisters: I had no intention of taking part in the debates of this Assembly. You all know that I do not like making speeches and praising persons; but some of my brethren have compelled me to say something.

[English translation of Hindustani speech begins.

at this occasion I congratulate Babu Rajendra Prasad on your behalf and. on behalf of North-West Frontier Province for the great honour done to him by this House.

I know Babu Rajendra Prasad well. People who happen to live together in prisons and in other places of pain and sorrow get good opportunity to know each other. I am proud that I have lived a long time in prison with Babu Rajendra Prasad. I know him well. I know his habits and I can say that the greatest quality he possesses, and which every Indian should possess, is that his mind is free from communal bias. Unfortunately, people in India have different prejudices, You all know of Hindu food and Muslim food. Babu Rajendra Prasad is free, from all prejudices.

I feel with great sorrow the absence from this House of our Muslim League brethren. I regret to say that my Muslim brethren are displeased with the people of the North-West Frontier Province, especially with me. They say that I am not with them, Many a time while travelling in the train I am told such things, I always tell them that I am always with Muslims, never
separating myself for one moment from them. Where, however, they say that I am not with the League, I tell them that the League is a political party and it is not necessary that one should be with it. Every man is free to have his own opinion. No one should be compelled in ways which are employed these days. Everybody has a right to do what he honestly considers good for his country and people. Nobody has got the right to ask me why I am on the side of the Congress. I admit that the people of the North-West Frontier Province are much behind you in literacy and in wealth. Our Province is a small one while yours are larger but I can say that the people of the North-West Frontier Province, if not ahead, are in no way behind you in many things.

When we read the history of India prior to the advent of the British and compare it with the conditions prevalent now, I find the villagers of this once prosperous India steeped in poverty and want. One thing, which causes me great sorrow is that whenever we try to do something for the welfare of our countrymen, impediments are placed in our way. The country and its people are being exploited and ruined. This has caused disappointment to the people of the North-West Frontier Province and they feel utterly helpless. We have been forced to think that we can do nothing for the good of this unfortunate country until we make it free. I desire to tell my Indian brethren why we are with (Mahatma) Gandhi. We believe that the Congress is trying to free this country and that the Congress can remove the poverty of this country. We are with the Congress because we are tired of slavery. It is true that we are behind you in education but in the war of non-violence of 1942, only our Province fought it in non-violent ways. You all know we possess more-weapons of violence than any other Part of India and yet we adopted non-violent methods. Why? There are many responsible people present here and I see that even the Congress people are being swayed by violent feelings. That is why we walk the way of non-violence.

Let us see what violence is and what is non-violence. I tell you that whether we are Hindus or Muslims we can win the people only by being non-violent because violence breeds hate and non-violence creates love. You cannot bring peace to the worked by violence. One war' will compel us to fight a second war more disastrous than the first. Violence begets hate in the minds of people. I am glad Badu Rajendra Prasad, believes in non-violence and I am sure that, if he guides this House to tread the path of non-violence, he Will guide it to success. Before I finish I desire to speak briefly to my brethren in the "House and to Babu Rajendra Prasad, about our Province.: I will not go into details. Our Province is the only Muslim Province which desires 'to end the British rule and drive them out of India. It is not easy to realize
what difficulties, what hardships and what affliction will befall us. I, therefore, earnestly appeal to Babu Rajendra Prasad to keep this in mind. We cannot succeed until the road-blocks created by the British are removed from our way. I hope my prison friend, Babu Rajendra Prasad, who has been elected the Chairman of this House and who loves us, will not forget our difficulties and help us to remove them.

The Chairman (Dr. Sachchidananda Sinha): I will now ask Mr. Poonacha from Coorg to speak for a few minutes.

Mr. C. M. Poonacha (Coorg): W. President, Sir, I deem it a great pleasure and great honour to associate myself with the sentiments expressed by the previous speakers. Coming from Coorg, Sir, I would like to convey to you, Dr. Rajendra Prasad, our respectful felicitations on behalf of the people of Coorg. As President of the Indian National Congress, you have once visited our Province and extended to us good advice which was a great fillip to us in our freedom movement. Sir, I do not intend making a long speech but would like to cut it short and express once again my respectful congratulations to you and trust that under your Chairmanship the efforts of this Assembly will be a complete success. Sir, I have done. (Cheers).

The Chairman (Dr. Sachchidananda Sinha): Mr. H. V. Kamath will now kindly address the House.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. Chairman, Sir, will you permit me to join in the chorus of tributes that has flowed from all parts of this august Assembly? This Constituent Assembly is the first Assembly of its kind in India. On this occasion, at once happy and solemn, when we have elected to the high office of permanent Chairman, Deshratna Rajendra Prasad, it is well for us to remember that we have come to this stage in our history through the united will and labours of the Indian nation, through the brave-struggle and suffering of the Indian National Congress under the leadership of Mahatma Gandhi, as well as by the heroic was waged by the "Azad Hind Fauji" under the leadership of Netaji Subhas Chandra Bose. It is not for me to dilate upon the qualities of head and heart of Deshratna Rajendra Prasad. He embodied in himself the spirit of India, the spirit which has animated our sages and our rishis to preach the ancient gospel, the ancient but ever new-(sanatano nitya nutarih) the gospel of universalism: that spirit Deshratna Rajendra Prasad embodies in himself. When I look at him, I am reminded of a poem of Gurudev-Rabindra Nath Tagore, wherein he says Give me the strength to make ray love fruitful in service. Give me the strength to surrender my strength to thy will with love. At this moment of our history we welcome Deshratna Rajendra Prasad to this high office. I pray to God Almighty that. in
His Grace abounding, He may endow Deshratna Rajendra Prasad with strength and health, with energy and fortitude to steer this barque of our Constituent Assembly to the fair haven of peace, freedom and harmony. Friends, I have done. Before I conclude, I only want to say this that it is well for us to take to heart and to bear in mind the ancient message-

Uttisthata jagrata praya varannibodhata

"Awake. arise and stop not till the goal is reached." Jai Hind.

The Chairman (Dr. Sachchidananda Sinha): Mr. Somnath Lahiri will now address the House.

Mr. Somnath Lahiri (Bengal: General): Let me congratulate Dr. Rajendra Prasad on his election as permanent Chairman of this House and I congratulate him on behalf of the Communist Party which I have the honour to represent.

Well, Dr. Rajendra Prasad, when you happened to be the President of the Indian National Congress we, the Communists, noticed in you your patience, tolerance and your eager desire to know the view-points of the other parties and other points of view. Well, Sir, I hope you will continue to exercise the same qualities as the Chairman of this Assembly and will allow us facilities equal to that of anyone else to express our points of view fully. Sir, one great thing to remember is that British imperialism is still sovereign over us and whatever may be the colour of any member in this Assembly, I am sure that everyone of us burns with the desire to be free, absolutely free, immediately from the clutches of British imperialism which has sucked our blood for the last 200 years and which still retains its grip over us with its army, with its British Viceroy, with its white bureaucracy, with its economic and financial strangleholds and with the aid of its allies-the Indian Native Princes. Well, Sir, some would expect you to be non-partisan as the Chairman of the Assembly. I would not in the sense that you are a patriot, one of the tried patriots of this country and in the matter in which we have to assert our sovereignty, sovereignty not against a section of our own people, not by quarreling over phrases of Sections and Committees but
sovereignty against British imperialism, asserting our sovereignty by asking and compelling the British Viceroy to quit, by asking and compelling the British army to quit. I am sure we could declare or sovereignty here and now by calling upon our people to wage a struggle and to begin that struggle by declaration from this august Assembly that we are free, we no longer recognize the authority of the British Government, of the British Viceroy, of the diplomatic words, etc. I wish we could declare from this Assembly that we are not to be led by the illusions created by British imperialism and its Cabinet Mission plan regarding transfer of power. But I know that illusions die hard. I hope we will have your help in dispelling those illusions and making the people of India again wage the most determined and united struggle against a Plan, a diabolical Plan, which has already reduced us to become a laughing stock of the world. We are already meeting under the dark pall of death and fratricidal warfare which has been the result of this Cabinet Plan........

The Chairman (Dr. Sachchidananda Sinha): Mr. Lahiri, permit me to interrupt you. You may say something now about Dr. Rajendra Prasad. (Laughter).

Mr. Somnath Lahiri: I know that. That is exactly the point for which I have praised Dr. Rajendra Prasad and hope he will extend to us the same consideration for placing our point of view as you would to any others, because it has always been our experience that when it comes to a question of our placing our views we are invariably asked to be brief. As a matter of fact, I have already been asked twice to be brief even before I got up to speak in this Assembly. However, I don't mind that. What I would expect of Dr. Rajendra Prasad as permanent Chairman of this Assembly is to help us in dispelling our countrymen's illusions, to help us to place our point of view in full, to throw away this Cabinet Mission's Plan and all its award and everything else and be united and fight.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members will agree that I am not infallible. I shall therefore now call on Mr. Jaipal Singh to address you for a few minutes, He represents the aboriginal tribes of Chhota Nagpur.

Mr. Jaipal Singh (Bihar:-General): I thank you, Sir, for giving me an opportunity to speak as representative of the aboriginal tribes of Nagpur. I want to say a few words in congratulating Dr. Rajendra Prasad, especially on behalf of the community I represent. So far as I have been able to count, we are here only five. But we are millions and millions and we are the real owners of India. It has recently become the fashion to talk of "Quit India". I do hope that this is only a stage for the real rehabilitation and resettlement of the original people of India. Let the British quit. Then after that, all the later-comers quit. Then there would be left behind the
original people of India. We are indeed very glad that we have Dr. Rajendra Prasad as the permanent Chairman of this Assembly. We feel that, as he belongs to a Province where there is, in the southern portion of it, the most compact aboriginal area in the whole of India perhaps, that we, in presenting our case, will at least get sympathetic hearing from him. I do not wish to say anything about his merits. They are already too well known. Let me therefore end by saying that we hope that the rest of the House will, while Dr. Rajendra Prasad gives us his sympathy, also reciprocate with him. (Cheers).

The Chairman (Dr. Sachchidananda Sinha): I shall now request bulbul-i-Hind, the Nightingale of India, to address the House (laughter and cheers) not in prose but in poetry.

(Mrs. Sarojini Naidu then went up to the rostrum amidst acclamation.)

Mrs. Sarojini Naidu (Bihar: General): Mr. Chairman, the manner of your calling me is not constitutional. (Laughter).

The Chairman (Dr. Sachchidananda Sinha): Order, order. No reflection on the Chair please (continued laughter).

Mrs. Sarojini Naidu: It reminds me of some lines of the Kashmiri poet who said:—

"Bulbul ko gul mubarak, gul ko chaman mubarak,
Rangeen tabiaton ko range sukhan mubarak"

and today we are steeped in the rainbow coloured tints of speeches in praise of my great leader and comrade Rajendra Prasad. (Cheers.) I do not know how even poetic fancy can add yet another tint to the rainbow. So I will be modest, emulating the example of Rajendra Babu himself and confine myself, as a woman should, to purely domestic issues. (Laughter). We have all been taken in the chariot of oratory by our great philosopher Sir Radhakrishnan who seems to have evaporated from the scene. (Laughter).

Sir S. Radhakrishnan: No, no. I am here; (Renewed laughter).

Mrs. Sarojini Naidu: He has poured very eloquent wisdom on us. And also all the other speakers representing different provinces, sects, religions, communities and the gentleman who is asking all of us to quit India after the British, tracing his claim to the original people of this land, have all spoken in their turn, and one thing they have all been unanimous is the question of Rajendra Prasad himself. Some time ago I was asked to compress an epic into an
epigram about Rajendra Prasad. I was asked to say a line about Rajendra Prasad, and I said that I could only do so if I had a pen of gold dipped in a pot of honey because all the ink in the world would not suffice to explain his qualities or adequately to pay tribute to has qualities. Very rightly one speaker reminded us, though I agree with one part of it, that both the temporary Chairman and the permanent Chairman were born in Bihar and that both have assimilated some of the qualities of the Great Buddha who was born in Bihar. I say that I agree on one point, not on the other. The point which I wish to agree with is that Rajendra Prasad has certainly descended spiritually from the great Buddha, the embodiment of compassion, understanding, sacrifice and love. For many years, I have been privileged to be associated with him. He is my leader, he is my comrade, 'he is my brother, but much younger brother. That I knew on his birthday, I found that he is over five whole years younger than I am-and therefore, I am in a position to give him my blessings as well as my tribute of praise. In this House where every one has said with conviction that he would be the guardian and the father of the House. I conceive him not as one with the flaming sword but an angel with the lily which wins victories over the hearts of men, because in him there is essential sweetness, that is part of his strength, there is essential wisdom, that is part of his experience, there is essential clarity of vision, creative imagination and creative faith that brings him very near the feet of Lord Buddha himself. I see gaps in this House and my heart is sore because of the absence of those Muslim brothers to whose coming I am looking forward under the leadership of my old friend Mr. Muhammad Ali Jinnah. I think if any persuasion were necessary, if any fine wand of magic were necessary to bring them in, it would be the essential sweetness, the essential wisdom, the essential creative faith of Dr. Rajendra Prasad. I am hoping and I believe I ari right in hoping that my friend Dr. Ambedkar who is so bitter today will soon be one of the most emphatic supporters of this Constituent Assembly in all its purposes and that through him his adherents of many millions will realise that their interests are as safe as the interests of more privileged people. I hope those that call themselves the original masters of this land, the tribal people will realise that there is no distinction of caste, creed, ancient or modern, status in this Constituent Assembly. I hope the smallest minority in this country will, whether represented politically, or I do not know by what other means they may be represented,-I hope they will realise that they have a jealous, vigilant and loving guardian of their interests who Will not permit the more privileged. to encroach by, a hair's breadth on their birth-right of equity and equal opportunity in this country. I hope also that the Princes of India, many of whom I count among my personal friends, who are so harried, so anxious, so uncertain or so afraid today, will realise that the constitution for India is a constitution for the freedom and emancipation of every human being in India, whether Prince or peasant. I want that realisation to be carried
home, and in no better manner, in no more convincing manner can it be carried than through the guidance and guardianship of Dr. Rajendra Prasad. I have been asked to speak—for how long? But I believe that I must disprove the age old proverb that woman has not only the last but the longest word. I have the last word not because I am a woman but because I am acting today as the hostess of the Indian National Congress which has so gladly invited those who are outside its fold to come and participate with us in framing the constitution, that is to be the, immortal charter of India's freedom.

Friends, I, do not praise or command Rajendra Prasad. I affirm that he is the symbol of India's destiny to-day. He will help us in framing that charter that restores to our Mother—our Mother still in fetters,—her rightful place as torchbearer of liberty, love, and peace.

Standing in the immemorial house with its roof of snow and walls of sea, once again in the history of humanity she will rekindle her lamp of wisdom and inspiration to illuminate the world on its onward march to freedom. So, will she be justified of her children and the children be justified of her.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, the last speaker has practically closed me for all time together by declaring that she as a woman must have the last word, and many of you who are lawyers here know that there can be no last word after the last word. I shall therefore not detain you long. If I choose to do so, I could hold your attention till the small hours of the next morning, for of all the people present here in this great gathering I am the one who has had the privilege, the great privilege, the greatest privilege, of knowing intimately Dr. Rajendra Prasad for a period of now 44 long years; since he passed his matriculation in the year 1902, and stood first in the first division in the whole of the Calcutta University of those days, extending from Assam to the Punjab and the North-West Frontier. I remember that when he passed the matriculation examination standing first in the Calcutta University, I wrote an editorial note in the Hindustan Review (which I was then conducting, and which I am still conducting after 47 years), to the effect that to a man with the brilliant powers of Rajendra Prasad nothing could be denied. I said, we may predict that he will one day be the President of the Indian National Congress, and while delivering the presidential address, like Sir Narayan Chandavarkar at the previous year's session of the Congress, held at Lahore, will receive a communication from the Viceroy of India offering him a High Court Judgeship. That was what I predicted about him then He has lived to be the President of the Indian National Congress more than once. But he has profoundly disappointed me by not being a High Court Judge, Why was I so anxious that he should be a High Court Judge? Because he
would have handled properly the British bureaucracy on the executive side, with his independence of judgment and trenchant criticism of their conduct. But if Dr. Rajendra Prasad has not been a High Court Judge, he has lived to be elected the permanent Chairman of the Constituent Assembly of India. And to-day it is my proud privilege now—the highest privilege I hoped to have achieved in my life—of inducting him into the Chair have so unworthily occupied for the last few days) as the first permanent Chairman of this Constituent Assembly. (Applause.) I now vacate this Chair, and I shall ask Dr. Rajendra Prasad, in the name of this great gathering to come and occupy this Chair which he so worthily deserves.

(Cries of Inquilab Zindabad, Rajendra Babu Zindabad).

(The temporary Chairman, Dr. Sachchidananda Sinha, then vacated the Chair. The Chair was then occupied by the Hon'ble Dr. Rajendra Prasad amidst acclamation).

Acharya J. B. Kripalani (United Provinces: General): [Mr. Chairman there have been many speeches in English and I feel that I should speak in Hindi. I spoke in Hindustani when I invited Dr. Sachchidananda Singha to be our temporary Chairman. I now congratulate him, on your behalf, for performing his work so successfully.

I could not at first believe that Dr. Sinha was older than I. I am younger than him and I am proud of my hair but Dr. Sinha's hair are 'a shade blacker than mine'.

He called the meeting to order in a strong voice which did not at all show that he was older than us. He conducted the whole proceedings with a zeal which may be called the fervour of youth. Sometimes, he gave short shrifts to our amendments. Once he remarked on an amendment—'I hope the good sense will prevail'.

This kept us silent, fearing that if we said anything, our good sense would be suspected. Thus he performed his work well and I congratulate him on it. I hope he will sit with us in the House in the same spirit in which he conducted the preliminary proceedings of the House].

Mr. Chairman (The Hon'ble Dr. Rajendra Prasad): +[Brothers and sisters, pardon me if I say that I feel overwhelmed with the burden you have placed on my shoulders by entrusting me with this most important duty. By electing me for this high rank you have bestowed upon me an honour which is the highest honour for an Indian. Allow me to say that in this country of castes and creeds, you have, as it were, cast me out of your caste. Depriving me of a seat among yourselves you have compelled me to sit on a different Chair, and it does not end
there. I believe all of you expect me to do nothing in this House which will show that I belong to a particular part or sect; you will expect that whatever I do

[ English translation of Hindustani speech begins.]

[English translation of Hindustani speech ends.]

[English translation of Hindustani speech begins.]

here, will be done in a spirit of service to you all. I shall try to carry the honour conferred on me in a manner which will gladden the hearts of all of my brethren and my elder sister here, who have felicitated me at this occasion. I am aware that my path is beset with obstacles. The work of this Constituent Assembly is most arduous. Various problems will come before it and it will be confronted with questions which will not yield easily to solution. I know I will not be able to solve them but I have full confidence in you that you will help me at each step with the same kindness and liberality with which you have elected me here.

The Constituent Assembly is meeting at a most critical time. We all know that other constituent assemblies, whenever and wherever they met, were confronted with similar difficulties. They had also to contend with internal differences which were placed before them with great vehemence. We also know that many of these constituent assemblies were held amidst strife and bloodshed; even their proceedings were conducted amidst quarrels and fights. In spite of all these obstacles those assemblies carried on their work to the end. Their members joined together and with courage, kindness, generosity, tolerance and regard for one another's feelings framed constitutions which were then readily accepted by the people of the countries for which they were framed. Even at this time the people of those countries consider them their most valuable possession. There is no reason why our Constituent Assembly, in spite of the obstructions in its way, should not succeed in doing its work. If we are sincere, if we respect each other's opinion, we shall develop so much insight that we will not only be able to understand each others thoughts, but also be able to go deep to the root and understand each others real troubles. We will then function in a manner that no one will give no one cause to think that he has been ignored or that his opinion has not been respected. If this comes to pass and if this strength is born in us, I have full faith that in spite of all obstruction we will succeed in our work.
This Constituent Assembly has come into being a number of limitations, many of which we will have to bear in mind as we proceed. But, it must also be borne in mind that the Assembly is a sovereign body and is fully competent to conduct its proceedings in the manner it chooses to follow. No outside power can meddle with its proceedings. I also believe that it is competent to break the limitations attached to it at its birth. It should be our effort to get free of these limitations and frame a constitution which will assure all men and women of this country, no matter of what religion, province or shade of opinion, that their rights are fully protected. If such an effort is made in this House and we succeed in it, I believe that it will be such a landmark in the history of the world that it will be hard to rival.

It is also to be remembered and we, who are present in the House, cannot forget it even for a moment that many of the seats are vacant in this meeting. Our brethren of the Muslim League are not with us and their absence increases our responsibility. We shall have to think at each step what would they have done if they were here? We have to proceed keeping all these things in view. We hope they will soon come and take their places and share in the deliberations for framing a constitution for their country which will give it freedom, that they will join us in our march for freedom. But if unfortunately these seats continue to remain unoccupied, it will be our duty to frame a constitution which will leave no room for complaint from anybody.

We have been fighting for the freedom of our country for a long time. This Constituent Assembly has been brought into existence by three forces. First, the sacrifice of our patriots. Many men and women gave their lives, bore hardships and persecution and after hard and continuous struggles ushered in the present stage. Second, the history of the British nation; their selfishness and their generosity. Third, the present world conditions and serious situation and the forces that are raging in the world. All these combined together to bring into being our Constituent Assembly. These forces will continue functioning while we are proceeding with our work. It is quite possible that some of them may draw us to one side and others to the other side. I am, however, confident that success will be ours. I pray to God that he may give us foresight, so that we may understand each other's mind, and that, united together, we may free our country.

I thank my brothers and sisters who have congratulated me. I was overwhelmed with embarrassment and I wished, I had not been present during their speeches. My particular thanks are due to Dr. Sinha who continued in the Chair and did not throw additional burden upon me at that time. I once more thank you all for the inspiring sentiments that have been expressed. I assure you that in the proceedings of this House. I shall freely give you whatever
strength God has bestowed upon me, whatever little wisdom has been given to me and whatever experience of the world I have. In return I hope you will unstintingly give me the help that you can give me.]

Friends, I just want to say a few words in English for the benefit of those of you who have not been able to follow my speech in Hindi. Hon'ble Members will not consider it ungracious on my part if I tell them that at the present moment I feel more overwhelmed by a sense of the burden of responsibility which they have placed on my shoulders than by a sense of elation for the great honour which they have conferred upon me. I realize that the greatest honour which an Assembly like this could confer on any Indian, you have been pleased to confer on me, and I am not using merely the language of convention when I say that I appreciate it greatly and I am grateful to you for it.

I know the difficulties which I shall have to face in the discharge of the heavy responsibilities which I have undertaken on your behest. I know the work of the Constituent Assembly is beset with various kinds of obstacles, but I know too that in the discharge of my duties, I can count upon your unstinted support and the same kind of generosity which you have exhibited in electing me to this high honour. Our Constituent Assembly is meeting in difficult circumstances. We see signs of strife in many places in this unfortunate land. But other countries too, when they elected their constituent assemblies and asked them to frame a constitution for them, were faced with similar difficulties. We can take comfort in the fact that in spite of those difficulties, in spite of the differences in viewpoints which exhibited themselves with vigour, sometimes with trouble and turmoil, the assemblies were able, in spite of them, to frame constitutions which were acceptable to the people at large and which have become in course of time an invaluable heritage for the people in those lands. There is no reason why we also should not succeed similarly. All that we need is honesty of purpose, firmness of determination, a desire to understand each other’s viewpoint, that we shall do justice, that we shall behave as fairly, as squarely as possible towards everyone else—and with that determination, with that resolve, I cannot see why we should not be able to overcome the obstacles in our way. I am aware that this Constituent Assembly has been born with certain limitations placed on it from its very birth. We may not forget, disregard or ignore those limitations, in the course of our proceedings and in arriving at our decisions. But I know too that in spite of those limitations the Assembly is a self-governing, self-determining independent body with the

] English translation of Hindustani speech ends.
proceedings of which no outside authority

can interfere, and the decisions of which no one else outside it can upset or alter or modify. Indeed it is in the power of this Constituent Assembly to get rid of and to demolish the limitations which have been attached to it at its birth and I hope you, Ladies and Gentlemen, who have come her& for framing a constitution for an independent and free India, will be able to get rid of those limitations and to place before the world a model of a constitution that will satisfy all our people all groups, all communities, all religions inhabiting this vast land, and which will ensure to everyone freedom of action freedom of thought, freedom of belief and freedom of worship, which will guarantee to everyone opportunities for rising to his highest, and which will guarantee to everyone freedom in all respects.

I hope and trust that this Constituent Assembly will in course of time be able to develop strength as all such assemblies have done. When, an Organisation like this sets on its work it gathers momentum, and as it goes along it is able to gather, strength which can conquer all difficulties and which can subdue the most, formidable obstacles, in its path. Let me pray and hope that our Assembly too will gather more and more, strength as it goes along.

It is a most regrettable thing that I find many seats unoccupied to-day in this Assembly. I am hoping that our friends of the Muslim League will soon come I to occupy there places and will be glad and happy to participate in this great work of creating a constitution for our people creating a constitution which according to, the experience of all other nations of the world, which according to our own experience and which according to our own traditions and our own peculiar conditions, will guarantee to every one all that can be guaranteed, all that need be guaranteed and all that require to be guaranteed, and will not leave any room for any complaint from any side. I am hoping also that you all will do your best to achieve this great objective.

Above all, what we need is freedom and as some one has said "Nothing is more valuable than the freedom to be free". Let us hope and pray that as a result of the labours of this Constituent Assembly we shall have achieved that freedom and we shall, be proud of it. (Applause.)

ELECTION OF THE COMMITTEE FOR RULES OF PROCEDURE

Mr. Chairman: This, brings us to the close of our proceedings for the day, but I will ask Hon'ble Members to bear with me for a minute or two. You will recollect that yesterday we
decided to have a Committee for framing Rules, and 12 O'clock was the time fixed by which all nominations had to be put in. We had to elect 15 members. I find that nominations of only 15 members have been put in. That obviates the necessity of having an election by ballot, and I declare the following persons, who have been proposed, to be duly elected.

The Hon'ble Mr. Jagjivan Ram.

Mr. Sarat Chandra Bose.

Mr. F. R. Anthony.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar.

Bakhshi Sir Tek Chand.

The Hon'ble Mr. Rafi Ahmad Kidwai.

Shrimati G. Durga Bai.

Dr. Joseph Alban D'Souza.

The Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar.

The Hon'ble Shri Purushottam Das Tandon.

The Hon'ble Srijut Gopinath Bardoloi.

Dr. B. Pattabhi Sitaramayya.

Mr. K. M. Munshi. The Hon'ble Mr. Mehr Chand Khanna.

Sardar Harnam Singh.

They are declared duly elected to the Rules Committee.

There is one thing more. On the first day, Dr. Sinha, to save time and for the convenience of the members, did away with the process of hand shaking with every member. I would like to go round and meet every member before you all leave this place. I know there are many with whom it has been by privilege to work for years. I know others with whom I have not been so
intimately associated, but whose faces are known and in some cases names too. But there are
at least some whom I have not known and I would like to make their acquaintance
today, if you don't mind.

After that we disperse for the day. The House remains adjourned till Eleven of the Clock
tomorrow morning.

(Mr. Chairman went round and shook hands with an the members present).

The Assembly then adjourned till Thursday, the 12th December 1946, at Eleven of the Clock.
Thursday, the 12th December, 1946

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

Mr. Chairman: If there are any Members who have not yet signed the Register, they may do so now.

(Nobody came forward.) It seems there is nobody who has not yet signed. We now proceed to the next item. The first item that we have is a Resolution by Pandit Jawahar Lal Nehru. I understand that there are some Members who feel that they have not had sufficient time to consider this important Resolution. There is no doubt that the Resolution is a very important one and I would not like any Member to feel that he has not had sufficient time to consider it fully. If the House so desires, I am prepared to adjourn this discussion till tomorrow.

Hon’ble Members: Yes.

Mr. Chairman: Then there is another matter in this connection in regard to which I should like the advice of the House. We have got a Rules Committee and its members should meet to prepare the Rules which they will place before us. They should have time separate from the general session of the Assembly. If you agree, they will meet after this House is adjourned and we shall do as much as we can do. But if it cannot complete the work, the Rules Committee will have to meet tomorrow, and I would like to know whether the House would like to sit in the morning from 11 or in the afternoon because I would suggest that we should have one session only, either in the morning or afternoon, so that the Rules Committee may get the other half of the day for its work. If the House want the morning session, then we can meet in the morning.

Some Hon’ble Members: We want morning sessions.

Some Hon’ble Members: Afternoon sessions.
Mr. Chairman: I am afraid in this matter it is difficult for me to come to a decision. I have to trouble the members to raise their hands-those who would like the morning sessions may please raise their hands.

(More members raised their hands in favour of the morning session.)

It seems the morning session is preferred by a large number of people. We shall have the session at 11 tomorrow morning concerting this Resolution and in the afternoon we may have, if necessary a meeting of the Rules Committee. If any Members have got any amendment to the Resolution to move, I would request them to hand over the amendments to the Secretary in the course of the day and we shall take up the discussion tomorrow. The Secretary will take care, if possible, to circulate the amendments also to Members.

An Hon'ble Member: Are we sitting on Saturday?

Mr. Chairman: I think we should be sitting on Saturday. That is my view but that is entirely in the hands of the House. I think we will be sitting on Saturday too.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): I think we should not, meet on Saturday. Let us have a day off for quiet discussions of the problems between ourselves.

Shri Sri Prakasa (United Provinces: General): I think we should not meet on Sundays and that should be sufficient for quiet discussions for Pandit Hirday Nath Kunzru.

Mr. Chairman: We shall consider that tomorrow. So far as the House is concerned, I think we have to adjourn now till 11 A.M. tomorrow and I would like the Members of the Rules Committee to meet say half-an-hour later. In the meantime we shall fix UP some room where they shall meet.

The House stands adjourned till 11 A.M. tomorrow.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): It seems to me that it will serve a useful purpose if the Hon'ble Mover of the Resolution formally moves and expresses his views to enable the Members here to understand the full import of the Resolution, so that we can frame amendments accordingly and these can be taken up tomorrow or the day after.

Mr. Satyanarayan Sinha (Bihar- General): The House has, already been adjourned.
Mr. Chairman: Sir Hari Singh Gour has suggested that the
Resolution might be moved by the Mover today who in his speech could explain his own
point of view so that the other Members may be in possession of that and the discussion might
take place tomorrow. I had myself at first thought of that but then I felt that the members
would like to consider the whole thing tomorrow.

Some Hon’ble Members- Tomorrow.

Mr. Chairman: There seems to be a difference of opinion and I do not like to take a. vote on
this question especially as I have already declared the House adjourned. So we shall now
‘adjourn. The House stands adjourned till tomorrow, 11 O’Clock.

The Assembly then adjourned till Eleven of the Clock, on Friday, the, 13th December, 1946.
Friday, the 13th December 1946

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

RESOLUTION RE: AIMS AND OBJECTS

Mr. Chairman: Pandit Jawahar Lal Nehru will now move the Resolution which stands in his name.

The Hon’ble Pandit Jawahar Lal Nehru (United Provinces: General): [Mr. Chairman, this Constituent Assembly has not been in session for some days. It has done much formal business, but more is yet to be done. We have been cutting our way and clearing the ground on which we Intend to erect the edifice of a constitution. It, however, seems proper that before we proceed further we should clearly understand where we are going and what we intend building. It is apparent that on such occasions details are unnecessary. In building, you will, no doubt, use each brick after mature consideration. Usually, when one desires to construct a building, one must have a plan for the structure that one wishes to erect and then collect the material required. For a long time we have been, having various plans for a free India in our minds, but now, when we are beginning the actual work, I hope, you will be at one with me when I say, that we should present a clear picture of this plan to ourselves, to the people of India and to the world at large. The Resolution’ that I am placing before you defines our aims, describes an outline of the plan and points the way which we are going to tread.

You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions and the British Government has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this Assembly, after serious deliberations and we shall endeavour to work within its limits. But you must not ignore the source from which this Assembly derives
its strength. Governments do not come into being by State Papers. Governments are, in fact the expression of the will of the people. We have met here today because of the strength of the people behind us and we shall go as far as the people not of any party or group but the people as a whole shall wish us to go. We should, therefore, always keep-in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them.

I am sorry there are so many absentees. Many members who have a right to come and attend the meeting are not here to-day. This, in one sense, increases our responsibility. We shall have to be Careful that we do nothing which may cause uneasiness in others or goes against any principle. We do hope that those who have abstained, will soon join us in our deliberations, since this Constitution can only go as far as the strength behind it can push it. It has ever been and shall always be our ardent desire to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people. It is, at the same time, manifest that when a great country starts to--advance, no party or group can stop it. This House, although it has met in the absence of some of its members, will continue functioning and try to carry out its work at all costs.

The Resolution that I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy. A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. The Resolution deals with fundamentals which are commonly held and have been accepted by the people. I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs. Unfortunately, our country is full of differences, but no one, except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic.

On this occasion, when the representatives of the Indian States are not present, I desire to make it clear how this Resolution will affect the Indian States. It has also been suggested, and
the suggestion may take the form of an amendment laying down that since certain sections of
the House are not present, the consideration of the Resolution may be postponed. In my
opinion, such an amendment is not in keeping with the spirit of the times, because if we do
not approve the first objective that we are placing before ourselves, before our country and
before the world at large, our deliberations will become meaningless and lifeless, and the
people will have no interest in our work. Our intention regarding the States must be early
understood. We do desire that all sections of India should willingly participate in the future
Indian Union but in what way and with what sort of government rests with them. The
Resolution does not go into these details. It contains only the fundamentals. It imposes
nothing on the States against their will. The point to be considered is how they will join us
and what sort of administration they will have. I do not wish to express my personal opinion
on the matter. Nevertheless I must say that no State can have an administration which goes
against our fundamental principles or gives less freedom than obtaining in other parts of
India. The Resolution does not concern itself with what form of government they will have or
whether the present Rajas and Nawabs will continue or not. These things concern the people
of the States. It is quite possible that the people may like to have their Rajas. The decision
will rest with them. Our republic shall include the whole of India. If a part within it desires to
have its own type of administration, it will be at liberty to have it.

I do not wish that anything should be added to or substracted from the Resolution. It is my
hope that this House will do nothing that may appear in Papers, so that, at no time, should
people, who are concerned with these problems but who are not present here, be able to say
that this House indulged in irregular talk.

I desire to make it clear that this Resolution does not go into details. It only seeks to show
how we shall lead India to gain the objectives laid down in it. You will take into consideration
its words and I hope you will accept them; but the main thing is the spirit behind it. Laws are
made of words but this Resolution is something higher than the law. If you examine its words
like lawyers you will produce only a lifeless thing. We are at present standing midway
between two ears; the old order is fast changing, yielding place to the new. At such a juncture
we have to give a live message to India and to the world at large. Later con we can frame our
Constitution in whatever words we please. At present, we have to send out a message to show
what we have resolved to attempt to do. As to what form or shape this Resolution, this
declaration will ultimately take, we shall see later. But one thing is, however, certain: it is not
a law; but is something that breathes life in human minds.
I hope the House will pass the Resolution which is of a special nature. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed, it will be a sort of pledge that we shall have to carry out. With this expectation and in this form, I place it before you. You have copies of it in Hindustani with you. I will therefore not take more of your time to read it one way, or, I will, however, read it in English and speak further on it in that language.]

I beg to move: "(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution; (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and (3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and (5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and (6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and (7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and (8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

Sir, this is the fifth day of this first session of the Constituent Assembly. Thus far we have laboured on certain provisional and procedural matters which are essential. We have a clear field to work upon; we have to prepare the ground and we have been doing that these few days. We have still much to do. We have to pass our Rules of Procedure and to appoint Committees and the like, before We can proceed to the real step, to the real work of this
Constituent Assembly, that is, the high adventure of giving shape, in the printed and written word, to a Nation's dream and aspiration. But even now, at this stage, it is surely desirable that we should give some indication to ourselves, to those who look to this Assembly, to those millions in this country who are looking up to us and to the world at large, as to what we may do, what we seek to achieve, whither we are going. It is with this purpose that I have placed this Resolution before this House. It is a Resolution and yet, 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

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[The Hon'ble Pandit Jawahar Lal Nehru]

not in a spirit of narrow legal wording, but rather to look at the spirit behind that Resolution. Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion. And so, I cannot say that this Resolution at all conveys the passion that lies in the hearts and the minds of the Indian people today. It seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution

before the House and it is in that spirit that I trust the House will receive it and ultimately pass it. And may I, Sir, also, with all respect, suggest to you and to the House that when the time comes for the passing of this Resolution let it be not done in the formal way by the raising of hands, but much more solemnly, by all of us standing up and thus taking this pledge anew.-

The House knows that there are many absentees here and many members who have a right to come here, have not come. We regret that fact because we should have liked to associate with ourselves as many people, as many representatives from the different parts of India and different groups as possible. We have undertaken a tremendous task and we seek the cooperation of all people in that task; because the future of India that we have envisaged is not confined to any group or section or province or other, but it comprises all the four hundred million people of India, and it is with deep regret that we find some benches empty and some colleagues, who might have been here, absent. I do feel, I do hope that they will come and that this House, in its future stages, will have the benefit of the cooperation of all. Meanwhile, there is a duty cast upon us and that is to bear the absentees in mind, to remember
always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India. We are all now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation, think sometimes of even the world at large of which our Nation is a great part. And when I think of the work of this Constituent Assembly, it seems to me, the time has come when we should, so far as we are capable of it, rise above our ordinary selves and party disputes and think of the great problem before us in the widest and most tolerant and most effective manner so that, whatever we may produce, should be worthy of India as a whole and should be such that the world should recognise that we have functioned, as we should have functioned, in this high adventure.

There is another person who is absent here and who must be in the minds of many of us today-the great leader of our people, the father of our Nation (applause)-who has been the architect of this Assembly and all, that has gone before it and possibly of much that will follow. He is not here because, in pursuit of his ideals, he is ceaselessly working in a far corner of India. But I have no doubt that his spirit hovers over this place and blesses our undertaking.

As I stand here, Sir, I feel the weight of all manner of things crowding around me. We are at the end of an era and possibly very soon we shall embark upon a new age; and my mind goes back to the great past of India to the 5,000 years of India's history, from the very dawn of that history which might be considered almost the dawn of human history, till today. All that past crowds around me and exhilarates me and, at the same time, somewhat oppresses me. Am I worthy of that past? When I think also of the future, the greater future I hope, standing on this sword's edge of the present between this mighty past and the mightier future, I tremble a little and feel overwhelmed by this mighty task. We have come here at a strange moment in India's history. I do not know but I do feel that there is some magic in this moment of transition from the old to the new, something of that magic which one sees when the night turns into day and even though the day may be a cloudy one, it is day after all, for when the clouds move away, we can see the sun later on. Because of all this I find a little difficulty in addressing this House and putting all my ideas before it and I feel also that in this long succession of thousands of years, I see the mighty figures that have come and gone and I see also the long succession of our comrades who have laboured for the freedom of India. And now we stand on the verge of this passing age, trying, labouring, to usher in the new. I am sure the House will feel the solemnity
of this moment and will endeavour to treat this Resolution which it is my proud privilege to place before it in that solemn manner. I believe there are a large number of amendments coming before the House. I have not seen, most of them. It is open to the House, to any member of this House, to move any amendment and it is for the House to accept it or reject it, but I would, with all respect, suggest that this is not moment for us to be technical and legal about small matters when we have big things to face big things to say and big things to do, and therefore I would hope that the House would consider this-Resolution in this big manner and not lose itself in wordy quarrels and squabbles.

I think also of the various Constituent Assemblies that have gone before and of what took place at the making of the great American nation when the fathers of that nation met and fashioned out a constitution which has stood the test of so many years, more than a century and a half, and of the great nation which has resulted, which has been built up on the basis of that Constitution. My mind goes back to that mighty revolution which took place also over 150 years ago and to that Constituent Assembly that met in that gracious and lovely city of Paris which has fought so many battles for freedom, to the difficulties that that Constituent Assembly had and to how the King and other authorities came in its way, and still it continued. The House will remember that when these difficulties came and even the room for a meeting was denied to the then Constituent Assembly, they be took themselves to an open tennis court and met there and took the oath, which is called the Oath of the Tennis Court, that they continued meeting in spite of Kings, in spite of the others, and did not disperse till they had finished the task they had undertaken. Well, I trust that it is in that solemn spirit that we too are meeting here and that we, too, whether we meet in this chamber or other Chambers, or in the fields or in the market-place, will go on meeting and continue our work till we have finished it.

Then my mind goes back to a more recent revolution which gave rise to a new type of State, the revolution that took place in Russia and out of which has arisen the Union of the Soviet Socialist Republics, another mighty country which is playing a tremendous part in the world, not only a mighty country but for us in India, a neighbouring country.

So our mind goes back to these great examples and we seek to, learn from their success and to avoid their failures. Perhaps we may not be able to avoid failures because some measure of failure is inherent in human effort. Nevertheless, we shall advance, I am certain in spite of obstructions and difficulties, and achieve and realise the dream that we have dreamt so long. In this Resolution which the House knows, has been drafted with exceeding care, We have tried to avoid saying too much or too little. It is difficult to frame a resolution of this kind. If
you say too little, it becomes just a pious resolution and nothing more. If you say too much, it encroaches on the functions of those who are going to draw up a constitution, that is, on the functions of this House. This Resolution is not a part of the constitution we are going to draw up, and it must not be looked at as such. This House has perfect freedom to draw up that Constitution and when others come into this House, they will have perfect freedom too to fashion that constitution. This Resolution therefore steers between these two extremes and lays down only certain fundamentals which I do believe, no group or party and hardly any individual in India can dispute. We say that it is our firm and solemn resolve to have an Independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it, is bound to be a republic. I will not go into the arguments about monarchy and the rest, but obviously we cannot produce monarchy in India out of nothing. It is not there. If it is to be an independent and sovereign State, we are not going to have an external monarchy and we cannot have a research for some local monarchies. It must inevitably be a republic. Now, some friends have raised the question: "Why have you not put in the word "democratic" here. Well, I told them that it is conceivable, of course, that a republic may not be democratic but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter? The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they have to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them. We stand for democracy. It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope. The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something must more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution. Others might take objection' to this Resolution on the ground that we have not said that it should be a Socialist State. Well, I stand for Socialism and, I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way. What form of Socialism again is another matter for your considerations. But the main thing is that in such a Resolution, if, in accordance with my own desire, I had
put in, that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some and we wanted this Resolution not to be controversial in regard to such matters. Therefore we have laid down, not theoretical words and formulae, but rather the content of the thing we desire. This is important and I take it there can be no dispute about it. Some people have pointed out to me that our mentioning a republic may somewhat displease the Rulers of Indian States. It is possible that this may displease them. But I want to make it clear personally and the House knows, that I do not believe in the monarchical system anywhere, and that in the world today monarchy is a fast disappearing institution. Nevertheless it is not a question of my personal belief in this matter.

Our view in regard to these Indian States has been, for many years, first of all that the people of those States must share completely in the freedom to come. It is quite inconceivable to me that there should be different standard and degrees of freedom as between the people in the States and the people outside the States. In what manner the States will be Parts of that Union that is a matter for this House to consider with the representatives of the States. And I hope in all matters relating to the States, this House will deal with the real representatives of the States. We are perfectly willing, I take it, to deal in such matters as appertain to them, with the Rulers or their representatives also, but finally when we make a constitution for India, it must be through the representatives of the people of the States as with the rest of India. Who are present here. (Applause). In any event, we may lay down or agree that the measure of freedom must be the same in the States elsewhere. It is a possibility and personally I should like a measure of uniformity too in regard to the apparatus and machinery of Government. Nevertheless, this is a point to be considered in co-operation and in consultation with the States. I do not wish, and I imagine this Constituent Assembly will not like, to impose anything on the States against their will. If the people of a particular State desire to have a certain form of administration, even though it might be monarchical, it is open to them to have it. The House will remember that even in the British Commonwealth of Nations today, Eire is a Republic and yet in many ways it is a member of the British Commonwealth. So, it is a conceivable thing. What will happen, I do not know, because that is partly for this House and partly for others to decide. there is no incongruity or impossibility about a certain definite form of administration in the States, provided there is complete freedom and responsible Government there and the people really are in charge. If monarchical figure-heads are approved by the people of the State, of a particular State, whether I like it or not, I certainly will not like to interfere. So I wish to make it clear that so far as this Resolution or Declaration is concerned, it does not interfere in any way with any future work that this Constituent Assembly may do, with any future negotiations that it may undertake. Only in one sense, if you like, it limits our work, if you call that a limitation, i.e.,
we adhere to certain fundamental propositions which are laid down in the Declaration. Those fundamental propositions, I submit, are not controversial in any real sense of the word. Nobody challenges them in India and nobody ought to challenge them and if anybody does challenge, well, we accept that challenge and we hold our position. (Applause).

Well, Sir, we are going to make a constitution for India and it is obvious that what we are going to do in India, is going to have a powerful effect on the rest of the world, not only because a new free independent nation comes out into the arena of the world, but because of the very fact that India is such a country that by virtue, not only of her large size and population, but of her enormous resources and her ability to exploit those resources, she can immediately play an important and a vital part in world affairs. Even today, on the verge of freedom as we are today, India has begun to play an important part in world affairs. Therefore, it is right that the framers of our Constitution should always bear this larger international aspect in mind.

We approach the world in a friendly way. We want to make friends with all countries. We want to make friends in spite of the long history of conflict in the past, with England also. The House knows that recently I paid a visit to England. I was reluctant to go for reasons which the House knows well. But I went because of a personal request from the Prime Minister of Great Britain. I went and I met with courtesy everywhere. And yet at this psychological moment in India's history when we wanted, when we hungered for messages of cheer, friendship and co-operation from all over the world and more especially from England, because of the past contact and conflict between us, unfortunately, I came back without any message of cheer, but with a large measure of disappointment. I hope that the new difficulties that have arisen, as every one knows, because of the recent statements made by the British Cabinet and by others in authority there, will not come in our way and that we shall yet succeed in going ahead with the co-operation of all of us here and those who have not come. It has been a blow to me, and it has hurt me that just at the moment when we are going to stride ahead, obstructions were placed in our way, new limitations were mentioned which had not been mentioned previously and new methods of procedure were suggested. I do not wish to challenge the bona fides of any person,

but I wish to say that whatever the legal aspect of the thing might be, there are moments when law is a very feeble reed to rely upon, when we have to deal with a nation which is full of the passion for freedom. Most of us here during the Past many years, for a generation or more have often taken part in the struggle for India's freedom. We have gone through the valley of the shadow. We are used to it and if necessity arises we shall go through it again. (Hear,
hear). Nevertheless, through ill this long period we have thought of the time when we shall have an opportunity not merely to struggle, not merely to destroy, but to construct and create. And now when it appeared that the time was coming for constructive effort in a free India to which we looked forward with joy, fresh difficulties are placed in our way at such a moment. It shows that, whatever force might be behind all this, people who are able and clever and very intelligent, somehow lack the imaginative daring which should accompany great offices. For, if you have to deal with- any people, you have to understand them imaginatively; you should understand them emotionally; and ’of course, you have also to understand them intellectually. One of the unfortunate legacies of the past has been that there has been no imagination in the understanding of the Indian problem. People have often indulged in, or have presumed to give us advice, not realising that India, as she is constituted today, wants no one's advice and no one's imposition upon her. The only, way to influence India is through friendship and co-operation and goodwill Any attempt at imposition, the slightest trace of patronage, is resented and will be resented. (Applause). We have tried, I think honestly, in the last few months in spite of the difficulties that have faced us, to create an atmosphere of co-operation. We shall continue that endeavour. But I do very much fear that that atmosphere will be impaired if there is not sufficient and adequate response from others. Nevertheless, because we are bent on great tasks, I hope and trust, that we shall continue that endeavour and I do hope that if we continue, that we shall succeed. Where we have to deal with our own countrymen, we must continue that endeavour even though in our opinion some countrymen of ours take a wrong path. For, after all, we have to work together in this country and we have inevitably to co-operate, if not today, tomorrow or the day after. Therefore, we have to avoid in the present anything which might create a new difficulty in the creation of that future which we are working for. Therefore, so far as our own countrymen are concerned, we must try our utmost to gain their co-operation in the largest measure. But, co-operation cannot mean the giving up of the fundamental deals on which we have stood and on which we should stand. It is not co-operation to surrender everything that has given meaning to our lives. Apart from that, as I said, we seek the co-operation of England even at this stage which is full of suspicion of each other. We feel that if that co-operative is denied, that will be injurious to India, certainly to some extent probably more so to England, and to some extent, to the world at large. We have just come out of the World War and People talk vaguely and rather wildly of new wars to come. At such a moment this New India is taking birth-renalent, vital, fearless. Perhaps it is a suitable moment for this new birth to take place out of this turmoil in the world. But we have to be cleared at this moment, we, who have this heavy task of constitutionbuilding. We have to think of this tremendous prospect of the present and the greater prospect of the future and not get lost in seeking small gains for this group or that. In this Constituent Assembly we are functioning on a world stage and the eyes of the world are
upon us and the eyes of our entire past are upon us. Our past is witness to what we are doing here and though the future is still unborn, the future too somehow Looks at us, I think, and so, I would beg of this

House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon. Sir, I. beg to move. (Prolonged Cheers).

Mr. Chairman: Shri Purushottam Das Tandon will second the Resolution.

The Hon’ble Shri Purushottam Das Tandon (United Provinces: General[Mr. Chairman, I fully support the Resolution moved by my brother Pandit Jawahar Lal Nehru. Today’s session of the Constituent Assembly is an historical occasion. After centuries such a meeting has once more been convened in our country. It recalls to our mind our glorious past when we were free and when assemblies were held at which the Pandits met to discuss important affairs of the country. It reminds us of the Assemblies of age of Asoka. We have dim impressions. of those days before our eyes. We are also reminded of Assemblies of other countries such as, America, France and Russia. Our Constituent Assembly will be remembered with those others which met to frame the constitutions of other free nations. We have met here to frame a constitution which will show to the world that India is determined to live honourably not in isolation but as a part, of the world. It will co-operate with other countries and help them in their difficulties and assist them in all those affairs which make for the general progress of the world. We hope that what we are doing today will be a historic event which will be counted those great events which have helped in the progress of the world.

India has been under the sway of the British for the last 150 years. We do not wish to go into things against which we have continuously raised our voice ever since the advent of the British Raj. We will not at present speak of the injuries done to India during this one and a half century. They not only deprived us of our freedom but also created disunity among us. We are not to go into these things today. We, however, cannot ignore the struggle. and sacrifices of our leaders. In the beginning our leaders demanded freedom by passing resolutions with explanations and submitting them to the Government. We were subjected openly to high-handedness and the Government were everywhere openly favouring the British. We earnestly appealed to our rulers to treat us with justice. Our leaders referred them to their high ideals, to the ideals of Burke and Mill. They were steeped in British ideals and they hoped that the British would do them justice. and give them freedom That time is now gone. Our experience has shown us that freedom cannot be had by requests and appeals and that drastic steps are unavoidable. The pages, of our history show that new movements were
started and open opposition began to be offered to the British. The movement of 1905-6 helped our country to ascend a few rungs higher on the ladder of progress. At that time our brave Bengali leaders and youths did act which will be written in golden letters in our history. We forged ahead. Our national leader, Mahatma Gandhi appeared in the field of politics and changed the methods of our struggle. He taught us new ways and we started afresh. British laws were not only openly defied but were also openly contravened without minding the dire consequences which were likely to follow such action. Thousands of our people broke the laws and went to jails. The pictures of those, who gave their lives of lingered for years in prisons, stand before our eyes. The more recent movement—the movement of 1942 is, in fact, the creator of this Assembly. This movement played a most important role in making the British Government call this Constituent Assembly. It opened a new field for our further advance. The eyes of the British Government were opened and the world was confronted with the fact that the British Government could no longer stay in India. Other countries did not help us openly.

We have, however, to admit that in addition to the expression of our strength, which is the Main thing which will carry us towards our goal, we were helped by powers which are today engaged in uniting the world. The world has seen, that oppression perpetrated in its remotest corner, has far-reaching repercussions involving the oppressor's country and its neighbours. This has been proved by the last two world wars. Now the great leaders of the world are thinking of the means to save the world from the ravages of a third world war. They desire to make it a paradise, to turn it into a place where no more wars will be fought, no more human blood will be shed, where no great distinction will exist between the rich and the poor, where everybody will get food and amenities, where people will be allowed to live according to their ideas, where every child has a right to be educated, where ideals will become noble and nobler and where spiritual ties will grow between the sons of man. Wise people are trying to bring out laws which will extricate the world from the slough in which it is at present wallowing and which will give equal rights to all countries. The time is swiftly changing and world forces are contributing towards these new ideas. We, too, living in this world cannot escape them. We ardently welcome the new forces which have always been the basis of our high hopes. It can be particularly said about India that its people have always considered the whole of mankind as one family and the whole world as one country. The best people among us never made any distinction between the people of the world. Many foreigners came to our
country. We received them with open arms. We never practiced the policy, which some countries have adopted against the people of our country. Our history shows that we welcomed all those who came from other countries and gave them whatever help they needed, assisting them to stay in our country. How did the people of England first come to this country? They found here protection and refuge. There have been quarrels and strifes: but on the whole our history shows that we have always protected human' rights. We do not consider it right to divide brother from brother nor do we make any distinction in their political rights. We have no doubt, had and still have shortcomings: and we cannot ignore them.

Our past history urges us to go forward. We have to reach the point where we may place the ideal of equality not only before our own country but before the world at large. On this historical occasion it is quite, natural that our thoughts dwell on our past history and to the events which occurred in our country; On our struggles, our sacrifices and help that we have received from other nations which have brought us here together and we must take strength from them. We have come here to frame a constitution which will give our country peace and tranquillity. We aim at giving equality to each and every in-habitant of our motherland.

The Resolution placed before you to-day has equality as its underlying theme. The different sections of the country have been given autonomy and India as a whole remains one with full sovereignty. We shall stand united in affairs which demand our unity. The one important thing in the Resolution is the recognition of India as a free country. Our country is one and yet we shall give full freedom to its various sections to have for themselves whatever administration they liked. The present division of our country into provinces may change. We shall do justice to all communities and give them full freedom in their social and religious affairs.

There is an amendment to the Resolution asking for a postponement of its consideration until such time as the Muslim League joins the Assembly. We should not ignore the fact that for every action there is a proper time. if we postpone the Resolution today, when will it again come before us? We are not certain as to when the League would come in. We have gathered together to-day; should we disperse without doing anything? Should we not have at least an objective for our future proceedings? Should we go away after merely appointing a Procedure Committee? Our brethren advise us to postpone the consideration of the Resolution to some other time. If they wanted not to do anything in the absence of the Muslim League, why have they met here at all?
We do want the Muslim League to co-operate with us; but can we contribute to the present aims and aspirations of that body? We shall try our utmost not to hurt the cause of the Muslim League; and, I point out to you, that the Resolution takes note of this fact. There are many of us who are against giving residuary powers to the provinces. Personally, I would oppose the grant of residuary powers to the provinces in the best interests of my country, especially in view of the conditions prevalent in the provinces owing to this Hindu-Muslim problem. We all know what has happened in Bengal and in other provinces. Residuary powers and political rights, which may conduce to unity and progress in the country, should lie with the Central or Federal Government. The Resolution, however gives residuary powers to the provinces so that the Muslim League may not say that we have done in their absence what as we pleased. Moreover, the State Paper issued by the Cabinet Mission, which is the foundation of the Constituent Assembly, also said that the residuary powers should go to the provinces. We accepted it in the hope that this will enable the Muslim League to work with us. We went as far as we could to make the Muslim League co-operate with us; nay, I would rather say, we want farther than was needed, because the Muslim League aims at certain objectives which are absolutely against our objectives and this will cause a lot of trouble in the future. For the sake of securing Muslim League's co-operation we have been accepting many things against our ideals. We should now put a stop to that and should not ignore our fundamental principles for the sake of coming to an agreement with the Muslim League. I am opposed to the postponement of the Resolution, and I am sure, the House realises the importance of this Resolution. Constituent Assemblies in other countries began with their objectives before them. If you postpone this Resolution, what will the world think? When they hear of this Resolution they would think that India was going to be free; that the fight of 'Quit India' against the British started by Indians in 1942, was being won. This Resolution will lend a great importance to your cause of freedom, and its postponement I think, is not expedient.

There are other amendments to the Resolution. It has been clearly pointed out in the Resolution that power shall entirely vest in the people. Some members suggest to substitute 'working people' for 'people.' I am opposed to this. The word 'people' means all the people. I am myself a servant of the farmers. To work with them is my highest glory. The term people' is comprehensive and contains all the people. It is, therefore, my opinion that no adjective should be attached to it. There are amendments asking for universal compulsory education and so on. These are petty matters. Times have changed. Provincial Governments have enacted laws to enforce these things. For the nonce we should concentrate on larger issues. All these amendments are non-essential and should not be moved.
As I have already said we have got this of making a constitution after passing through many ordeals. We obtained some privileges in 1935. We continued the fight until we came to 1942. Now, as a result of these struggles, we have gathered here to frame a constitution and we do not yet know what will be the result of our efforts. Our path is still full of obstructions. Our friends in London send us their advice. Sir Stafford Cripps, while speaking of certain principles, advises us to accept the formula that the majority should frame its own constitution, while the minority should also have the right to have its safeguards against any obstructions from the majority. I am sorry to say though Sir Stafford

professes to help us, his real aim is to erect obstacles in our way. The history of our relations with the British show that Hindu-Muslim differences are purely a British creation.

The differences on which the British harp upon have been created by them. They were not in existence before their advent. Hindus and Muslims had a common civilization and lived amicably. Can the British say that the situation now obtained in India is not of their creation and is not backed by them? Those who are opposing us under the instigation of the British are our brethren and we certainly desire their co-operation; but in order to have them on our side, we cannot sacrifice these basic principles to which we have been wedded till now and which go to make a nation. Sir Stafford warns us of civil war and advises us to co-operate with each other to avoid it. No patriot would like civil war and shedding the blood of his own countrymen. Congress has always tried to unite all the sections of the population to figr. for the freedom of their country. Our leaders have never indulged in communal bickerings. Congress is the only body in which Hindus, Muslims, Parsees, Jains and Buddhists can unite. In politics it refuses to recognize any difference on account of religion. To say that such and such sections be separated from the country on religious basis, is no religion but pure politics-politics which destroy the unity of a country. We ask Sir Stafford and other British leaders: "If a hundred years or, for that matter, twenty years ago, the right of separate elections were given to different sects of your country what sort of Government you would have had today?" Again, we ask America: "if the right of separate elections was given to different communities and Christian sects of your country, would you have had the same form of government as you now have? Would you not have had continuous civil wars in your countries?" The possibility of civil war in our country has been created by the British Government. The British Government is playing the old game. The Cabinet's Statement shows the same mentality. The interpretation given by them stresses the point that the different groups of the Indian Federation shall have full power to frame whatever constitution they liked for them. They say, as they said before, that a province will have full option to remain in a group or not; but at the same time they qualify this statement with conditions which preclude the possibility of a
province using that right. You tell a province that it was free to remain in a group or not but at the same time you say that all the people of a group should join together to frame its constitution. The North-West Frontier Province will have to attach itself to the Punjab, Sind and Baluchistan, and Assam to Bengal. Their constitutions will be framed by 'B' and 'C' groups. The group consisting of Punjab, Sind and Baluchistan will frame constitutions for N.-W. F. Province and Bengal for Assam. Is it honest? You say that a province has the right to go out of a group but you frame a constitution that precludes its going out of it. In the Cabinet Mission's Statement, it was clearly said that a province will have option to join a group. The option to go out is given at the end of the Statement. The meaning of the first part is that at the time of the formation of groups a province will have free option to be in the group or not. We understood it as such and so the Congress accepted it; but now it is said that a province has no option, even at the time of formation of groups to remain out of its group not does it have the right to frame its constitution. It will be framed by the delegates of the whole group. This means that we should accept the division of India and deliver the N.-W. F. Province and Assam into the hands of persons who openly assert that they are out to divide India into two parts. If civil war is unavoidable, let it come. We cannot be coerced to do a wrong thing by threats of civil war. It is quite possible that civil war may occur in a comer of India and we may have to

fight the British, too. They threaten us with civil war; but the fact is that they are sowing the seeds of civil war among us. They wish that we should fight so that they may rule over us. I feel pained when I say these things. I have a great regard for the British people. They are far advanced in the field of politics and they are wise and freedom-loving. We have learnt many things from them. I have not a trace of hatred in my mind for them. I was happy that a new era had dawned in England, that the Government had passed to the Labour Party who would reverse the old policy. For the last hundred years the policy of the British Government had been one of selfishness and cunning towards countries, while in their own country they are very liberal and have a great regard for each other. For the benefit of their own people they consider it expedient to coerce and exploit other people. It was expected that with the advent of this new government and the defeat of the old Tories their policy would be entirely reversed and the foreign policy of England would be based on honesty but I am disappointed to see that some of the recent statements aimed only at creating a breach among the people of India.

I admit that the Congress had come into the Assembly by accepting the Cabinet Mission's Proposals but I want to point out that Constituent Assembly after meeting may adopt an altogether a different course. In France people met on the invitation of King Louis. When they
saw they could not do what they wanted to do, they began their own procedure. The King who had called them for granting him money, seeing their intentions, wanted to disperse them but they refused to disperse. Our Constituent Assembly has met on the invitation of the British Government but we are free to carry on the work as we please. Some of us were against the Congress participation in this Assembly. They were afraid of British tactics. The Congress, however, had full confidence in itself. My humble voice was also for coming into the Assembly I believed in the power and determination of my colleagues. The occasion was not to be lost. If we could not succeed on account of obstructions from the British Government we shall at least show the world the sort of constitution we want. Our Chairman in his speech made many good points. I was elated to hear him say that we would not subject ourselves to limitations laid down by the British Government.

In this House we cannot accept the British Government's proposals to divide India into sections and to give that right of framing constitution for provinces into the hands of persons who are bent upon dividing India. I do not like to say these things but I feel it my duty to say that the British Government shows a lack of honesty in assertions which it makes on behalf of the Muslim League.

Somebody has rightly said that the League was the British Government's Front (morcha). Pandit Nehru said the other day in the Congress that the League members who had come in the Interim Government were acting as the King's Party. The fact is that the League is being duped by the British Government. They are our countrymen and our brethren and we are always prepared to come to an agreement with them. Today the British are using them as their morcha from behind which they are throwing arrows upon us. We know the British arrows and We have to protect ourselves. In the Constitution that we would frame, we would try to save ourselves from these arrows. In doing so, if we have to fight the British and their proteges, we are prepared to do so. We are sure we will, surmount all obstacles. It is the time of our trial. when success comes nearer a host of difficulties crop up. When yogis begin to ascend higher in their yogas they are beset by apparitions, spectres and evil spirits. They threaten them and try to dupe them. We are nearer the success and many evil spirit have arisen to make us deviate from our purpose. It is our duty that we should neither fall to their machinations or should we feel afraid of them.

In framing the Constitution we

should remember that whatever plan- of progress we make, we should never yield to the proposal of dividing India. India should remain one. Thus protecting our past civilization, we may proceed forward and take the greatest part in bringing peace to the world.
Mr. Chairman: The Resolution has been moved and seconded. I have received notice of a large number of amendments. I think I have got more than 40 amendments already before me and therefore I do not think it necessary to give any more time for giving notice of more amendments. I think all who wanted to put in amendments have already done so., taking into consideration the number of amendments.

It is now 1 o'clock and I think we may rise. But before we rise, I desire to point out to the House that from the next day, I may have to do the unpleasant duty of imposing some sort of time-limit on the speakers. This being the first day, I did not like to interfere and I allowed the speakers to have full time.

Tomorrow being, Saturday, I would not like that the House should meet. It is not as if I am laying down a rule that we shall not meet on Saturdays. We are not meeting this Saturday for the reason that we are meeting in the Rules Committee and I want the Committee's work to be finished as soon as possible. So to allow the Members of the Committee full time tomorrow, we are not meeting here. We meet on Monday, and on Monday we shall meet in the afternoon from 3 o'clock, not in the morning. The House stands adjourned to 3 o'clock on Monday.

The Assembly then adjourned till 3 P.m on Monday, the 16th December, 1946.
CONSTITUENT ASSEMBLY OF INDIA - Volume I

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS--contd.

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death-(cheers)--Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am
supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of MY supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims In reply I said that I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am conscious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, e.g., of asking your attention to some pitfalls and difficulties-in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers
being derived from the people, minorities Rights, fundamental rights—all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitution have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and, limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to you the relevant parts of the Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.
Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment: "This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (I) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States, Then comes sub-clause (iii) which says that "representatives thus chosen", i.e. the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible". We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your
attention to the letter of invitation, dated the 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do: "A preliminary meeting will be held at which (1) the general order of business will be decided (2) a chairman and other Officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...."

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore, my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order. What is your point of order, Mr. Santhanam?

Sr. K. Santhanam: My point of order is that-if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.
Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty—it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? it is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as, a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point, the Resolution moved by Pandit Jawahar Lal Nehru is out of order. This question should have been raised at the time when the Resolution was moved. But at, this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You ,it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says: "These sections shall proceed to settle provincial constitution for the provinces included in each

I understand these will meet in March or April. next. I leave the other irrelevant portions. Then comes clause (vi)—which relates to the stage at which quest-Ions relating to the Constitution can be settled. "The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

That is the stage at which the fundamentals of the Constitution can be settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached
yet. Therefore, my submission is, that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil

(Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals—all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so than when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R. K. Sidhwa (C. P. and Berar: General): I rise to a point of order, Sir. Dr. Jayakar's amendment says: "...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly."

He has quoted clause (ii) of paragraph 19. That clause says: "It is the intention that the States would be given in the final Constituent Assembly appropriate representation...."
That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you further see.........

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M. R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M. R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by 'superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck I congratulate you that you will, have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to the Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, viz., relating to grouping and voting, you cannot go to the Federal Court on the last point gained by the Muslim League, viz., the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been
conceder the Muslim League. viz., that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th (Applause)

The Right Hon'ble Dr. M. B. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", i.e., they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.
So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the-Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it win not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in They have not come of their own accord.

The Right Hon'ble Dr. M. B. Jayakar: That. is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M. R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.
The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M. R. Jayakar: yes.

The Hon'ble Pandit Govind Ballabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there. place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M. R. Jayakar: I am, not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not, come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result?( Interruption).
Tuesday, the 17th December, 1946

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

The following Member presented, Her credential and signed the Register. The Hon'ble Mrs. Vijayalakshmi Pandit.

Mr. Chairman: I am happy to welcome Srimathi Vijayalakshmi Pandit after the great work she has been able to achieve in the International Conference in America. (Cheers). I am sure the whole House will join me in that welcome as is apparent from the cheering. (Applause).

Is there any other member who wishes to sign the Roll? (None.)

RESOLUTION RE: AIMS AND OBJECTS-contd.

Mr. Chairman: We shall proceed to the discussion of the Resolution and the amendments. I have got a long list of members who wish to speak. The list covers more than 50 names. I do not know how I can accommodate all the 50 speakers who have sent in their may. There may also be some others who wish to speak. I would therefore select according to my own choice. I am not sure that that may not cause complaint in some quarter or other, but I suppose that that is the only way. I want to suggest to the speakers to be as brief as they can, because after all we have got to go through this work, finish this Resolution and take up other business. Sitting, as we are doing now for two hours a day, if every speaker takes 15 minutes, that means 6 days and if we sit both in the morning and evening, it means 3 days. I do not think we can afford so much time on this Resolution. I would therefore request the speakers to be as brief as they can without my fixing any time-limit. Ten minutes may be taken as a reasonable limit. I would call upon Mr. Masani.

Mr. M. R. Masani (Bombay: General): Mr. Chairman, in rising to speak on this Resolution, I would like to make it clear at the outset that I, do not as a member of one of the several communities, into which unfortunately, our nation is today divided, but as an Indian first and last. (Hear). I do so even though I owe my origin to the very smallest or tiniest of our national
minorities. It was one of those groups of people who received that welcome, that hospitality and that protection to which Babu Purushottamdas Tandon referred in his speech in seconding this Resolution. I hope, Sir, that these minorities which exist in our country, will, along with the majority, continue their progress towards becoming a nation, a process which in this ancient country was happening through the absorption of new groups that came into it through the centuries, but a process which seems to have been retarded through the rigidity of caste and through the exclusiveness of society in the past few centuries. I would only observe at this stage that the conception of a nation does not permit the existence of perpetual or permanent minorities. Either the nation absorbs these minorities or, in course of time, it must break up. Therefore, while welcoming the clause in this Resolution which promises adequate safeguards for the minorities, I would say that it is a good thing that we have these legal and constitutional safeguards, but that ultimately no legal safeguard can protect small minorities from the overwhelming domination of big masses, unless on both sides an effort is made to get closer and become one corporate nation, a homogeneous nation. That process has been shown to us by the United States of America, where peoples of different races have, with one unfortunate exception, been absorbed into one nation.

There must have been indeed very few members of this House who were not deeply moved, and who did not feel elevated, by the noble speech with which the Mover of this Resolution introduced it in this House. He peered into the future and tried to see what shape the destiny of the people of India would take and, in response to the appeal which he made that we should consider this Resolution as something fundamental and avoid legal disputes and quibbling over its terms. I would like, in the very few minutes that, Sir, you have placed at my disposal, to draw the attention of this House to what I might call the social or long-term aspect of this Resolution and to try to understand what kind of society or State, what way of life this Resolution offers to the people of this country. I feel, Sir, that immediate disputes aside, that is the part of the Resolution at which the common people of the country will look with the closest attention.

I approach this part of the Resolution, Sir, as a Democratic Socialist, a Socialist who feels that democracy needs to be extended from the Political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all. I welcome this Resolution in spite of the fact that neither the word 'Democracy' nor the word 'Socialist' finds a place in its Preamble. It is perhaps just as well that those words have been avoided because, as one of us here put it in his Presidential Address at the Meerut Congress, terms like Socialism or Democracy can be made to cover multitude of sins. The fog of words often covers realities.
We know the French Revolution was made in the name of fraternity but, towards the end of that Resolution, a cynic remarked-

"When I saw what men did in the name of fraternity, I resolved if I had a brother to call him cousin”

That I fear, is true of other revolutions as well. As a Socialist, Sir, I welcome this aspect of the Resolution because, as the Mover has rightly pointed out, the content of economic democracy is there although the label is not there. The 'Resolution, in my view clearly rejects the present social structure, it rejects the social status quo. There can be no other meaning to the words in clause 5 which refer to justice social, economic and political. I do not think anyone here would argue that 'the present state of our society is based on justice. I think it has an estimated that today if our national income were to be divided into three equal thirds, 5 out of 100 Indians get one third of our national income, another 33 get the second third and the big mass of 62 get the remaining portion. That surely is not social or economic justice and, therefore, as I understand this Resolution, it would not tolerate the wide and gross inequalities which exist in our country. It would not tolerate the exploitation of a man's labour by somebody else. It certainly means that every one who toils for the common good will get his fair share of the fruits of his labour. It also means that the people of this country, so far as any constitution can endow them, will get social security-the right to work or maintenance by the Community. The Resolution also provides for equality of opportunity. Equality of opportunity, Sir, presupposes equal facilities in education and in the development of the talent that is latent in each one of us, To-day, among our masses a fund of latent talent exists which has no chance to come out and contribute to our national good. Equality of opportunity certainly assumes that every child in this country, every boy and girl, will get an equal opportunity to develop those faculties which he or she possesses in order contribute to the common good.

That, Sir, is the socialist aspect of the Resolution. It does not provide for Socialism. It would be wrong to provide for such a thing, because this House has no mandate to go in for far-reaching economic changes in the country. Those changes can be brought about by a properly constituted Parliament when it comes into existence with the mandate of the people. All that we can do as an Assembly here, is to frame a constitution which will allow those far-reaching changes which are necessary to be made and I submit, Sir, that this Resolution goes as far as it can in satisfying the most ardent socialist amongst us.

As I said, Sir, I approach this as a Democratic Socialist and, if Socialism is there, so is Democracy or the content of Democracy included in the Resolution. I do not think the word 'Republic' there is adequate. As Pandit Jawahar Lal Nehru himself has stated; it is conceivable
that a Republic may not be democratic. If we cast our eyes around the globe to-day, we shall see several instances of this and therefore, apart from saying that we shall be a Republic, it is necessary that we should make it clear, as clauses 4 and 5 do, that in our view Democracy does not mean a Police State, where the Secret Police can arrest or liquidate people without trial. It does not mean a totalitarian State where one party can seize power and keep opposition parties suppressed and not give them the freedom to function freely and with equal facilities. It cannot mean a Society or State where an individual is made a robot or where is reduced to "a small screw in the big machine of State". Pandit Jawahar Lal Nehru has pointed out that this Resolution is based on Democracy, and that all our past bears witness to the fact that we stand for Democracy and for nothing less. But it is not only our past which is a guarantee if our democratic faith. It is also our present.

Our national life has many different trends in it but, almost unanimously, we all stand for the freedom of the individual and for a democratic State. And to show how widely differing schools of thought in our midst can agree with almost one voice on this desire to distribute power to our common people, to distribute political and economic power so widely that no one man or group of people can exploit or dominate the rest, I will cite to you first the testimony of one who is not present amongst us, one who, was referred to by the Mover as the Father of our Nation. I refer to Mahatma Gandhi. (Cheers). These are his words as quoted in 'A Week with Gandhi' by Louis Fischer:

"The centre of power now is in New Delhi, or in Calcutta and Bombay, in the big cities. I would have it distributed among the seven hundred thousand villages of India...."

"There will then be voluntary co-operation between these seven hundred thousand units, voluntary co-operation-not co-operation induced by Nazi methods. Voluntary co-operation will produce real freedom and a new order vastly superior to the new order in Soviet Russia......"

"Some say there is ruthlessness in Russia, but that it is exercised for the lowest and the poorest and is good for that reason. For me, it has very little good in it."

And as if to find an echo of that in a thinker of a very different school, I shall now cite a sentence or two from a recent Picture of Socialism drawn by the leader of the Indian Socialist Party, Jai Prakash Narain. I regret, Sir, that he has not joined us in our here, but this is what he says and it sounds almost like an echo of Gandhiji's thought: "The State under Socialism threatens, as in Russia, far from withering away, to become an all-powerful tyrant maintaining a strangle-hold over the entire life of the citizen. This leads to totalitarianism of..."
the type we witness in Russia today. By, dispersing the ownership and management of industry and by developing the village into a democratic village republic, we break this strangle-hold to a very large extent and attenuate the danger of totalitarianism. Thus my picture of a

India is the picture of an economic and political democracy. In this democracy, men will neither be slaves to capitalism nor to a party or the State. Man will be free.”

Sir, it is a fashion of our day to argue that the social and economic changes that are at present required cannot be made unless individual liberty and democracy are first destroyed and an all-powerful State can push its programmes through. This Resolution, if I read it aright, is a refutation of that thesis. It envisages far-reaching social changes—social justice in the fullest sense of the term—but it works for those social changes through the mechanism of political democracy and individual liberty. To those defeatists who say that this cannot be done, this Resolution says it can be done, and we have the intention and the determination to do it. The central problem of our times is whether the State is to own the people or the people are to own the State. Where the State belongs to the people, the State is a mere instrument subordinate to the people and it serves the people. It only takes away the liberty of the individual to the extent that the people really desire it. Where the State owns the people, the people are mere robots in a big machine—pushed about here and there by the whims of an all-powerful dictator or an all-powerful party. It is because I believe, Sir, that this Resolution points the direction to a constitution where the people will be in power, where the individual will occupy the centre of the stage and the development of the individual personality will be the main aim of our social good, that I support this part of the Resolution, this aspect of it, for I believe that, as the fathers of the United States Constitution put it, every individual Indian has an "inalienable right to Life, Liberty and pursuit of Happiness". (Cheers.)

Mr. F. R. Anthony (Bengal General): Mr. President, Sir, I have risen to support the amendment moved by Dr. Jayakar. I have given the most earnest consideration to the Resolution involved by Pandit Nehru and to the amendment as it has been moved by Dr. Jayakar. I appreciate the solemn character of the main Resolution, and I am not going to support the amendment purely by arguing technical or legal reasons in support of it. I appreciate the fact that the first part of that man Resolution affirms our solemn resolve to proclaim India as an independent Sovereign Republic. That, I realise, is an article of faith with the Congress Party. It represents the supreme objective for which they have fought so long and so arduously. No one could, should, more than that, would dare ask them not to reiterate that pledge of theirs on this, the first and the most appropriate occasion. Apart from
that, I think it is a pledge which is enshrined in the heart of every Indian. I also appreciate the fact that constitutional precedent shows that assemblies such as ours have at the very first opportunity declared their main and fundamental objective. And ours is to proclaim India as a Sovereign Independent Republic. Pandit Jawahar Lal Nehru has asked us, quite rightly, not to read into this word "Republic" any unnecessary bogeys. It is only meant to indicate a constitution in contradistinction to a monarchical form of government. At the same time, he emphasised that it does not preclude units, autonomous units, from joining this Republic and retain- in to themselves a monarchical form of government. The reason why I have supported Dr. Jayakar's amendment are that, I believe that it fulfils essentially both these things. The amendment respects the Congress pledge. it affirms our solemn resolve to frame constitution for A free and democratic Sovereign State. The words used may not be identical. I would prefer the words to have been adopted from the man Resolution, but I believe that from the constitutional point of view, the connotations of these two phrases are virtually identical. Further, Dr. Jalyakar's amendment meets the second need, to proclaim at this first stage our fundamental objective of framing a constitution for a free and democratic Sovereign State. What I believe Dr. Jayakar's amendment really seeks to do is to ask us to defer a declaration on the remaining parts of that main Resolution. That is, those parts relating to the Indian States, to the powers and functions of the Provinces and to the powers and functions of the Union. That, I believe is the intention of this amendment-to ask us to defer a declaration, however just it may be a declaration which may expose us to the charge, however baseless, that we are prejudging matters of detail which have to be traversed in this Assembly and on which decisions should be made after they have been fully canvassed and discussed here. That is why, Sir, I feel that Dr. Jayakar's amendment should be supported. It ought to be adopted because it is dictated, if I may say so, with all humility, by considerations of statesmanship, by the desire of every one of us to see the greatest measure of agreement and goodwill between the two major parties and by the desire of every one of us to see this great country of ours embracing, giving strength to and being given strength by those who make up her children.

Dr. Syama Prasad Mookherjee (Bengal: General): Mr. Chairman, Sir, I believe in the course of the chequered history of our country, we have often passed motions and resolutions from different political parties and platforms embodying our demands for an Independent Sovereign State for our motherland. But so far as today's Resolution is concerned, it has :a deep and special significance. It is for the first time in the history of our country, since we came under British rule, that we have met to frame our own constitution. It is a great responsibility-in fact, as the Hon'ble the Mover of the Resolution reminded us, it is a solemn and sacred trust which we Indians have agreed to perform and we propose to do so to the best
of our ability. Now, Sir, the amendment which has been moved by Dr. Jayakar raises certain questions of fundamental importance. I am sorry I cannot support the amendment. The effect, of the amendment practically is that we cannot pass a resolution of this description at all until the Sections have met and made their recommendations. Dr. Jayakar wants that we should not pass this Resolution until both the Indian States and the Muslim League are enabled to attend the Constituent Assembly. So far as the Indian States are concerned, they cannot come even if they wish to, until the Sections have met and settled the provincial constitutions, which means how many months none can foretell. So far as the Muslim League is concerned, no doubt, every one regrets that the Muslim League has not found it possible to attend the preliminary session of the Constituent Assembly. But what guarantee is there that, if this Resolution is postponed till the 20th January next, as Dr. Jayakar suggests, the Muslim League will come and attend the session?

I feel, Sir, that the question should really be looked at from a different point of view. Does this Resolution raise issues which are in any way inconsistent with the Cabinet Mission's Scheme of May the 16th?-If it does raise issues which are inconsistent with that scheme, then obviously we are prejudging matters, we are raising matters which, it may be said, we have no right to do at this stage. Now, that document to my mind is something like a puzzle picture. You can interpret it in so many ways looking at it from different angles of vision. But looking at the Resolution as it stands, what is the declaration that it is making now? It enumerates certain fundamental things which are within the frame-work of the Scheme itself. I know that if we go into some details. I have to refer to at least one matter on which many of us hold divergent views, namely, the question of residuary powers. But that is a matter which the Cabinet Mission's Scheme has included within the contemplated framework of the Constitution. That is a matter on which the Indian National Congress has expressed its opinion; that is a matter. I believe, on which the Muslim League also has expressed its opinion. Some of us differ from that standpoint and urge a stronger Centre in India's paramount interest. We shall do so at an appropriate stage later on. Pandit Jawahar Lal Nehru, as the mover of the Resolution, has also made it clear that we are not now framing a constitution for India; we are only passing a resolution at this stage, at the preliminary stage, outlining generally the shape that the future constitution of India should take. In other words, when the time actually comes for us to frame the Constitution, I believe, Sir, it will be open to any one to, bring up any matter that he chooses before the House as an amendment to any proposal that may be made and which is bound to be considered on its merits. The passing of this Resolution, I take it, can be no legal bar whatever against any member bringing forward any amendment to the draft Constitution that this Assembly may
frame at a later stage. If assurances are forthcoming, on these two issues, namely, that the Resolution as drafted does not go against the main features of the Cabinet Mission's Scheme, and also that it does not commit the Constituent Assembly in a definite manner with regard to the details of the Constitution that is yet to come. I see no reason why any obstacle should be put forward to passing the Resolution at this stage.

The Resolution has an importance of its own. After all, we are sitting here not in our individual capacity, but we claim to represent the People of this great land. Our sanction is not the British Parliament; our sanction is not the British Government; our sanction is the people of India (cheers). And if that is so, we have to say something, not merely to frame rules and regulations, we have to say something concrete to the people of India as to why we have assembled here on the 9th December 1946. If what Dr. Jayakar says had been the correct position, then this Constituent Assembly should not have been called at all; in fact, Dr. Jayakar need not have attended the meeting. He should have informed the Governor General, "I regret I cannot accept your invitation because I feel you are doing wrong in calling the Constituent Assembly as the Muslim League and the Indian States are not attending." But having come here, for us to raise this issue is practically to walk into the trap, of the Muslim League and to strengthen the hands of reactionaries in Great Britain. I know that Dr. Jayakar will be the last man to do such a thing. I admire his courage of conviction; in fact, every one who feels that a certain thing should be done, must be able to come forward and present his view point. But we may also respectfully point out to Dr. Jayakar the great danger that lies in the innocent looking amendment that he has put forward before the House, and I hope that he will withdraw the amendment in due course when the time comes.

I would like just to say a few words with regard to another aspect of the question. The Resolution is there, but, how are we going to implement it? What are the impediments that we already see before us which may prevent us from carrying this Resolution into effect? Now, one, of course, is the status of the Constituent Assembly in the absence of the Muslim League. Dr. Jayakar yesterday referred to some analogy of a dinner party. He said, "If guests are invited and some guests do not come, then how can you have the dinner party?" But he forgot to say what will be the fate of the guests who have already arrived? If he is going to be the host and invites six guests, suppose five of them come and one is absent, is he then going to starve those five guests of his and turn them out of his house and say, "the sixth has not come and you are not going to get your food?" Obviously not. Here also the hunger for freedom for those who have come has to be satisfied. Mr. Churchill said that the absence of the Muslim League in the Constituent Assembly was something like the absence of the bride in the Church when the marriage was going to take place. I do not know, when the Indian States
come in and also the Muslim League, how many brides the Constituent Assembly is going to have ultimately. In any case, if that is Mr. Churchill's point of view, he should not play the role of a seducer. He should have asked Mr. Jinnah to go back to India and join the Constituent Assembly and place his point of view before the people of India. No one has said that the Muslim League should not come. In fact, we want that the Muslim League should come so that we can meet each other face to face. If there are difficulties, if there are differences of opinion, we do not wish that we should carry only by majority votes. That may have to be done as a last resort, but obviously, every attempt must be made, will be made to come to an agreement as regards the future Constitution of India. But why is the Muslim League being prevented from coming? My charge is that the Muslim League is not coming because of the encouragement it receives from British attitude. The Muslim League has been encouraged to feel that if it does not come, it may be able to veto the final decision of the Constituent Assembly. The power of veto in some form or another has again passed into the hands of the Muslim League, and that is the danger that threatens the future activities of this great Assembly. Sir, I am not going to discuss in detail, because this is neither the time nor the occasion when I can discuss, the various provisions of the British statements. But, I would certainly say this: that "his Constituent Assembly, although it is a British creation for the time being, once it has come into existence, it has the power, if it has the will, to assert its right and to do what is best and proper for the attainment of India's freedom, for the good of the people of India irrespective of caste, creed or community. (Hear, hear).

Now, Sir, we have said, at any rate, the Indian National Congress has said—because that was one of the major parties with whom negotiations went on—that they stand by the Cabinet Mission Scheme of May 16. It gladdened my heart yesterday when the Hon'ble Sardar Vallabhai Patel got up, interrupting Dr. Jayakar, and said that the Congress has not accepted anything beyond the Statement of May 16, 1946. (Cheers) That I consider to be an announcement of fundamental importance, We have got to make it clear as to what we are here for. I say that our attitude should be something like this: We shall give the Cabinet Mission Scheme of May 16, a chance; genuinely, honestly we shall see if we can come to an agreement with the other parties and elements on the basis of the Scheme on May 16, 1946. But subsequent interpretations, if any, we are not going to accept. Or if any party chooses to deviate from the Scheme and break away, we shall proceed and frame the Constitution as we wish.
There has been considerable difference of opinion with regard to one clause of the Statement of May 16, 1946, and that is with regard to the question of grouping. Now, it is for the Congress to decide, as one of the major parties involved, what interpretation it is going to accept ultimately. If the interpretation as given by His Majesty's Government is not accepted, and if the Congress considers that the interpretation put upon that portion of the Statement by it (the Congress) is correct, then of course a crisis may come. That is a question which has to be decided apart from a discussion on this Resolution. In fact, the greater the delay in making a decision on that question, the greater will be the atmosphere of unreality; so far as the proceeding of this House are concerned. But, after that question is decided, supposing the interpretation put by His Majesty's Government is accepted, whether by a reference to the Federal Court, or not, I need not go into, then we shall go on. We shall proceed with our work. The Muslim League may come or may not come if it comes, well and good; and even if it does not come, it cannot retard India's freedom and we must claim to proceed with our business in This I feel, Sir, that if a crisis does come, as I visualise, it is likely to come, if our country is to be free, it is not going to be in accordance with constitutional means. In view of the developments that have taken place during the last few days, our task will not be performed so easily. But let me emphasise that whatever has to be done, it has to be done through the agency of this Constituent Assembly and none other. If ultimately we have to functional we shall function on our own responsibility and prepare a constitution which we shall be able to place before the bar of world opinion and satisfy everyone that we have treated the people of India, minorities and all, in a just and equitable manner.

After all, what happened with regard to the South African question? We have today in our-midst, the Hon'ble Mrs. Pandit, who has come back to her motherland after a great victory. But even there she was not supported by our self-constituted trustee-His Majesty's Government in Great Britain. In fact the vote went against India so far as Great Britain was concerned. But she won. The Indian Delegation won before the bar of world opinion. Similar may be the case with regard to the Constituent Assembly also. If we take courage in both hands and frame constitution which will be just and equitable to all, then we shall be able, if need be, to declare this Constituent Assembly as the first Parliament of a Free and Sovereign Indian Republic. (Loud cheers.) We then may be able to worm our own National Government and enforce our decision on the people of this land. As I said a few minutes ago, our sanction is not the British people of the British Government. Our sanction is the, people of India and therefore we have to make the ultimate appeal to the people of our country.
Sir, when we talk about minorities, it is suggested as if the Muslim League represents, the only minority in India. But that is not so. There are other minorities. Coming from Bengal with all her tragic suffering, let me remind the House that Hindus also constitute a minority in at least four Provinces in India and, if minority rights are to be protected, such rights must affect every minority which may vary from Province to Province.

Only last night, Lord Simon made the startling announcement that the Constituent Assembly sitting in Delhi consists of Only Caste Hindus. So many false-statements have been uttered during the last few days in England that it is difficult to keep count of them all. But who are represented xi this House today? There are Hindus; there are some Muslims too. At east there are Muslims from one Muslim province who come as representatives of a Government which is functioning there in spite of the Muslim League. There are the representatives of the Province of Assam which is supposed to be part and parcel of Mr. Jinnah's Pakistan-to-come. That Province is also officially represented by the majority of the people of that province. You have the Scheduled Castes. All the Scheduled Caste members Who have been elected to the Constituent Assembly are here. Even Dr. Ambedkar who may not agree with us in all matters is present here, (applause), and I take it, it will be possible for us to convert him, or reconvert him and to get him to our side, (renewed applause) when we go to discuss in detail the interests of those whom he represents. There are other Scheduled Caste members also present here. The Sikhs are present here; all of them. The Anglo-Indians are present and so are the Indian Christians. So, how did it lie in the mouth of Lord Simon........... (A Voice: Parsis also are present here.) Yes, last but not least, the Parsees also are present here. So, how did it lie in the mouth of Lord Simon or anybody else. (A Voice: The Tribal representatives are here). Tribal areas and the Adibasis are here represented by my friend Mr. J. Singh. In fact, every element that has been elected to the Indian Constituent Assembly is here barring the Muslim League. The Muslim League represents a section. I take it a large section, may be a very large section of the Muslim community, but it is absolutely false to suggest that this Constituent Assembly consists only of one section of the people, the Caste Hindus, as though Caste Hindus have been born only to oppress the others and to fashion out something which will be disastrous to the interests of India. Now, is it suggested that if one section of the Indian people chooses to be absent from the Constituent Assembly, India should continue to remain a slave country? (A Voice: "No"). That reply has to be given to the people of this country who are absent and also their instigators. I would say, Sir, that we should say to the British people once and for all, "We want to remain friendly with you. You started Your career in this country as traders. You came here as supplicants before the Great Mughal. You wanted to exploit the wealth of this country. Luck was in your favour. By forgery, fraud and force, you succeeded in establishing-these are all matters of history-your Government
in this country, but not with the willing co-operation of the People of this land. You introduced separate electorates, you introduced religion into Indian politics. That was not done by Indians. You did it, only to perpetuate your rule in this country. You have created vested interests in this country which have become powerful enough now and which cannot be destroyed with their own willing co-operation. In spite of all these, if you really want that you and India should remain as friends in the future, we are prepared to accept your hand of co-operation. But for heaven's sake, it is not the business of the British Government to interfere so far as the domestic problems of India are concerned. Every country will have its own domestic problems and unfortunately India has her domestic problems too, and those domestic problems must ultimately be settled by the people of this country.” I hope, Sir, as we are not framing a constitution now, as we are only laying down a general outline of the things that we want to do in the future, the House will refuse to listen to narrow technicalities. We shall go ahead with our work in spite of all difficulties and obstacles and help to create that great India, united and strong, which will be the motherland of not this community or that, not this class or that, but of every person, man, woman and child, inhabiting this great land, irrespective of race, caste, creed or community, where everyone will have an equal opportunity, an equal freedom, an equal status so that he or she could develop himself or herself to the best of his or her talents and serve faithfully and fearlessly this beloved common motherland of ours.

Mr. Chairman: Dr. Ambedkar.

Dr-. B. R. Ambedkar (Bengal: General) : Mr. Chairman, I am indeed very graceful to you for having called me to speak on the Resolution. I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ahead of me, my turn, if it did come at all, would come tomorrow. I would have preferred that as today I have come without any preparation whatsoever. I would have liked to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few words As possible what I think about the matter.

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the Future constitution of this country. I must confess that, coming as the Resolution does from Pandit
Jawaharlal Nehru who is reputed to be a Socialist, this. Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Right of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula, that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental set out are made subject to law and moralist. Obviously what is law, what is morality will be determined by the Executive of the-day and when the Executive may take, one view another Executive may take another view and we do not know what exactly would be the position with regard "to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be,. possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject Where it is with the observations I have made.
Now I come to the first part of the Resolution, which includes the first for paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centred on the use of that word 'Republic'. It is centred on the sentence occurring in paragraph 4 "the sovereignty is derived from the people". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to-day we are divided politically, socially and economically; We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (Applause): With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. (Cheers). I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even form them. (Loud cheers and applause).

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that mad, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We
should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of, keeping the Muslim League out. In this connection I should like to invite your attention to paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive to the Constituent Assembly to frame a constitution in terms of para' 3 of the Resolution. What does para. 3 say? Para. 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference- to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para. in the light of the Cabinet Mission's Statement or reading, it even in the light of the Revolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping (hear, hear) I like a strong united Centre, (hear, hear) much stronger than the Centre, we had created under the Government of India Act of 1935. But, S.r, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration, and which. I must say, was to me a matter of great admiration and respect and refuge. But having given up that position, having said that we do not want a strong Centre, and having accepted that there
must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces. I would like to know why there is no reference in para. 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not ad idem on the interpretation of the clause relating to grouping. But I always thought that, if I am prepared to stand corrected if it is shown that I am wrong, at least, it was agreed by the Congress Party that if the Provinces which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Provinces or grouping of Provinces on the terms on which he and his party was prepared to accept it? Why is the idea of Union completely effaced from this Resolution? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookerjee as to how this Resolution is inconsistent with the Statement of May 16th or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para. 3 which the Muslim League is bound to take advantage of and justify its continued abstention. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case, if I may say so, without offence to him, somewhat in a legalistic manner. The basis of his argument was, have you the right to do so? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this. I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so? Is it wise for you to do so? Power is one thing; wisdom is quite a different thing and I want this House to consider thus matter from the point of view, not of what authority is vested in this Constituent Assembly, I want this House to consider the matter from another point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be prudent, it would not be wise. I suggest think another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party of the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would in the interest not only of this
Constituent Assembly so that it may function as one whole, so that it may have the reaction of the Muslim League before it proceeds to decision that I support Dr. Jayakar's amendment—we must also consider what is going to happen with regard to the future, if we act precipitately. I do not know, what plans the Congress Party, which holds this House in its possession, has in its mind? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen;, it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other—that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them, believe that the war that they are thinking of, would be a war on the British. Well, Sir, if the war that is contemplated, that is in the mind, % of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if that war has any relation to the issue with which we are confronted to-day, it will not be a war on the British. It will be a war on the Muslims. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see bow this contemplated war be, of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke’s great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said :-

"First, Sir, permit me to observe, that the use of force alone is but temporary. it may subdue for a moment; but it does not remove the necessity of subduing again; and a nation is not governed, which is perpetually to be conquered.

"My next objection is its uncertainty. Terror is riot always the effect of force an amendment is not a victory. If you do not succeed, you are without resource for, conciliation failing, force
remains; but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence....

"A further objection to force is, that you impair the object by you very endeavours to preserve it. The thing you fought for Is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest."

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslims may be subjugated and made to surrender to the Constitution that might be prepared without their content. this country would be involved in perpetually conquering, them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke-- has said somewhere that it is easy to give power, it is difficult to give wisdom. let us, Prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we which we can carry with ,is all sections of the country. There is no other way that can lead us to unity. Let us not have no doubt on that point

Sardar Ujjal Singh (Punjab: Sikh): Sir, I stand here to support the Resolution which was so ably and eloquently moved by Pandit Jawahar Lal Nehru. Sir, the Resolution places before this Assembly the objective which we must have in view before we start on our labour. This is undoubtedly a unique and solemn occasion in the history of India when the chosen people of this country have assembled here

to prepare a charter of liberty and a scheme of governance for the people and by the people. Sir, before we sit to work we must send a message of hope and cheer to the dumb millions of this country and to the world outside whose eyes at this moment are fixed upon us. And I believe this Resolution win give a new hope of an early realization of their dreams to the teeming millions, the dumb masses of this country, who have been struggling hard for the last many years to achieve freedom. Sir, in this matter of the fight for freedom, as in many others, history repeats itself. Ours is not the only country which has to struggle so long and so hard. The Goddess of Liberty must take her due toll of sacrifice from everyone. It may be that the struggle is violent and has been violent elsewhere, and nonviolent in this country. For this and for many other things for which this country stands today and hopes to achieve in the future, we owe a great :debt of gratitude to that master-mind, Mahatma Gandhi, whom Pandit Nehru described as the Father of the Indian Nation.
Sir, the Constituent Assembly is the culmination of the final stage of the struggle for freedom. The Resolution before this House is an expression of the pent-up emotions of the millions of this country. It can be divided into three parts. The first part deals with the declaration of an Independent Sovereign Republic of India. The second deals with autonomous units, having residuary powers with a Union of them all i.e., including the Indian States. The third part deals with social and economic freedom and justice to all and with adequate safeguards for the minorities, backward classes and tribal areas. Opinions may differ with regard to the exact wording of the Resolution or its brevity in certain respects, but taken as a whole its is an expression of the will of the people of this country.

Sir, my Hon'ble friend, Dr. Jayakar, for whom I have got the, highest respect, objected to this Resolution being moved and taken into consideration on the floor of this House at this stage on the ground that we are a' this preliminary session, precluded from taking into consideration any other matter excepting those three which are set out in paragraph 19 of the Cabinet Mission's Statement. He further suggested that the House would be well advised to take this matter on the 20th of January, when we meet again after we adjourn for the Christmas. My Hon'ble friend probably knows, when we meet again on the 20th of January for completing our unfinished business, we will be meeting again in a preliminary session and if he objects to this Resolution being taken into consideration today, his objection holds good also when we meet again on the 20th of January. (Hear, hear).

Sir, the second point that lie suggested was that we should postpone its consideration for a few weeks so that the Muslim League and the States may have an opportunity to have their say on this matter. I am one of those who regret very much that the Muslim League is not present here today in this House and also value and seek the co-operation of the Muslim League. But it is not the fault of this House that those friends are absent today and we do not know when they may join us. It is not, therefore, fair to this House, having assembled here, to wait indefinitely without knowing when the other party is coming in. With regard to the States, if my Hon'ble friend were to study the State Paper, he- would find that it is clearly laid down that States will come at the last stage when we, after completing our provincial constitutions, reassemble for the Union Constitution making. Are we to postpone a resolution of this nature to the very last stage when a good part of our constitution has been framed? A resolution of this importance must be considered and adopted at the beginning of our work.

Another objection to this Resolution was taken by Dr. Ambedkar that he did not find the word "grouping" mentioned anywhere. Dr. Ambedkar should know that grouping is an optional matter and, if I may say so, almost all of us
are against grouping. Even the State Paper leaves it to the option of the Sections or the Provinces. In a resolution of this kind the Mover could not put in what the Sections may decide otherwise or the Provinces may decide otherwise.

The Indian States may find some objection to the word "Republic" being used in the Resolution. Indian States have been used to the monarchical system of government and they may have some fears on that score but in the light of the speech of Pandit Nehruji those fears are entirely unjustified. In an Indian Republic the people of the Indian States. If they so choose can retain a monarchical form of government in their own part. of the country.

I believe, Sir, that the exact scheme when it emerges from the labours of the Constituent Assembly will be such as will be acceptable to all the elements in Indian life and will be suited to the talents and the peculiar conditions of this country.

The second portion of the Resolution deals with the Union and the autonomous units, residuary powers being given to the units. Some of us may have serious objection to the residuary powers being given to the Units, but this proposal is in accord with the State Paper Scheme and is an essential part of paragraph 15. It may be a bitter pill for most of us, but it has got to be swallowed.

The third part of the Resolution gives an assurance to the minorities and the backward classes that their interests will be adequately safeguarded. Now, Sir, in this connection my community feels that the safeguard, should not only be adequate but should be satisfactory to the Sikhs and the other minorities concerned. With your permission, Sir, I would like to acquaint the House with the solemn assurances given to the Sikhs in the Congress Resolution of December 1929, passed at the Lahore Session of the Indian National Congress. The relevant portion of the Resolution, which related to the Sikhs and the minorities read, as follows:

"No solution thereof (i.e., the communal problem) in any future constitution of India will be acceptable to the Congress which does not give full satisfaction to the Muslims, Sikhs, other minorities."

Ever since this resolution was passed, the Sikhs have made a common cause and have fought the country's battle for freedom side by side with the Congress. Unfortunately, when the British Mission came and formulated their proposals, i.e., the Statement of May 16, although they admitted the Sikhs to be one of the three main communities in India, they completely failed to provide any protection or safeguards for the Sikhs In the case of the Mussalmans, the
Mission pointed out that there was a real apprehension of their culture, and political and social life becoming submerged in a unitary India, in which the Hindus would be a dominant element. They however entirely failed to realise the same plight of the Sikhs in the Punjab which is the Holy Land and the Homeland of the. Sikhs under a Muslim majority. It was the height of injustice on the part of the Cabinet Delegation not to have provided similar safeguards for the Sikhs in the Punjab and the 'B' Section, as they had provided for the Muslims in the Union. Sir Stafford Cripps, while speaking in the House of Commons the other day, remarked that they could not give similar rights to the Sikhs in the Punjab and the 'B' Section as they had given to the Musalmans in the Union, as a similar right would have had to be given to other minorities. May I ask whether the Mission took into consideration the other minorities when they provided safeguards for the Mussalmans in the Union Centre? They did not consider the Sikhs although they were admitted to be one of the main communities of India. On the other hand, I feel that the Sikhs have a stronger claim for having similar safeguards in the Punjab than the Musalmans have in the Union Centre. I also feel and believe that any safeguards given to the Sikhs in Section 'B' and in the Punjab will be a guarantee for the protection of the rights of other minorities in that area. As nothing was done by the Mission, a wave of indignation went throughout the entire Sikh community and their indignation rose to the highest pitch. A resolution was passed by the Sikhs at a special meeting held at Amritsar-their holy centre, that the Constituent Assembly should be boycotted and the Sikhs did boycott the Assembly. The Congress, however, accepted the proposals of the Cabinet Mission, and eminent leaders of the Congress appealed to the Sikhs to accept the proposals also. Sardar Patel particularly pleaded the cause of the Sikhs at the All-India Congress Committee session in Bombay and our sincere thanks are due to, him. In the House of Lords on the 18th July last, while speaking on a debate, the Secretary of State made significant reference to the Sikhs in the following words:

"It is, however, essential that fullest consideration should be given to their claims for they are a distinct and important community, but on population basis adopted they lose their weightage. This situation will, to some extent, we hope, be remedied by their full representation in the Advisory Committee oil Minorities set up under paragraph 20 of the Statement of May 16."

He further said:
"Over and above that, we have represented to the two major parties who were both most receptive in this matter that some special means of giving the Sikhs a strong position in the affairs of the Punjab or in the N.-W. Group should be devised."

This assurance though satisfactory in some respects was not sufficient to change the attitude of the Sikh community towards the Constituent Assembly. Then on the 9th August, the Congress Working Committee passed a resolution appealing to the Sikhs to reconsider their position. The resolution stated:

"The Committee are aware that injustice has been done to the Sikhs and they have drawn attention of the Cabinet Delegation to it. We are, however, strongly of the opinion that the Sikhs would serve their cause and the cause of the country's freedom better by participation in the Constituent Assembly than by keeping out of it. It therefore appeals to the Sikhs to, reconsider their decision and express their willingness to take part in the Constituent Assembly. The Working Committee assures the Sikhs that Congress will give them all possible support in redressing their legitimate grievances and in securing adequate safeguard.'The Sikhs reviewed the whole position on the 14th August. The resolution of the Congress Working Committee carried the greatest weight with them, and it was on that account that the Panthic Board, which was called at a special meeting, decided to lift the ban on participation in the work of the Constituent Assembly. The resolution of the Panthic Board decided to give the Constituent Assembly a trial to secure for the Sikhs similar safeguards as were given to the Mussalmans in the Union. The Sikh members are here assembled according to that mandate. I have great faith in the Congress leaders and sincerely hope that the assurances given to the Sikhs will be implemented without delay as the time has come for the translation of those solemn words into action.

I am sorry to take the time of the House in going in a little detail into the Sikh position, but I thought it my duty to acquaint the House with the Sikh case. Let me, however, make it clear that the safeguards which the Sikhs demand for their due and strong position in the Punjab and the North West, are meant to be provided within the Indian Republic and not outside. They are anxious that all communities may live together in harmony and peace. They are prepared to live happily with their Mussalman brothers in the Punjab and the North West, even treating them as elder brothers, but not as a superior ruling race or a separate nation. The Sikhs, therefore, cannot tolerate the partition of this great and ancient land. They will stoutly oppose the establishment of Pakistan and all that it implies or stands for.

Sir, if I may be permitted to say, the Sikhs have a burning passion for freedom. No single community in the history of India has struggled so
long and so hard as the Sikhs have done to drive away foreign hordes from this land; and in recent times, their record of sacrifice in the battle of country's freedom is second to none. They will continue to march with the Congress in its fight for independence with unabated zeal and vigour. (Hear, hear). They, however, want their separate entity and position to be maintained and strengthened so that they may be able to contribute their full quota to the service of the country.

Sir, I realise that it is a stupendous task that this august Assembly has set itself to accomplish. There are hurdles and obstacles in our way, but I feel certain that we will be able to cross those hurdles and overcome all those obstacles if we deliberate with caution, act with decision and, if need be, oppose with firmness. With these words, Sir, I support the Resolution (Cheers).

Seth Govind Das (C. P. and Berar: General): [Mr. Chairman, in the Central Assembly and in the Council of State I speak in English as the Rules demand it; but hereafter so many English speeches I would like to speak in the language of my country.

I have came to speak for the Resolution and against the amendments. While speaking in favour of the Resolution I cannot resist the desire to offer my thanks to the Hon'ble Dr. Jayakar for his beautiful speech. I was surprised to hear of Dr. Jayakar's amendment yesterday. Dr. Jayakar and I have been friends since the days of the Swaraj' Party- I can understand his amendment. I can understand his desire to defer voting on the Resolution until the Muslim League joins; but I fail to understand the logic of the arguments advanced by him in support of his contention. I do not want to speak on the legal aspect of his arguments. That is the work of the lawyers. What surprises me is his assertion that if we passed the Resolution now, we will finish our work without achieving what we desire. That puts me in mind of the days prior to 1920; when our Moderates were at a loss to know what to do and saw everywhere nothing but frustration and disappointment. We have not met here simply to sit together, talk a lot and then disperse without achieving any result. It will be our duty to see that we achieve results. Just at present it is not necessary to say what we are going to do and how far we are going to proceed. Suffice it to say that we shall achieve speedy and substantial results. Dr. Jayakar has spoken of war. The Congress people and the people who believe in the principle of Satyagraha always desire peace and no war. They, however, want true peace and not the peace of the graveyard.

The greatest gift that Mahatmaji has, given to the world is Satyagraha. Satyagrahis want peace but when they see that true peace is Impossible without having resort to war they,
ready to give their lives in a war of Ahinsa. I, therefore, say we do not want war. We want peace. We neither want to fight with the Muslims nor with the British Government.

[English translation of Hindustani speech begins.]

[Seth Govind Das]

ment. If, however, the British Government wishes to fight with us making Muslims their Shikhandi; we will not do what Bhisham Patama did. We will not lay down our arms because Shikhandi is made to stand against us. We do desire our brethren of the Muslim League to come and cooperate with us. If, however, with all our solicitations, with all our patience and with all our desire for peace, they do not come, we are not going to stop our work for them.

Dr. Jayakar has not told us whether our Muslim brethren would join us if we postponed the consideration of the Resolution till the 20th January. If we were assured that they would join us, Pandit Jawahar Lal Nehru, I think, would perhaps, be the first person to say that if his Muslim brethren were coming in, he would postpone Resolution. Panditji told us in so many words that the Resolution was an undertaking—a pledge. When one signs a pledge, he signs it with full sense of responsibility of what he was doing. As this Resolution is a pledge when we pass it, we will pass it with a full sense of our responsibility.

The Resolution speaks of a Republic. There may be a difference of opinion whether the Republic should be a democratic republic or a socialist republic. But, to discuss it at this juncture, would be meaningless. Whenever the world is in need of a thing it creates it. Keeping in view the condition of the world and the plight of India, we can say that our republic will be both democratic and socialist. I desire to tell the people, who feel chary of socialism and tremble at hearing of its tenets, that not only the people who have nothing are miserable but the people who possess everything, are also in sorrow. The former are miserable because they labour under the desire to possess everything and the later are unhappy because they have to resort to hundreds and thousands of knaveries and evasions. They perform acts that are not in the least considered fair in the eyes of Justice. If these people, while ignoring justice, pretend to protect and champion it, I tell you, they never get true happiness. I am myself of the people who possess everything; but I feel that if true peace is to be realized, it can only be realized through socialism. No other system can give us true peace. There can be no doubt that our republic will be both democratic and socialist.
As to preventing us doing this work; I desire, to make it known that both' the British Government and the Muslim League cannot stop us from doing what We intend to do. Our country is so vast and its population is so great that even the British Government cannot now put obstacles in the way of itsits freedom and progress.

To my brethren of the Muslim League, I desire to say some thing; and say it with all the emphasis at my disposal, that if the British, who are foreigners, put obstacles in the path of our freedom, nobody, in history, will held them blameworthy; but, if persons, who are born in this country Who are bred in it, and who consume its produce, try to come in the way of its freedom they will be censured by their own progeny. As for the British, they cannot block our way to freedom; but so far as our Muslim League brethren are concerned, they may take it from me in plain words that if they allied themselves with the British to keep this country in slavish sub ingation, future generations will hold them blameworthy and they will gel' this stigma without stopping us from achieving our freedom.

If the British Government adhering to the Statements issued in the last few days, tried not to enact a new Government of India Act, in the light of the decisions of this Constituent Assembly, I tell them that their efforts in ,his respect are doomed to failure. They have always tried to keep India.and other countries under their subjugation by not allowing them to solve their own problems. If, they played the same game will this country now, the time will perhaps never come for the presentation of a Government of India Act in the British Parliament and no Indo-British Treaty will ever be signed. I do not say this on behalf of the Congress. I see the future, when, if the British failed to translate the decisions of this Constituent Assembly into some solid form of action, a parallel government will be set up here and the whole of England will have to fight it. People coming from across the seven seas will not 'be able to win our war of Ahimsa. I fully believe in it.

I do riot want to take more time; but before the chit comes to me asking me-to stop, I appeal to you that you should pass this Resolution not as, a resolution but as a pledge with full sense of responsibility of what you do and go forward in the manner of a free country.]

Mr. Chairman: It is now 1 o'clock. The House stands adjourned till Eleven o'clock tomorrow morning. In the afternoon we ,have got a meeting of the Rules Committee and we shall not be able to meet here.

The Assembly then adjourned till Eleven of the Clock, on Wednesday, the

18th December, 1946.
Wednesday, the 18th December, 1946

The Assembly met in Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: I have received a note from Mr. Mohan Lal Saksena asking me to make a statement with regard to the progress that has been made in the Rules Committee. I think it would be helpful to the Members in making their future programme if I made that statement today. We have been discussing drafts which had been prepared before and we have gone through a great part of the work, but some work still remains to be done and the final draft will have to be considered by the Rules Committee before being placed before this House. I hope we shall be able, to complete this work by Friday and I propose to hand over to Members the rules in their final form as passed by the Rules Committee on Saturday, so that we may take them up for consideration by this House on Monday next. Monday happens to be the 23rd and after that we have the Christmas holidays. I do not think we shall be able to complete the rules in one day. They will take at least two days or it may be three days. If the Members agree I propose that we observe Christmas holidays for two days 24th and 25th and then the Assembly continues sitting thereafter. So on the 26th and 27th we may discuss the rules and finish them by the 27th and anything else arising out of the rules we may do thereafter. I do not think we should finish this preliminary session before passing the rules and before appointing certain committees which it is the intention of the preliminary session to appoint. This is the programme as I envisage at present. It all depends upon the House. Hard pressed as we are for time, I do not think we could afford to go without any work during the whole of the Christmas week. I think we should take holidays on the 24th and 25th of this year,

Sri M. Ananthasayanam Ayyangar (Madras: General):We would like to have the whole week of Christmas as holiday and we would like to go back during this period and meet again after the beginning of next year.
Mr. Chairman: It is not expected that the Members should go home if we have only a holiday of two days.

The Hon'ble Pandit Hriday Nath Kunzru (United Provinces: General): Mr. Chairman it was expected by most of us when the session commenced that it would end before Christmas and on that footing we have made engagements which will keep us busy during Christmas week. I am not asking for any holidays at all. I should be quite prepared to do without them altogether, but having accepted engagements which are of a somewhat important character, it would not be possible for many of us to attend the session if it is continued after the 23rd of December. I hope, therefore, that you will be good enough to take this into consideration before deciding when the Constituent Assembly should meet again in order to pass the rules and appoint those committees to which you have referred.

Mr. Dhirendra Nath Datta (Bengal: General): Mr. Chairman, Sir, you have just told us that the rules should be placed before us on the 23rd of December and considered on the 26th, but some time is necessary for putting in amendments. I do not know what is the practice here but in the legislatures elsewhere, at least 4 or 5 days' time is given. So it is impossible to begin the consideration of the rules on the 26th and I think under the circumstances, it is desirable that we should meet on the 2nd of January.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Chairman, Christmas holidays are very important for Christians and we usually get holidays on the 24th, 25th, 26th and 27th and we shall be glad if this Constituent Assembly will meet again on the 2nd or 3rd of January. Then we can carry on as long as we want, but if we meet during this year after the 25th i.e., during the Christmas holidays, it will be very inconvenient for the work of this Assembly and will also disturb many of our engagements which we have already made during the Christmas holidays. That is all I have to place before this House, Sir.

Mr. D. P. Khaitan (Bengal: General): Sir, I am rather surprised at the way in which the Members of the Constituent Assembly have not agreed with your programme as announced by you. The work before the Constituent Assembly must gain precedence over every other work and we should proceed with as much speed as we possibly can. We should not desperate before we have passed the Rules of Procedure which are so essentially necessary. Therefore, through you, Sir, I appeal to all the Members of the Constituent Assembly to lay aside all other work and give precedence to the important work that lies ahead of us.
Mr. R. K. Sidhwa (C. P. and Berar: General): I think the House is entitled to have a number of days for studying the report and also presenting amendments. In our party meetings also we shall have to consider them. It may take two or three days. It may not be possible to finish the work in two or three days as Mr. Mohan Lal Saksena says. I would therefore support the motion that we meet on the 2nd or 3rd January after presenting the report of the Committee on 21st or 23rd.

Mr. Chairman: There are certain other public functions, which have been announced very long before, which take place in the first week of January. It was for this reason that I was anxious to complete the work of this Assembly before the year is out. For example, the Science Congress is going to begin on the 2nd January next. Eminent scientists from all over the world are coming and Pandit Jawahar Lal Nehru is going to have a very important function there, and there may be other members also who may be interested in it. Similarly, there are other functions which have been fixed. I was therefore anxious not to disturb those public functions, which have been announced already and to complete our work as much as possible within this year. Of course it rests with the members of the Assembly. If they do not wish to sit beyond the 23rd, we shall leave to take that also into consideration and go into the next year. The difficulties, that confront us, I have placed before you. In January, there will be a further difficulty; some Provincial Assemblies will meet.

The Hon'ble Shri Purushattam Das Tandon (United Provinces: General): The business of the Provincial Assemblies can be adjusted suitably.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): Sir in a House consisting of about 300 important members it is difficult to suit the convenience of all. We have the Budget Session of all the Provinces also.

There is the Budget Session of the Central Assembly. It is not possible to meet the convenience of all. As has been rightly suggested, precedence should be given to the work of the Constituent Assembly. We will not be able to make any progress with the work of the Constituent Assembly till we have passed the Rules. The Rules we must finish before we disperse and then we can adjourn. The preliminary session may not be finished during this
month or even in the first week of January. Therefore to suggest that we should meet on the 3rd or 4th January is not practicable. With all the inconvenience that we may have to put up with, we must finish the Rules. Therefore, if as the Chairman has suggested, the Rules are ready on the 23rd, either we give up the holidays on 24th and 25th or we come on the 26th and 27th and finish the Rules. Men we can fix the date for adjournment. Without the programme being fixed, we will not be able to dispose of our work. Therefore, let us provisionally fix the programme and then consider other matters.

Sri K. Santhanam (Madras: General): I wish to suggest that the Rules may be placed before the Assembly as they are ready. Why should we wait till all the Rules have been completed. We can take them up from tomorrow or this evening. I am really surprised that the Committee should not have been able to draft even a portion. We can take up portions and go on passing them. When they are completed, we shall have also completed.

Mr. Chairman; I do not think it is possible to take up the Rules piecemeal. We have to take them as a whole.

The Hon'ble Shri Purushottam Das Tandon: I suggest, Sir, that we should keep in view that a large number of members have already entered into engagements for the Christmas week. It is no good-telling us now that we had no business to enter into such engagements. Ordinarily, it is supposed that during the Christmas week, we will not be working here actively. Of course, members, will give some part of their time to the Rules if presented to them before we disperse. They should be given some time to think over them. As has been pointed out, possibly the Parties also may have to consider them in their party meetings. I think, Sir, we should not take up the question of rules during the Christmas week; sufficient time should be given to the members to think over them, to digest them and to send in amendments. We can meet some time in the first week of January,

Mr. Chairman: Now we have heard different speakers and their opinions. We shall take some decision tomorrow after consideration of these points. In the meantime, we will proceed with our business. We take up the discussion of the Resolution and the amendments.

RESOLUTION RE: AIMS AND OBJECTS-contd.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President Sir. thank you for giving me this opportunity to speak on this Resolution. I stand here to support the Resolution
moved by Pandit Nehru, with all the force that I can command. This Resolution contains all the principles that need to be enunciated in such a kind of Resolution to be placed before his House. First of all, it has stated the objective that we all in India have in our minds, that is, to proclaim at a certain date the independence of India. Here we have only resolved that we shall proclaim the independence of India and we have that firm resolve in our mind, to get the independence of India. That is the desire of every one in India. I cannot imagine that there will be anybody in India from one end of India to the other end, who will be against that kind of objective. Then it proclaims also that the kind of Constitution that we shall make will be a republican form of Government, a democratic form of Government, a Government by the people and for the people. That is surely the desire of all the people of India. It is true that there are some monarchies in India but we envisage the time when all these monarchies will become at least wholly constitutional monarchies like the Monarchy of England, and we believe that even the people of all the States envisage that in their own States, there will be a democratic form of Government. Therefore there can be no objection at all to these declarations that we have in this Resolution. Then it speaks of the territories which will be included in the Union of India and it is comprehensive enough. Then in the third para it speaks of autonomous units that those autonomous units which are now autonomous according to present boundaries or with such other boundaries as they may have afterwards, these units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous. In this connection, Sir, I want to say that it is very unfortunate that the idea of Sections was introduced in the Cabinet Mission Declaration and that in a Section according to the latest interpretation given by His Majesty's Government a certain Province will be outvoted by the Majority of members of another Province. I speak especially in connection with Section 1C' which relates to Assam: Assam is a non-Muslim Province. There are 7 non-Muslims who are representatives of Assam in this Constituent Assembly and 3 are Muslims. I am sorry that my Muslim friends are not present here, in this Assembly. I wish they were here. In Bengal, Sir, there are 27 non-Muslims and 33 Muslims. If we are brought into a Section, there will be 36 Muslims and 34 non-Muslims and if the voting in that Section will be by a majority vote, a simple majority vote as interpreted by His Majesty's Government, it will mean that our Constitution, our Assam Constitution, will be framed by the Majority of the people of Bengal, that is the Muslim League. We cannot conceive of anything that is so unjust as this, Sir. (Cheers). It is a matter which should be considered by all the members of this Constituent Assembly. When the Cabinet Mission made its
Declaration, we in Assam thought that such kind of interpretation might be given in the future but we took it for granted that the Cabinet Mission would not be so unreasonable as to place As---am which is a non-Muslim Province to come under a Muslim Province and that our constitution would be framed by the majority of the members in the Section. We never thought that it would be like that, because we considered that it is unjust for the people of Assam to be placed in such a position. In the month of June 1946 we had a public meeting in Shillong. I happened to be the Chairman of that meeting. We were discussing about the Declaration of the Cabinet Mission and in that meeting I said this:- "From this paragraph 15 (v) of the Cabinet Mission's Declaration I, understand that each Province has freedom to form or not into a group suggested by the Cabinet Mission. Secondly, that the grouping will be, as independent provinces, to discuss what subjects could be taken as common subjects to be dealt with by the group. Thirdly, that it a province does not agree in regard to subjects which may affect it vitally, there will be no group constitution as recommended by para. 19 (v) of the Declaration. Fourthly, that if one province, in the discussion, finds it impossible to settle the question in the group, it will not be forced by a majority vote of the members of another Province. Fifthly, that the whole question will be brought before the whole Constituent Assembly which will have the power to decide finally."

That is what we understood by the Declaration of the Cabinet Mission, and, I believe, Sir, that was also the view which the Congress took at that time. I was very much gladdened by the declaration of Sardar Vallabhbhai Patel the other day that the Congress had not up to the present time accepted the interpretation of His Majesty's Government. Sir, we still hold that position. It appears to me that the British Cabinet Mission has changed its mentality from what it was when they were here in India. When they were in India they were under certain circumstances and were influenced by the opinion at that time in this country. When they have gone back to England they are placed under a different-circumstance, influenced by the Conservative Party there, and the force which Mr. Jinnah has placed upon their minds. They have 'changed their opinion altogether. That is what appears to me. I would like to know from Lord Pthick-Lawrence whether in reality there was that idea in the minds of the Cabinet Mission when they were here in India. There was nothing in any of their declarations, in any of their writings that said that the vote in the Sections would be by a simple majority vote. The principle of driving by force a non-Muslim province to come under a Muslim Province is absolutely wrong. Mr. Jinnah has forced His Majesty's Government to commit this great injustice to our Province, and we feel, Sir, that we shall have the sympathy and support of this august body, that our
Province may not be driven to that pitiable condition. I want Mr. Jinnah and the League Members to be here and I want them to come here to take part in the framing of the constitution of India. I will expect him and all the others to be just. I do not want anything else except that they will act like gentlemen and be just. It is unjust, everybody knows, that we should be forced into such a position in which we are now placed by the recent interpretation of His Majesty's Government. We are an autonomous province and a non-Muslim province. Why should we be forced to go to Vat kind of a Section which could outvote the province of Assam and frame the Constitution according to the desire of the majority, created artificially. Now, Sir, it may be said that this will at once bring a conflict between the British Government and this Constituent Assembly. This need not be. Someone said to deviate from the four walls of the Declaration of May 16th and to give a different interpretation would be revolutionary. This Constituent Assembly need not adopt that attitude at all. I believe that we can adopt a friendly attitude. We shall say to the British Government: "We thank you for the good effort you made to bring a compromise between the Hindus and the Muslims. You have been to us good advice and made good recommendations. You have acted as makers of peace. We shall, as far as practicable, implement your recommendations, but we shall, like responsible persons, be free to deviate from them whenever we find it is impracticable and unjust to carry out literally to the letter any of your recommendations. We shall frame a constitution which will do justice to all minorities and which shall not overlook any community. If the members of the Muslim League will co-operate, we shall heartily welcome them. After we have finished framing the constitution, the whole of India will get the opportunity to, see what kind of constitution this Constituent Assembly has framed; we request you, British gentlemen, not to, make speeches in Parliament which Will suggest revolutionary activities in India. Kindly co-operate with us quietly until we finish our work, and then judge our work." Then only the British Government will have the opportunity to see what kind of a constitution this Assembly has framed. Then, and not till then, can they say that this Constituent Assembly has been just or unjust to a certain community or to the Muslims. We do expect that the Muslim community will come here and co-operate in framing the Constitution of India. There is no one who wishes their attendance here more than I do. I have some very, good friends of mine among the members of the Muslim League and I would like to see them come here and co-operate with this Assembly.

I now turn to another portion of this Resolution. namely, paragraph 5 and before I do that, I must point out another thing. I envisage that in the autonomous Provinces there will be units in a Province which will be selfgoverning and which will be connected with a Province. This will be necessary do doubt, in a Province like Assam.
Now, to turn to paragraph 5. In this paragraph we have provisions regarding justice and freedom,-social justice, justice in the economic and political , field, ensured to all. Political justice, no doubt, will mean that every community will get representation in the legislatures as well as in the administration of the country. Therefore, there need be no fear in the mind of any community that this Constituent Assembly will not look after their interests.

Then there is mention,-here, of the freedom of thought, expression, belief, faith and worship. There was a propaganda made in this country by some parties that when there will be self-government in India, some religious faiths will not be allowed to propagate their faith. This is really false propaganda. This Resolution has declared that this will not be the case. There will be provision in the Constitution of India for the freedom of all religious faiths and for the propagation of those faiths according to their own desire. I am particularly glad that this para. speaks of association and action, subject to law and public morality. Public morality needs to be protected by Government and righteousness needs to be exalted. "Righteousness exalteth a nation, but sin is a reproach to any people'.

I would like to speak on other points of this Resolution but, I don't think I need dwell on them at all. There are difficulties and hindrances before us. India is not an exception to difficulties of this nature; such difficulties confronted Canada, Australia and even the United States-when they were engaged in the work of framing their constitutions, and some parts of those countries did not come into the constitution at the beginning, although they came in afterwards. That very same thing may be repeated here in India. We shall have to go on framing the constitution and then when that is placed before the world and before this country, it will then and then only be the proper time for the people of England or the British Government to say that it is not a constitution according to their Declaration. Before that happens, they should not try to prejudge What this Constituent Assembly will do and thus cause obstruction to its work.

Mr. Chairman: The Hon'ble Member has exceeded his time.

The Hon'ble Rev. J. J. M. Nichols-Roy: I want to speak on only one more point, which has impressed me from the speech of Viscount Simon in the House of Lords. Viscount Simon has said that this Constituent Assembly If it carries on the work of framing a constitution for India, , will "threaten" India "with a Hindu Raj". I was very much surprised when I saw these words in a newspaper this morning. When I was in Western countries-in England and also America, I was impressed by the fact that some people in those countries had an idea that a Hindu is S. man who Is steeped in his caste system and who worships a cow. If this is the idea
which Viscount Simon has when he refers to a Hindu Raj,' i.e., that the people of India will be forced to perpetuate the caste system and to worship a cow, then he is entirely wrong. If the people who are assembled here, whether they be Hindus, Muslims, or Christians, or whatever other religion they may profess— if they frame a constitution which will be a democratic constitution, which will do justice to everybody, why should that constitution be called a Hindu Raj? And if by 'Hindu' is meant people who live in India, surely we should have a constitution for the people of India. That is exactly what we want: we want a constitution to be made by the people of India, but if some people in India do not want to come into the constitution just now, they will come afterwards and I envisage a time when they will all enter into this constitution and make India one country— one united country—with a democratic form of government. I have faith that all these hindrances will be removed by prayer to God. Let us follow the example of Mahatma Gandhiji—our Bapuji and pray to God. Let us pray to God that all these hindrances may be removed from our way and that we may be able to carry on the work of framing a constitution which will be a blessing to our whole country.

Mr. R. R. Sidhwa (C. P. and Berar: General): Mr. Chairman, Sir, the demand made by the Indian National Congress for framing a constitution for free India has now become an accomplished fact. We are here to frame a constitution for India and we are sure—whether our friends the Muslim Leaguers whom we welcome—speaker after speaker has stated that they miss their presence here—whether they come in or not, let me state, that with all the threats that have been now thrown at us by the Britishers during the last four or five days in the House of Commons and the House of Lords we shall proceed with our business and shall frame a constitution which they dare not refuse to implement. If they choose not to implement it when the occasion arises for them to do so, then we know how to implement it. Sir, if poverty as to be eradicated from India, to bring human happiness to this country and our constitution should be based on the socialist principle and such a constitution, I am confident when it is completed will be welcomed by all in this country and also outside this country. Much fetish has been made many a time about the minority question. Sir, all reasonable safeguards and all interests will be reasonably considered while framing this constitution but I do not understand why the question is brought to the forefront. In this very resolution, in paragraph 3, you will see how we have safeguarded, without anybody else's telling us, the interests of the minorities. Paragraph 4 relates to residuary powers, which we have accepted, not because the British Delegation want us to do so. This matter had been receiving the serious consideration of the Congress as you know, Sir, for a number of years, and to allay the fears of the Muslim Leaguers, we came to a decision in August 1942 that there should be residuary powers in the provinces. Many of us even to-day do not like the residuary powers to
be vested in the provinces; we want a strong Central Government. If a free vote is taken in this House or in the country, they will oppose residuary powers being vested in the provinces. But simply because we want to allay the fears of the Muslim League, imaginary or real, we respect their feeling and accepted that residuary powers shall vest in the provinces. May I ask who came forward to safeguard the interests of the minorities? It is the Congress and the majority community that have said that the provinces shall have residuary powers. Whether leaguers are here or not, as Hon'ble Congressmen we will stick to that resolve. We do not want to go back, even if the Muslim League choose to remain absent upon that pledge; even though we do not like it we shall implement it. That is one instance that I want to point out to the Britishers, when they tell us how we are ourselves alert in safeguarding the interests of the minorities. But if you make unreasonable demands, it is certainly not possible for the majority community to be converted into a minority community. In this very paragraph there is a reference regarding redistribution of provinces. I am a firm believer in the redistribution of the present provinces. (Hear, hear). The present heterogeneous way in which, without any thought, or without any sense these provinces have been formed, requires immediate revision. Coming from the Province of Sind, as I do, I know ten years ago when we were separated from Bombay there was 22 crores of rupees of debt to the Government of India. We have wiped off that debt in 7 years-I do not want to enter into the details of the advantages that we have achieved by separation.

But what I would state is that this paragraph is so guardedly framed as to respect the feelings of the Muslimans, so that the present provinces may be taken into consideration in going into Sections. If I were free I would suggest an amendment that the provinces should be redistributed straightaway and the boundary commission appointed immediately and then the constitution should be framed. But here also we want to keep to our promise to go into Sections within the framework of the Declaration of May 16. I point out these things in order to show to the world that without any interference or dictation or advice that has been given to us day in and day out in the House of Commons and in the House of Lords the mischievous statements and mischievous speeches that are being heard from the British to-day,-we do our legitimate duty. We cannot tolerate this kind of propaganda, which have falsely raised the question of minorities and raised the usual bogey of communal disturbances. When the Delegation cam they were in a different mood because there were political riots. The army, the navy and the air force were in revolt before they came. It was a political riot. Now, Sir, the Services in India feel that their days are numbered. They have started making capital of communal disturbances. Now that there is communal tension the British Cabinet want to go back upon what they
stated when they came over here. The British Government have told us that, if we do not frame the constitution according to their interpreting clause 15, it shall not be forced upon the minority community. I come from the minority communities, it is a very small minority comparatively an insignificant number, but still that community, as the world knows, although we are a lakh of Parsis only—the Parsi community is known all over the whole world. As Babu Purushottam Das Tandon pointed out in seconding the Resolution, in the earlier days of this country's history, whosoever came in this country were welcome. 1300 years ago when we were driven away from Iran so the history say, and were wandering in the sea for three months, nobody gave us a shelter excepting the Jadhwa Rana of Sanjan in Gujarat. We are grateful to him. We have had no grievance against the Hindu community, so long as we have been here. The Parsis have taken prominent part in politics, social and industrial enterprises; amongst the founders of the Indian Congress that great man Dadabhoy Naoroji was one. (Cheers). In 1909 from the presidential address in Calcutta he coined the word "Swaraj". Parsis were the pioneers in the industry of shipbuilding and textiles. They were the first to introduce female education, so in charitable Organisation like hospitals irrespective of caste and creed. As recently as 30 years ago the Iron and Steel industry of India which is the second largest in the whole world was started by the Tata family. I do not say all this to glorify my community. All I want to show is that the majority community have never forgotten us; and on our part we have not lagged behind in-taking part. We were forced by the British people to ask for separate electorates. We have refused. In the general electorate our community's interests are absolutely safe. I know of an instance where 30 years ago the mischief of separate representation was forced for the purpose of upholding British rule in this country. In Sind we had in the local bodies general representation without any communal representation. The then Commissioner of Sind called some of the Mussalmans to the Government House and told them secretly. "You give us a representation demanding separate electorates and I shall recommend to the Government of Bombay". Such representation was given and ever since there are separate electorates in Our Sind Municipality. Thus, we have seen with our own eyes how mischief is played by the British by dividing one community against another. Parsis have been asked many a time to demand separate electorates. We have refused and replied, "We are quite safe with our majority community." See the goodness of the majority community in this very Assembly. We have all been elected by their votes. May I say that those who opposed our cherished goal of achieving freedom were opposed to our goal for they have also been elected by the majority community. We do not consider anybody a foe although they may have opposed our cherished views or cherished demand, I mean the Anglo Indians, yet we have elected them. This is a Magnanimity which one ought to appreciate. What kind of safeguard do the Britishers want unless it is to create the usual old mischief? But let me tell the British Government, the time has come when this mischievous propaganda
that is being carried on intentionally to-day to disturb the Constituent Assembly work cannot help them. We shall proceed with our work. We shall proceed in spite of the difficulties and hurdles and machinations that have been carried on in season and out of season, particularly at this juncture. Instead of Sir Stafford Cripps or the Secretary of State telling Mr. Jinnah "You got the interpretation of particular clause, as you want and you must stop the propaganda of Pakistan." The Cabinet Mission discussed, investigated and have come to the conclusion that Pakistan is neither feasible practicable nor advisable and therefore that question is buried once and for all. Yet now in the Parliament during the recent debate have you said a single
CONSTITUENT ASSEMBLY OF INDIA - Volume I

Thursday, the 19th December 1946

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

PROGRAMME OF BUSINESS

Mr. Chairman: Yesterday I told the Members that I would be able to give some decision with regard to the programme of the work of the Assembly this morning. I have been considering that matter and some Members have seen me also in that connection. The work we have to get through is this. We have this Resolution, which we are considering. Then we have got the rules to pass. Then there is another question with regard to the reference of the, disputed point of interpretation to the Federal Court, with regard to which the Assembly may have to express some opinion and lastly, we must have to elect at any rate some of the Community, tees which will be provided for in the rules. So, these are the four items that we have to finish before we go home after this session.

The Rules have been practically considered and the final shape in being given to them. I propose to place them before the Rules Committee tomorrow morning and if the rules are finally passed by the Rules Committee, they will be Presented to this House day after tomorrow, i.e., Saturday. If the Members so desire, we can take up the question of referring the point of interpretation to the Federal Court on Saturday and thereafter we may take up the rules. That will take, I think, about two days or so. I think it all depends on the number of amendments which the Rules may evoke. Thereafter we may give a day for the appointment of the Committees. Now in this way if we work on Saturday, also on Sunday and on Monday, we might, possibly finish all this work if Members have some sort of self-denying ordinance and all who speak little and take as little time as possible. If we cannot complete by Monday, then in that case we shall have to go on after Christmas, that is to say, we shall have to take some days in this month after the 25th. I find that 24th, 25th and 26th are public holidays and we cannot sit, on those three days. So we can take up the discussion again on the 27th and 28th. 29th is a Sunday and 30th again is a public holiday for Sikhs in connection with the birthday Anniversary of Guru Govind Singh. So unless the Members are prepared to sit on a
Sunday and to work harder on Saturday and on Monday, there is no chance of finishing the work before Christmas and I do not like to go over to the next month, i.e., the next year. I want to complete the work within this month. I would therefore suggest that we take up this programme. We start discussing the rules say in the afternoon of Saturday and if Christian Members, particularly have no objection, we should every man sit on Sunday and then on Monday we may complete the whole thing. That would be rushing the business to some extent, if you want to avoid sitting after the 25th otherwise we shall have to sit after the 25th and go on until we finish it, in this matter this is the difficulty which I have placed before the Members and I should like to know which they would prefer. Personally, I would like to finish it by Monday, if possible.

Many Hon’ble Members: This is much better.

Mr. Chairman: Let us hope we finish on Monday. First of all, to work during the Christmas week would be very hard on Christians. I hope we will be able to sit on Saturday, Sunday and Monday and finish it. Otherwise we shall have to sit during Christmas week.

Mr. F. R. Anthony (Bengal: General): It is quite impossible. I am personally prepared to sit as long as the Members are ready to sit but not after the 26th.

The Hon’ble Pandit Jawahar Lal Nehru (United Provinces: General) I want to bring to your notice a fact that may interest the House, that the United Nations General Assembly did sit even on Sundays, both the Committees and the General Assembly, in order to expedite its work.

Mr. Chairman: Today we shall sit

only up to 1 O’clock, so as to give us time to complete the work in the Rules Committee and tomorrow we do not sit at all. We sit again on Saturday morning. I hope I shall be able to place the Rules in the hands of Members by Friday evening, but in any case they will be available on Saturday morning and in the morning session we might take up the question of reference to the Federal Court and in the afternoon you might commence discussing the Rules. That is the programme now fixed.

Mr. F. R. Anthony: Mr. Chairman, I am afraid the Christian members feel very strongly on this matter. We are prepared to work the whole of Sunday and we will work on Monday. I would only ask that we should not meet on the 27th and 28th, between Christmas and the New Year. It will be quite impossible for the Christian members to attend then. That is the
only time in the year when they insist on being with their families. This is very important. We are prepared to work all night and the whole of Sunday. I would ask you not to reconvene the Assembly between the 27th and the 1st.

Mr. Chairman I hope we shall be able to finish by Monday evening.

Mr. F. R. Anthony: Let us have night sessions.

Mr. Chairman: We shall have it if necessary.

Mr. Kiran Shankar Roy (Bengal: General): Mr. Chairman, I think that the Members should have copies of the Rules at least two or three days before general discussion so that they may consider the Rules. If the Committee has taken so much time to draft the Rules, surely, it would be unfair to rush through the rules in this house in this fashion. It will be very optimistic to think that we would be able to pass the Rules in two or three days when we have not been able to pass this Resolution in three or four days. I think the passing of the Rules would take at least a week. I therefore suggest that you should give us sufficient time to consider the Rules. It is no use thinking that we shall be able to finish the Rules in two days.

Mr. Chairman: That upsets the whole programme.

The Hon'ble Mr. B. G. Kher (Bombay: General): May I be permitted to say that the drafting of the Rules is more or less technical matter for lawyers and 15 men with long experience of drafting rules, with a competent secretariat, have framed the Rules. Are we going to quarrel and debate about a word here and a word there? I would submit that you should fix a time and say that by 5 o'clock on Monday all those who have important amendments will be allowed to move their amendments and vote on them, and by 5 o'clock, the guillotine should be applied, and by 7 o'clock all the Rules may be passed, and we should get on with the other business. Another alternative, Sir, is to sit throughout the night. I would suggest that we should sit up to 11 Pm. every day and finish the rules. I do make a strong plea not only on behalf of the Christians, but there are so many other people who, have come long distances to attend this session, having made engagements on the assumption that the work will be finished by the 23rd and that they will not be required to sit during Christmas. I do not want to mention names. We are all having engagements of equal importance. But there are some people who find it extremely hard, having come to India after a long time, to sit here during Christmas when they would like to be with their families. We can sit long hours by night and by day and finish it before Monday afternoon.
Mr. Chairman: This seems to be general sense of the House.

Dr. Syama Prasad Mookherjee (Bengal: General): I think we should not meet during the Christmas week. We have very important engagements during the Christmas week which were fixed weeks, months ago and it is not fair that we should be compelled to upset our programme. If we can finish the work, well and good. Otherwise, we must find some day in January. The passing of the Rules will not be quite so easy a matter. They must be circulated to the members who would like to have a reasonable time to study and also propose amendments. It will be left to your discretion whether the time so given is sufficient to enable members to propose amendments and discuss them. If we cannot finish by Monday or Tuesday, we should meet some time in January.

Mr. Chairman: We shall make an attempt to finish the consideration of the Rules and other business also by Monday. If we fail, we shall then think at what other time we will sit.

In the Rules Committee, we have 15 Members representing various groups and shades of opinion and we have been taking time because we have been trying to arrive at conclusions which will be acceptable to all, and that is why the Rules Committee has been taking so much time. As regards drafting, that is left in the hands of persons who are experts in that work and I suppose there will not be as much difficulty as Mr. Kiran Shankar Roy anticipates. If any discussion arises on a question principle, I shall give time for discussion; but for mere words, I will except members to leave that matter to the Committee which has spent a lot of time over it.

Now, we shall proceed with the Resolution. Mr. Somnath Lahiri.

RESOLUTION RE. AIMS AND OBJECTS-contd.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, The Right Hon'ble Dr. Jayakar, grown grey in the service of interpreting British Imperialist laws, has probably interpreted the limitations of the Cabinet Mission Plan correctly. The limitations, as he says, are probably correct. But we need not be frightened by them. Dr. Jayakar wants to wait for their Highnesses, the Princes, to come in and have a hand in distorting our future freedom. We need not have that. We do not want the Princes, the autocratic Princes, to come in and have a hand in distorting our future. Of course, so far as the Muslim League is concerned, that is on a different footing altogether. But I am not sorry that the Muslim League is not here; I am only...
Sorry that the Congress also has not gone out of the British Plan and left the British Plan to itself, to stew in its own juice. Agreement with the Muslim League for gaining independence of our country and for drafting a really free constitution of our country, is essential. But if you think that by waiting for the Muslim League, or by the Congress remaining here and the Muslim League remaining outside, you will be able to have a properly framed constitution, I am afraid you are sadly mistaken and you are counting without your host, the British imperialist, who have made this Plan. You have seen the example of the Interim Government.

Both the League and the Congress are there, but that has not solved the problem of our quarrels and internecine warfare in this country. It has happened there just as the British wanted it to happen, that is, they wanted the parties to fight against each other with the prospect of the British giving support in one party’s favour against the other with the result that in between these quarrels the British become more firmly entrenched.

Well, the Interim Government has not brought peace nor freedom to our country. Similarly, whether the Congress is inside this British-made Constituent Assembly and the Muslim League is out or whether, he Congress and the Muslim League are both inside this British-made Constituent Assembly and working the British plans as the British should like it to be worked out, then also the same thing will follow, viz., the quarrelling that is there to-day in the country, will only get more intensified inside this Assembly also. That is all and nothing else. Therefore, Sir, I am not sorry that the League is not here but I am only sorry that the Congress also has not gone out leaving the plan to stew in its own juice.

Well, Sir, I must congratulate Pandit Nehru for the fine expression lie gave to the spirit of the Indian people when he said that no imposition from the British will be accepted by the Indian people. Imposition would be resented and objected to, he said and he added that if need be we will walk the valley of struggle. That is very good, Sir—bold word, noble words.

But the point is to see when and how are you going to apply that challenge. Well, Sir, the point is that the imposition is here right now. Not only has the British Plan made any future Constitution provided you are able to evolve out something which I—very much doubt—even if you were able to evolve out something, not only is it dependent on a treaty satisfactory to the Britisher but it suggests that for every little difference you will have to run to the Federal Court or dance attendance there in England; or to call on Attlee or someone else. Not only is it a fact that this Constituent Assembly, whatever plans we may be hatching, we, are under the shadow of British guns, British Army, their economic and financial strongehold—which means that the final power is still in the British hands and the question of power has not yet been finally decided, which means the future is not yet completely in our hands. Not only that, but
the statements made by Attlee and others recently, have made it clear that if need be, they will even threaten you with division entirely. This means, Sir, there is no freedom in this country. As Sardar Vallabhbhai Patel put it some days ago, we have freedom only to flight among ourselves. That is the only freedom we have got and the only other freedom that I noticed is on the order paper of the day where Pandit Nehru is the Hon'ble Pandit Nehru and I suppose Pandit Nehru has not even the freedom to drop that honour. Therefore I say it is no use your thinking that from within the limitations of this British Plan, one part of which is the Interim Government and the other part of which is the Constitution-making procedure, I don't think you will be able to get any independence out of it. The insolence of the Britishers, as you have recently seen, and to which expression has been given by various Members of the House, why is this insolence so growing, it is for the patriots to see., The insolence is growing because they find that the great parties of our country, the Congress and the Muslim League, go on thinking that in getting our parties, may party's claim as against the other party, I will be able to get the help of the British. They want you to go on quarrelling with the only result, that fratricidal fights follow, as it has happened to-day throughout the country as it is bapotnin.g (everyday before your very eyes. Our strength against the British gets decimated and nothing of freedom comes our way. only we kill each other as if we are enemies instead of being brothers and Mr. Alexander gets the cheek to say in this month of 1946 in the House of Commons that the use of the Special powers of the Viceroy has not been changed and whatever power is available there, it is there to back it. Therefore, our humble suggestion is that it is not a question of getting something by working out this Plan but to declare independence here and now and call upon the Interim Government, call upon the people of India to stop fratricidal warfare and look out against its enemy, which still has the whip hand, the British Imperialism-and go together to fight it and then resolve our claims afterwards when we will be free. As a matter of fact, Sir, we have found in the long history of our struggle for the freedom, of the country that, when we are faced to the British, even though we might disagree very much among Ourselves, quarrels are generally resolved, no obstacles are put to the man who Is fighting the British. It is a way out of the present fratricidal impasse. Mr. Chairman, Sir, and the Mover of this Resolution, I would address him also, that Doctor Jayakar, the fine logician and a cruel logical that he is, has placed before you the only alternatives when he has told you that either we have to work through the limitations of the British Plan or you have to go forward to the seizure of power, revolutionary seizure of power. These are the alternatives and good old constitutional liberal that 'he is, he has rightly grasped it and playing upon the fear of revolution that some of you might have got, he has asked you to follow
his constitutional path and told you I know Congress also is not going to revolutionary seize power'. Yes, Sir, these are the only alternatives before Indian people today and before this Constituent Assembly today, that Father you try to follow the British Plan, put one party's claim against the other and get sunk into the morass of fratricidal warfare everyday with the result that finally the British may be as strong over you as before. or you go forward to the revolutionary seizure of power. I say, you go forward first of all to drive out the British, holding their guns even now over our heads.

Sri Raj Krushna Bose (Orissa: General): We have a right to know whether the speaker is supporting the Resolution or opposing it. I am afraid all that he is saying at this time is not relevant.

Mr. Somnath Lahiri: That is for the Chairman to decide. I hope I represent a political party which is the third largest in the country....(Laughter from Back Benches). Mr. Chairman, I hope you will let me continue without interruption. Our party got 7 lakhs of votes....(Interruption) ... in the last General Election. It is true that it is not a big party but it is the third largest party surely (Renewed laughter).

Mr. Chairman: I hope the House will allow the Speaker to proceed. (To Mr. Lahiri) But I would remind you of the time-limit and also of the fact that you should confine yourself to the subject in question.

Mr. Somnath Lahiri: Yes, Sir. I am coming to the point. I hope you will allow me, Sir, the same facilities as you allowed to Dr. Ambedkar or other party leaders. (Laughter from Back Benches).

Mr. Chairman: It is true that I did show some leniency to them., but the House was in a mood to listen to them, but it does not seem to be in that mood now. I have to be guided by the mood of the House.

Mr. Somnath Lahiri: Whether the House likes what I say or not, it is for you to let me, as the representative of an independent view-point, to express my views in full.

Mr. Chairman: You may go ahead.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): Sir, we must know whether he is supporting the Resolution or he is supporting the amendment.

Mr. Somnath Lahiri: The more interruptions there are....
Mr. Chairman: Members will draw their own inferences as to whether he is supporting the Resolution or opposing it or doing neither.

Mr. Somnath Lahiri: I will make it quite clear. You will know it when you listen to my Speech. Sir, coming to the third para of the original Resolution, I understand that you desire the unity of India. It is out of that desire you have given this right of autonomy and residuary power in paragraph three but refused right of session to linguistic, etc., units. I am also as much eager for the unity of India as you are, but the point is: can you get that unity by means of force or by compulsion? I come from Bengal. Look at Bengal. In Bengal the overwhelming majority of the population who are peasants and amongst whom the overwhelming majority is Muslim, are ground down under the double slavery of British Imperialism and the Hindu Upper Class. Now, Sir, in the image of freedom that the Bengal peasants and the Bengali Muslim has before his mind's eye, if he wants that neither British Imperialists nor Hindu Upper Class can exploit him, if he wants that his land-the Bengali speaking territory--should be free and sovereign, free from the control of any other part of India-can you deny that right of freedom to him? You cannot. And if the Muslim League-the reactionary section of the leadership of the Muslim League-are able to distort this freedom urge of the Bengali Muslim into religious separatism, or into demanding the Assamese speaking territory, I should say the responsibility for this is on the Congress leadership. Why? Because the Congress has never unequivocally recognised this right of separation of the nationalities on national,-linguistic basis and whatever recognition there was in the ruling of the Congress President that no territorial unit of India will be compelled against its wish to come into the Indian Union, You have given the final good-bye to that in this Resolution. You have said here that no unit however strong its wish might be to go out of India, can go out. The utmost it can hope for is residuary powers and autonomy. Well, Sir, this is not the way by which you would hope to win over the Muslim population of Bengal. This is not the way you would hope to win over the other nationalities which will come into the forefront as time goes by. So you cannot achieve the unity of India by forcing a unitary constitution on them and if you look at the constitutions of recent days in the world you will find as in Yugoslavia, in Czechoslovakia, etc. that the; recognise the rights of self-determination including that of separation. For instance, in Yugoslavia the very first article of their new Constitution gives the right of self-determination and separation to the Serbs, Croats, Slovenes, Montenegrins, etc., to the full. That is why today in Europe you find that though Yugoslavia is a small country, yet it is the most united and advancing most rapidly.
Now, Sir, I have heard some Congressmen say that "Well, this right of separation and self-determination we will give, but only later, if the Muslim League presses for it". Now, Sir, would it not be worst political opportunism to higgle with the rights of peoples across the bargaining counter if the bargain was pressed? Is it not better that you put it clearly and in unequivocal terms not for the leaders but for the people the Muslim people to see for themselves and have some faith, Some guarantee that they may safely come into the Indian Union?

The next point that I would deal with is paragraphs 4, 5 and 6 of Original Resolution. Well, Sir, here you have formulated certain fundamental principles on which the equality and the rights of the people of India would be based. Good, Good intention. Nobody denies the good intention. But the path to hell is often paved with good intentions and the intentions here may mean everything or may mean nothing. It all depends on how you interpret those Principles, in the light of the past and the future. You have said everybody will be equal before law. You have said that full legal rights will be given to everybody. At the same time history tells you there are popular Ministries in this country, the Congress has got Ministers, and even then you find in Bombay people being externed, even women being externed as good as without bringing them into court. At the same time, you find in U.P. a law being framed whereby detentions can take place without trial. At the same time, you find in Bengal a law being framed under the name of communalism which takes out the liberty of every newspaper and everybody. Now, Sir, people will look at your formulations here in the light of their past experience and if you want these things to be really what you wanted them to be, you ought to have been more explicit and stated clearly what you want. Similarly about the Depressed Classes. You have said that adequate safeguards will be provided. Good. But who is going to determine and when are they going to determine whether the safeguards are adequate or not? Everybody deplores the religious separatism that obtains today in our country. Everybody deplores that, but what is the political provision that you have been in your Resolution to them and to their aspirations?

An Hon'ble Member: What do you suggest?

Mr. Somnath Lahiri: Well, I would suggest proportional representation with adult suffrage and joint electorates in any election that might take place in the future and thereby each party, whether it be a communal party or a political party, on the basis of the total votes gained by it, will get its representation assured and then the parties, the communal parties like Muslim League and the Scheduled Castes Federation, who would have been assured of their
proper representation, could not have any complaint. At the same time, it would give a fillip to

the political parties also to get their proper representation, so that we can gradually cut across

the religious separatism that has grown in our country, and healthy politics on the basis of

political division and political struggle would develop. But you have not made the point clear.

I hope you will make it clear when you draw up the fundamentals of the Constitution. You

must remember that the people will judge you by your past,-by your immediate past which I

am sorry to say, in spite of the good programme of the Congress, in spite of the hard struggle

of the Congress, has not been up to its professions. I hope that they will be remedied when

you are drawing up the future Constitution.

Mr. H. V. Kamath (C. P. and Berar: General): I submit, Sir, that Mr. Lahiri when speaking on

his own amendment was ruled out of order by you, and is he in order now in doing the same?

Mr. Somnath Lahiri: I have every right to develop my argument However, I have almost

finished and I will take only a minute or two. This Resolution, apart from the generality and

the good thing that is in it--I should have liked that you had made the proclamation here and

now of our independence. Every Indian would agree with the first paragraph that India should

be a sovereign independent power. Apart from these things, your Resolution, to sum up

politically, is a resolution of pressure. Part of the pressure is against the British. It tells the

British, "Look here. If you think we are going to listen to you, to whatever you dictate, you

are very much mistaken.' We are going to evolve a constitution of our own for India." Good.

Put that more strongly if you like, but the other part of the Resolution is against the Muslim

League, "Look here, if you think that there is separation waiting for you, you are mistaken.

We are going to evolve out a unitary constitution for India and there is no scope in it for

separation." That is pressure against the Muslim League. I do not think the second pressure

helps you to increase the first pressure. The more we press against our brothers, the more we

fight against the Mussalmans, the more the British are able to deny us what we want. You

increase the pressure as much as you can against the British, but do not increase this pressure

against your own brothers. Well, Sir, Pandit Jawahar Lal Nehru has spoken of the magic of

the moment. Yes, magic. But it is the magic of the British witch which lulls patriots to sleep,

the magic of the British witch from whose bloody talons the blood of countless martyrs is

dripping and yet she is able to make the patriot think that he will get his claim against the

other party by working her magic Plan. I hope that the Congress patriot will remember that

and go forward in his struggle against the witch's plan, against British imperialism and not

against the Mussalmans.
Mrs. Hansa Mehta (Bombay : General): Sir, I consider it a proud privilege to speak in support of this historic Resolution so ably moved by Pandit Jawahar Lal Nehru. I do not wish to refer to the issue raised by Dr. Jayakar or speak on the speeches made six thousand miles away by people who either mean mischief or are totally ignorant of the real situation. I wish to offer a few remarks on that of this Resolution, the fundamental rights which affect a section of the people, namely, women.

It will warm the heart of many a woman to know that free India will mean not only equality of status but equality of opportunity. It is true that a few women in the past and even to-day enjoy high status and have received the highest honour that any man can receive, like our friend, Mrs. Sarojini Naidu. But these women are few and far between. One swallow does not make a summer. These women do not give us a real picture of the position of Indian women in this country.

The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilisation of which we are all so proud, and in praise of which Dr. Sir S. Radhakrishnan has always spoken. There are thousands of women to-day who are denied the ordinary human rights. They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her man will not only raise himself but rise the whole nation. Mahatma Gandhi’s name has, been invoked on the floor of this House. It would be ingratitude on my part if I do not acknowledge the great debt of gratitude that Indian women owe to Mahatma Gandhi for all that he has done for them. In spite of all these, we have never asked for privileges. The women's organisation to which I have the honour to belong has never asked for reserved seats, for quotas, or for separate electorates. What we have asked for is social justice, economic justice, and political justice. We have asked for that equality which can alone be the basis of mutual respect and understanding and with-out which real co-operation is not possible between man and woman. Women form one half of the population of this country and, therefore, men cannot go very far without the co-operation of women. This ancient land cannot attain its rightful place, its honoured place in this world without the co-operation of women. I therefore welcome this Resolution for the great promise which it holds, and I hope that the objectives embodied in the Resolution will not remain on paper but will be translated into reality. (Cheers).
Mr. P. R. Thakur (Bengal: General): Mr. Chairman, Sir. Dr. Ambedkar did not say anything last time about the Depressed Classes. So, I consider it a great honour to speak to the Members of the Constituent Assembly on behalf of the Scheduled Castes in general of India. I stand here to support the Resolution moved by Pandit Jawahar Lal Nehru. After analysing the whole of the Resolution and examining it in detail, I find that it is the best document that has ever extended hopes to the minds of the people of India for freedom. Some of my friends who have spoken before have pointed out some defects in it. Nevertheless, the Resolution as it stands before us will serve to solve many of the problems that have got to be solved before drawing up a constitution. I do’ feel there are many obstacles in our way, but we know we shall have to surmount them. If we look back into the history of the democratic nations of the world, we would see that every constitution-making body had to face very many difficulties and sometimes difficulties. But still, they were successful at the end.

It is a pity that our Muslim League friends have kept themselves out and are not taking part in the deliberations of this Assembly. But when we know that we, Hindus and Muslims will have to live in this country of ours, we shall have to solve our differences amicably by some way or other. It is hoped that the Muslim League members will, sooner or later, take up their rightful places in this Assembly, join in the deliberations and help in framing a Constitution that, will be acceptable to all.

Sir, in this big, august House of the Constituent Assembly' we belonging to the Depressed Classes, are very few in number, but in the country as a whole our population is 60 millions. We are no doubt a part and parcel of the great Hindu community. But our social status in the country is so very low that we do feel that we require adequate safeguards to be provided for us. Firstly, we should be considered as a minority- a minority, not in the sense in which a community is a minority on religious or racial grounds, but a minority which is a separate political entity. It is needless however to, point out that we are a separate political entity. I think those who have got themselves interested in the uplift of the Depressed Classes will admit, as Mahatma Gandhi himself has admitted by his words and deeds, that adequate safeguards are necessary for these classes for their political salvation. The Poona Pact is Mahatma Gandhi’s creation, and his writings in the 'Harijan' amply prove that the interests of the Depressed Classes must be carefully looked after.

The Cabinet Mission's Statement of May 16 does not say anything about the Depressed Classes; but the Press Conference that the British Cabinet Ministers had, after the publication of the Statement in Delhi, clearly shows that the Depressed Classes should be regarded as a
minority. The subsequent debates on India in the House of Commons as well as in the House of Lords have also laid stress on the importance of providing safeguards for the Depressed Classes as a minority.

Sir, the minority problem is one of the most intricate problems, specially in a country like India, where so many elements live together with so many different kinds of interests. I believe this Constituent Assembly will have to face very important problems in regard to the minorities and find satisfactory solution for them. If this is done the House Will have no difficulty in framing a constitution ultimately. We the members of the Depressed Classes do hope that this Constituent Assembly will do justice to us. There are Depressed Classes in all the Provinces and in the States of India. They want representation on a population basis in the Legislatures in the Centre, Provinces and the States. They do not claim any weightage, but if any weightage is given to any community, they demand proportional weightage for them.

Para. 4 of the Resolution says that-

"all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people."

I think this is the best part of the Resolution: It would infuse real strength into the minds of the common people of India. The people of India might not be as much politically conscious as the people of other democratic countries; but the very idea that all the power of the State will come from the people will make the Depressed Classes of India politically conscious quickly. Para. 7 of the Resolution says-

"Whereby shall be maintained the integrity of the territory of the Republic....

This is also very important. We the Depressed Classes are the original inhabitants of this country. We do not claim to have come to India from outside as conquerors, as do the Caste Hindus and the Muslims. As a matter of fact, India belongs to us and we cannot tolerate the idea that this ancient mother country of ours, will be divided between the Muslims and the Caste Hindus only.

I come from Bengal. Many of you might have heard of the civil disturbances over there-. The Depressed Classes were the worst sufferers. We strongly repudiate any claim of the Muslim League to take away our beloved Bengal and constitute her into Pakistan. We also oppose the idea of grouping. We shall fight tooth and nail to maintain the integrity of India intact. I hope better sense will prevail on Muslim League soon.
In this connection I cannot but say that the leaders of the Muslim League in Bengal are trying to get the support of a section of the Depressed Classes by joisting leaders of their choice over them. I think they are doing it just to pave the way for their fantastic Pakistan. But, fortunately, this section of the Depressed Classes is very small. I do hope that this Constituent Assembly will see that nothing is done in regard to Bengal without the consent of the Depressed Classes. They are of overwhelming number.

Lastly, I cannot but express my joy that very soon India will be free. The time has come for it. There is no power on earth which could stop it. Some of my friends, especially Dr. Ambedkar, said that there would be civil war in the country before India gets freedom. The Depressed Classes will be very glad to meet it. As a matter of fact they are ready to face it.

With these few words I support the Resolution moved by the Hon’ble Pandit Jawahar Lal Nehru.

Mr. Chairman: I propose to call upon Sir Alladi

Krishnaswami Ayyar to speak next; but as he is not in a position to stand up and speak, I permit him to sit and speak. I hope the House has no objection to that

Honourable Members: No objection.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, after the eloquent speech of our leader The Hon’ble Pandit Nehru, on the main Resolution and the eloquent speeches of other speakers on the amendment of the Right Hon’ble Dr. Jayakar, I shall try to be as brief as possible.

In support of his amendment, my Right Hon’ble Friend Dr. Jayakar has raised various Points, not all of which, I am, afraid, are consistent with one another. His first Point was that at this session, it was only competent for the Constituent Assembly to determine the order of business and that it should immediately resolve itself into ‘A’, ‘B’ and ‘C’ sections, as the Statement of the Cabinet Mission did not contemplate the transaction of any other business than merely determining the order of business. Secondly, he raised a doubt as to whether it is at all competent for this Assembly and in any event advisable to pass a resolution before the representatives of the Muslim League decided to come in. Lastly, he raised a point that before the State representatives come in, it may not be right for this Assembly to pass such a Resolution.
None of these points, I venture to say, has any validity. In regard to the first, the Statement of the Cabinet Mission is not in the nature of a Statute which purports to lay down every detail as to the steps to be taken by the Constituent Assembly in the matter of framing a constitution for India. In the language of the Cabinet Mission themselves, their object was merely to settle a machinery whereby a constitution can be settled by Indians for Indians. It is inconceivable that any constitution can be framed or steps taken in that regard without a directing objective which the Assembly has to set before itself. The formulating of such a directing objective does not of course in any way involve this Assembly deviating or departing from the main principles of the Cabinet Statement. You may search in vain for the proceedings of any Constituent Assembly or Convention which has not formulated such a purpose at the commencement of its proceedings. I do not therefore propose to further elaborate the point as to what exactly is the connotation of the expression 'order of business' in the Cabinet Statement.

Now as to the merits of the Resolution itself: There is nothing in the terms of the Resolution to which either the Muslims or the States can take exception if they decide to come in. In fact, neither of these two parties would have a place, in this Assembly unless they subscribe to the objective of an independent India. The Statement of the Cabinet Mission in several paragraphs declares that the Constituent Assembly "is committed to the task of framing a constitution for an independent India". They make an appeal in paragraph 24 of the Statement that "the leaders of the people of India have now the opportunity of complete independence" and they say that "they trust that the proposals will enable the people of India to attain their independence in the shortest time". The Statement of the Cabinet Mission, in so many terms, declares that the new independent India may choose to be a member of the British "Commonwealth or not" and in any event they express the hope that "India will remain in close and friendly association with the British people". There is nothing to prevent republican India from being a member of the British Commonwealth as is the case with Ireland. In fact, it is common knowledge that the conception of British Commonwealth is undergoing change year by year and day by day owing to the force of international events. The Muslim League has, on several occasions, expressed itself that it is as strongly for independence as the Congress, We have no right in this House to read between the lines and presume that Muslim India does not mean what it says for this purpose. The only issue

that was raised by the Muslim League was in regard to Pakistan. On that, the Cabinet Mission's Statement is definitely committed to a single Indian Union. It is only if the Muslim League subscribes to the article of a single Indian Union that the Members of the Muslim League have or could have any place in the Constituent Assembly. There is no guarantee nor
any indication that the postponement of the Resolution to some day next month will be a factor in the Muslim League making up their mind in joining the deliberations of this Assembly. The argument, therefore, derives from the Muslim League staying away from the present Constituent Assembly and the possibility of their coming in at a later stage has no validity on the propriety of the Resolution before the House. Then as to the Slate: Here again, the States or the States Representatives have a place in this Assembly only if they Subscribe to the creed and article of an independent India and if they are committed to the task of framing a constitution for an independent India. Otherwise, they have no place. They must choose to be constituent parts of an independent India or not. If they come in, it can only be on the footing that they are as much committed to the ideal and purpose of framing a constitution for an independent India as we in what is now British India. While I realise that there may be a certain incongruity in the States coming in only at a later stage in the proceedings of this Assembly that is not our making—it cannot stand in the way of this Assembly formulating its objective in the form of a resolution at this stage, a resolution which does not commit this Assembly to anything beyond what is contained in the Statement of the Cabinet Mission. Has this Assembly begun to function or not? Or is it in a state of suspended animation until the State representatives choose to come in? We have elected our Chairman; we are proceeding to frame rules of business and we have begun the work of framing a constitution for an independent India? How can it be said that this Assembly has not begun to function? Is there any logic in the argument that the Assembly must not formulate its objective until some other party comes in or can come in? An independent India cannot, as was forcibly pointed out by Pandit Nehru, be a monarchy. The executive head of the Union cannot be a hereditary monarch, Hindu, Muslim or Sikh. He can only be an integral part of a Republic constitution.

There is no substance either in the objection raised on behalf of the States in certain quarters outside the House to paragraph 4 of the Resolution that-

"all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people."

Is it suggested that in respect of the sovereign independent India, the authority of the provincial parts is derived from the people, and, so far as States are concerned, from the hereditary rules of the States? The constitution of a sovereign independent India is the concrete expression of the will of the people of India as a whole conceived of as an organic entity, and even in regard to the units themselves, the authority of the rulers can rest ultimately only on the will of the people concerned. The State machinery, be it monarchy or
democracy, ultimately derives its sanction from the will of the people concerned. The Divine Right of Kings is not a legal or political creed in any part of the world at the present day. I do not believe that it will be possible for hereditary monarchs to maintain their authority on such a mediaeval or archaic creed. The Cabinet Mission was quite alive to this and in their Statement, reference is made throughout to Indians, meaning thereby Indians both of the Indian States and British India, deciding the future constitution of India, no distinction being drawn between Indians in what is now British tract and what is now native State territory. I need only refer to paragraph 1, 3, 16 and 24 of the Statement of the Cabinet Mission.

There was one other minor point which formed the subject of criticism, viz., non-reference to groups in the Resolution, by Dr. Ambedkar, who I am glad to say has made a most useful contribution to the debate by giving his unqualified support to a United India. A close examination of the Cabinet Mission's Statement will point to the conclusion that the formation of groups is not an essential part of the constitutional structure. In the most material parts, the main recommendations are that there should be a Union of India dealing with certain subjects, that all subjects other than the Union subjects and residuary powers should vest in the Provinces and in the States, the States being assimilated to the position of provinces tinder the Cabinet Mission Scheme. There is nothing in the terms of the Resolution to prevent Provinces from forming themselves into Groups as contemplated by the Cabinet Mission. There was a further comment as to the reference to 'justice, social, economic and political' being too thin. The expression 'justice, social, economic and political' while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasise the fundamental aim of every democratic State in the present day. The Constitution framed will, I have no doubt, contain the necessary elements of growth and adjustment needed for a progressive society. After all, we have to remember that what we are dealing with is a Resolution setting out the main object of this Assembly and not a Preamble to a Statute.
Saturday, the 21st December, 1946

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

**PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER**

Mr. Chairman: The House, would join me in welcoming another Lady Member who has appeared for the first time this morning, having been away attending an International Conference. I request Rajkumari Amrit Kaur to sign the register.

The following members then presented their credentials and signed the Register.

Rajkumari Amrit Kaur (C.P. and Berar: General);

Sir Padampat Singhania (United Provinces: General).

**RESOLUTION RE: ELECTION OF CONSTITUENT ASSEMBLY NEGOTIATING COMMITTEE**

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

This Assembly resolves that the following members, namely,- (1)Maulana Abul Kalam Azad. (2)The Hon'ble Pandit Jawaharlal Nehru, (3)The Hon'ble Sardar Vallabhbhai Patel, (4)Dr. B. Pattabhji Sitaramayya, (5)Mr. Shankarrao Deo, and (6)The Hon'ble Sir N. Gopalaswami Ayyangar, do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of-
(a)determining the distribution of the seats in the Assembly not exceed in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and (b)deciding the method by which the representatives of the States should be returned to this Assembly. The Assembly further resolves that not more than three other Members may be added to the Committee later and that they be elected by the Assembly at such time and In such manner as the President may director.

Mr. Somnath Lahiri (Bengal: General) : I should like to know what is the procedure for submitting amendment to this Motion. I presume that We should be given some hours at least to move amendments

Mr. Chairman: Is it an amendment with regard to the substance of the Motion or with regard to the names?

Mr. Somnath Lahiri: With regard to the substance of the Motion,

Mr. Chairman: We shall see.

Shri Sri Prakasa (United Provinces : General) : It would be best to fix 1-15 P.m. as the hour by which the amendments may be moved and in the meantime we may go on with the Resolution.

Mr. Chairman: I suppose the mover and the seconder will take a little more than an hour and in that time you will be able to move the amendment.

Mr. K. M. Munshi: This is more or less a formal motion for the simple reason that the Cab-net Mission's Statement as well as Lord Pethick--Lawrence's speech both contemplate that there should be a committee appointed by this Assembly in order to. negotiate with the States for the purposes mentioned in this Resolution. I may refer in this connection, Sir, to the recent remarks of Lord Pethick-Lawrence. Lord Pethick--Lawrence said that- "The manner in which the seats representing the States should be filled in the Constituent Assembly was to be negotiated between the Committee appointed by the Indian States and a committee appointed by the British India side of the Constituent Assembly. The States had appointed the Committee and when the Committee has been appointed by the British India part of the Assembly, Negotiations could begin."
It is necessary, as the House will easily see, to begin these negotiations at the earliest possible date. It is for that reason that this Resolution has been placed before the House today. The number has been restricted at present to 6 because this Committee, having to deal with delicate negotiations, has to be as small as it possibly could be. Further the purposes, for which the Committee is being appointed, are fully set out in the Statement. I therefore commend this Resolution for the acceptance of the House.

Dr. Sachchidananda Sinha (Bihar: General): I second it.

An Honourable Member: Will the result of the negotiations be placed before the Assembly?

Mr. K. M. Munshi: I mention for the information of the Hon'ble Members that so far as the Cabinet Mission's Statement is concerned, It provides for Negotiating Committee on behalf of the States. The Negotiating Committee on behalf of the Constituent Assembly will meet it and will decide the nature of the State representation to the Assembly. That so far as I understand is the meaning of the Cabinet Mission's Statement. But certainly the matter will be brought before this House and. I have no doubt the House will have an opportunity to express itself upon it.

Mr. P. R. Thakur (Bengal: General): Sir, I want to move an amendment that after the name of the Hon'ble Sir N. Gopalaswami Ayyangar, the name of one of the Depressed class members of We House be added.

I press this point merely because it is important that in this Committee which is going to determine the distribution of the seats in the Assembly reserved for the States, and decide the methods by which the representatives of the States should be selected, a member from the Depressed Classes should be added. There are Depressed Classes in the States and their condition, both social and political, is worse than that of the Depressed Classes in the Provinces. request the House therefore to add one member of the Depressed Classes from this House.

Mr. Chairman: Have you got any name?

Mr. P. R. Thakur: The House will decide who will be there.
Mr. Somnath Lahiri: I have two amendments, Sir. My first amendment is to make the point clear which was not made clear by the mover of the Resolution whether decisions of the Committee will be subject to ratification by this Assembly.

The amendments are: (1) Add the following to the Resolution immediately before the last para: "After the necessary negotiations and consultations the Committee shall place before this Assembly for ratification their final recommendations regarding the distribution of seats to the different States and the method by which the representatives of the States may be returned."

(2) At the end of item (b) of the functions of the Committee add the following: "The Committee, however, should negotiate under the clear understanding that this Assembly recognises only the subjects of the States as being eligible to send States representatives to this Assembly and on the basis of direct election."

These are my two amendments. The objects of these amendments, especially the first is to fix the question of States representatives which, as you know, is something which is not yet fixed. I know that most of the members of the Committee whom you have proposed and most of the members of this House also realise that it is the States People who should have representation rather than the autocratic Rulers of the States. Unfortunately the State paper does not make this clear. There have been different interpretations on it, as was pointed out the other day by, I think, Sir N. Gopalaswami, Ayyangar. We should make it quite clear that we do not want the Princes and the Rulers of the States to determine what should be the representation of the States in this Assembly, because we par that they, being autocratic Princes on the one hand and tools of British imperialism on the other, they would like to whittle down whatever little freedom constitutionally we may try to evolve. It is neither fair to the people of the States as a whole.

You know, Sir, at present throughout most of the States, a terrible regime of repression is being conducted by the Rulers of the States. You have seen how in Kashmir even Mrs. Aruna Asaf Ali's meeting was disturbed by the authorities and how the whole National Conference is being thwarted by repression even though election is supposed to be going on there under
democratic rules, or whatever it may be. We have also heard how at Hyderabad, during the last few months, 7,000 people, men, women and children have been butchered by the Military and Police of the Hyderabad State. We certainly do not want that these Rulers should come here and negotiate with us and have a hand in framing our constitution. It is for this reason, Sir, that I move the second amendment that the Committee however should negotiate on the clear understanding that this House recognises only the subjects of the States as being, eligible to send States representatives to this Assembly and on the basis of direct election.

I do not doubt that the representatives whom you have chosen will have the needs of the States people in their mind. But it is something which is finally for the people of the States themselves to decide. Therefore, keeping my good faith in the members chosen, but keeping the final ratification to this Assembly, in the light of future developments, in the light of what attitude the Rulers of the States might take up ‘and in the light of what demands the people of the States might make, I have moved that it should be subject to ratification by this Assembly.

Mr. K. M. Munshi: May I say one word, Sir?

Mr. Chairman: The resolution has been moved and the amendments have been moved. The whole thing will be for the discussion of the House.

The Resolution and the amendments are now open for discussion. Any member, who wishes to speak may come.

Sri K. Santhanam (Madras: General) : I wish to move another amendment. I wish to move that after the words "for the purpose of" the following words be added: "formulating recommendations regarding. And then in (a) and (b), the words "determining” and "deciding” be deleted,

The purpose of my amendment is that this House should not delegate to any Committee whatsoever, the final determination of any matter. It is a matter of principle, not that I have distrust in the Committee Members. I have full confidence in the members proposed. But still this is a vital matter and I strongly object to any final delegation to any Committee whatsoever.
Mr. Chairman: I think your amendment is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: I have made it simpler.

Mr. Chairman: It is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: My amendment would read better. The principle that this House should be the final determining authority should be admitted and should be followed in every Committee we, appoint and in every other proceeding. Of course my amendment covers practically the ground of the amendment moved by Mr. Lahiri. But the reading of the Rule will be much better if my amendment is accepted.

Mr. Dhirendra Nath Datta (Bengal: General): Mr. Chairman, Sir, I rise to oppose the amendment that has been moved by my friend Mr. Somnath Lahiri. I have full sympathy with the sentiments expressed in the amendment but Mr. Lahiri has forgotten one thing. This is a Consultative Committee. If you refer to paragraph 19, Clause (ii) it has been stated in the Statement of 16th May, that- "It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would, in the preliminary stage be represented by a Negotiating Committee."

So the method of selection is to be determined by consultation, and Mr. Chairman, Sir, it is clear that there should be a Consultative Committee. The States have appointed a Negotiating Committee and we are bound to appoint another Consultative Committee to consult with the States Negotiating Committee. It is impossible to believe that the whole House will be consulted with the Negotiating Committee for the purpose of determining the number and for the purpose of determining the method. So it is necessary that a Consultative Committee should be appointed and the Consultative Committee should be very few in number. The object of the Resolution will be frustrated if the amendment be accepted by us because the consultation should be made between the two small Committees, one appointed by us and another appointed by the States. Therefore, Sir, I oppose the amendments that
have been moved by my friend, Mr. Lahiri, though I am in full sympathy with the sentiments expressed therein. With these words, I support the Resolution moved by my friend Mr. K. M. Munshi and oppose the amendments that have been moved by Mr. Lahiri.

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I would make a request to my friend Mr. Lahiri to withdraw his amendments. I think he must have got a copy of the work that has been done by the Procedure and Rules Committee. Therein already is indicated that everything that the Committees may do, will be submitted at one stage or another to this House and it would be for the House to accept the recommendations or otherwise. That being the case, Mr. Lahiri’s point is met.

A member of the Depressed Classes--I do not know what the difference is between Depressed Classes and Scheduled Castes-has pleaded that one Depressed Member should be in this Committee. As far as I am concerned, I have no quarrel with the names that have been suggested by the authors of this Resolution at all. They are eminent men, they are men who have worked in the States and they know the States. But, Sir, I humbly submit that I do not think they know much of the Eastern States. The Indian States People's Conference has dealt generally with States in Northern India. Southern India and a part of Western and Central India. They have had hardly anything whatever to do with the Orissa States Agency or the Agencies of Bengal and the North East Frontier. The House must forgive me if I blow my trumpet a bit. Ever since my return from British West Africa, I have been traversing a lot amongst the Adibasis in the Adibasi Tracts and, in the last 9 years, I have traversed 1,14,000 miles and it has given me an idea of what the Adibasis need and what this House is expected to do for them. There are, in Indian India, in Rajasthan, the Princely India, where you have a population of a little of 90 million people, you have 17 million Adibasis, 17 million tribes. Sir. I suggest that with such a large population, there should be an Adibasi in this Negotiating Committee. I think he will be able to help the Committee. I am not obstructing the work of the Committee but I want that an Adibasi should be there to fight for the Adibasis. You need an Adibasi when you fight for Adibasis and he will fight along with the authors of this Resolution that they do include an Adibasi and make it 'We Are Seven'.
The Hon'ble Mr. B.G. Kher (Bombay: General): Mr. Chairman, Sir, I yield to none in my concern for the Depressed Classes or for the Adibasis but to press for a representative either of the Adibasis or the Depressed Classes or the Christians or for the matter of that of any other community in this Committee is to misunderstand the whole purpose and object of this Resolution. The Princes are going to set up a Negotiating Committee and if you refer to the letter that the Chancellor of the Chamber of Princes wrote to the Viceroy on the 19th June, 1946, in para. 4 it says -

"The Standing Committee have decided, in response to Your Excellency's invitation, to set up a Negotiating Committee whose personnel is given in the enclosed list. The Committee did their utmost to keep the number small, as desired by Your Excellency but they felt that it would not be possible for them to reduce the number, I shall be grateful if I am informed as early as possible of the time and place when the Committee is expected to meet, and the personnel of the Corresponding Committee which may be set up by the representatives of British India on the Constituency Assembly. The result of these negotiations are proposed to be considered by the Standing Committee of Princes, the Committee of Ministers and the Constitutional Advisory Committee, whose recommendations will be placed before a General Conference of Rulers and Representatives of States."

Now if we refer to the terms of this Resolution what it says is -

"This Committee is to be constituted to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States with the limited purpose, viz., to determine the distribution of the seats in the Assembly not exceeding 93 in number and secondly to decide the method by which the representatives of the States should be returned to this Assembly."

So that, Sir, we have now to elect on behalf of British India those who have upto now shown their interest not only in the best interests of the people of British India but also of Indian India. There is Pandit Jawahar Lal Nehru who is the President of the States People's Conference; there is Dr. Pattabhi Sitaramayya, Shankarrao Deo and others. Now, a mover of an amendment said that there are Depressed Classes residing in the States and therefore they should be represented on this Committee. If that is so, then there are also
Sikhs, Indian Christians and Anglo-Indians residing in the States. The Committee is only a body for determining the method by which the representatives of the States should be given representation in this House. For this limited purpose, it is not necessary to bring in the principle of communal representation. The wording of the Resolution makes it clear that our Committee will confer with the Negotiating Committee and the Mover of the Resolution has made it clear that the result of their negotiations will come up before this House for final assent. I therefore do submit the movers of the amendments, including Mr. Santhanam, to withdraw their amendments. The scope of the Committee is so limited. The other considerations of communal representations, etc. do not, in my opinion, affect the main purpose. There may be some States, the population of which is so small, that to represent a group of them, there may be only one representative. We know there are about 650 States and we cannot expect that there should be 650 representatives. It is for the purpose of giving proper representation to all these States that this Committee has been formed; it is not right to fetter their discretion and I would once again appeal to the movers of the amendments to withdraw them. I support the proposition moved before the House and hope that it will be passed unanimously.

Mr. K. Santhanam: If it is the ruling of the Chairman that the proposals of this Committee will come before this House for ratification, then I would gladly withdraw my amendment.

Mr. Chairman: Pandit Jawahar Lal Nehru

Mr. Somnath Lahiri: If you can give a ruling, Sir, that the proposals of this Committee will be subject to ratification, then I also withdraw my amendments.

Mr. Chairman: I will give my ruling in time. Pandit Jawahar Lal Nehru.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): Mr. Chairman, Sir, the Resolution that has been placed by Mr. Munshi before the House is a very limited Resolution. It is meant only to fix the method of representation in this Assembly for the representatives of the States, and not to deal with the innumerable problems which the States have in common with
the rest of India. Mr. Lahiri mentioned the case of one or two States where political struggles are going on. Obviously, this Committee will have nothing to do with the internal structure of the States. That matter will have to be considered, I hope, by us when the States representatives come. We can confer with them and discuss and settle these matters; so we have for the presently only to consider the method of their representation.

Now, Sir, the amendments that have been moved in regard to members of the Depressed Classes or the Adibasis coming in, seem to ignore the fact that we are only considering this limited problem. Obviously, the Depressed Classes have their particular interests to be protected, but that question does not come in before this Committee. This Committee representing, if I may say so, that part of India which is not the States, will meet representatives of the Rulers - I might say frankly that we have to meet the Rulers Negotiating Committee. I think there should have been on the Negotiating Committee representatives of the peoples of the State and I think even now that Negotiating Committee. If it wants to do the right thing, should include some such representatives but I feel that we cannot insist upon this at this state. Unless we appoint a Committee to negotiate this matter the proper representation of the States representatives may not be secured. Therefore, in this Resolution we have said not only that we shall meet the Negotiating Committee set up by the Chamber of Princes but also the representatives of other States who are probably not included therein, and as I have already explained, the object of our meeting them is to ensure a proper method of representation for the State people. If that is so, and if you try and think of the States, as they are, you will see that apart from some States which are big, there will be many small States whom we may have to get represented by doing some kind of grouping or some other way of representing them, because for each State we may not be able to give one representative. Just see how many States there are how many will be required. States like Hyderabad and Kashmir will get adequate representation on the population basis. Some of the big States may get two, three or four, but most of them just barely one. Many of them may not even get that one. We may have to group them or devise some method. These are our problems. Apart from these, no other problem affecting any particular class or even affecting the internal structure of the States will come up before this Committee. Those problems will have
to come up before this Assembly at a later stage, when the State representatives are also here.

I submit that the question of any particular group-communal, provincial or State - coming into this Committee will not arise. We should take of course, competent men who are here, but in this particular matter you cannot enter into group representation, because if we do there is no particular reason why we should deny that representation to the many separate interests that exist here. If you take the Travancore State, thinking only or religious lines, you will find a very great part of the population of the State consists of Christians - Roman Catholics. Now, Travancore is a very important State, the people of which have often come into conflict with the Government authorities. Kashmir, of course, is another important State. In this way, you will get into enormous difficulty if you are going to think of people being represented on a communal basis in this small Committee. (Obviously, this committee ought to be a small Committee because it will be very difficult to deal with the representatives of the Rulers if it is a large committee). This Committee should not, therefore, be formed on the basis of separate interests, as suggested by some people.

Now, Mr. Jaipal Singh made a statement, from which I beg to differ, and that is that the States People's Conference is not taking sufficient interest in the Orissa States. The States People's Conference has not done all that it should do because the problem is a vast one, but as a matter of fact the Orissa States have been frequently before the States Peoples' Conference and one of our members of the Standing Committee of the States Peoples' Conference comes from there.

Now, some of the amendments moved by Mr. Santhanam and others say that this final authority should remain with this House. They agree, however, to withdraw them if the Chair could give a ruling in this matter. I have no doubt in my mind that the final decision on such matters should vest in this House, and that this Committee should only be a Negotiating Committee, that it should negotiate and report to this House. If this House does not agree with anything that they have done, they have got to go back and negotiate still further. Of course, in all such matters, a certain discretion is given. For instance, you do give a large measure of authority to your plenipotentiaries to
go and negotiate with other countries. The countries have got a right to accept or reject, but normally speaking, when the representatives of two parties come together and discuss a matter and come to an agreement, unless a vital principle is involved, the agreement is accepted because third parties are concerned in it. That will apply to our case also. But I suggest, if possible, - I have not the wording before me, - that is might be possible to have some such words as that the Committee should report to the House.

Shri Ajit Prasad Jain (United Provinces : General) : May I ask a question? This Resolution contemplates three bodies, a Negotiating Committee set up by this House, another Negotiating Committee set up by the Princes, whose, names have been announced, and a third, other representatives of the States. How are these bodies going to function and to reconcile differences? Supposing the Princes take up one attitude and other representatives of the States take up a different attitude and other representatives of the States take up a different attitude and so on, how are they going to work?

Mr. Chairman : I suppose it is the function of the Negotiating Committees to reconcile differences, and this Committee and the other Committee, that you refer to will work in that way, I think

Dr. P.S. Deshmukh (C.P. and Berar : General) If I may reply to my Hon'ble friend that is exactly the purpose of this Resolution. If there are differences of opinion between various representatives of the States, we know, Sir, that differences of opinion exist in this Assembly as between various sections of the people of India, as well as States and the people of British India. This Resolution proposes to set up a body, in whom we have confidence, and it will deal with the representatives of the States who have been elected or selected to a Negotiating Committee. It is precisely because this house cannot be expected to enter into negotiations with the Rulers and representatives of the people of States that this small committee has been proposed. Mr. Chairman, Sir, I am here to support the Resolution as it stands and oppose all the amendments that have been moved. Most of the points made have been met by speakers who preceded me and I am not going to repeat them. I want to draw the attention of the House to one particular factor, and that is, the limit within which this Committee is expected to work.
In doing so, I would like to draw attention of the Hon'ble Members to the exact wording in paragraph 19(ii) of the Cabinet Plan. You will be pleased to observe that this Committee is to enter into negotiation with the Negotiating Committee which has already been selected by the States or is likely to be selected. The wording is, "the method of selection will have to be determined by consultation". It is very likely that the word "selection" will have to be interpreted in several different ways. The States representatives may probably place a different interpretation from the one we may put on it and so on. So, it is no good tying he hands of this Committee one way or the other or insisting on a particular method of representation. We must leave it to the negotiators. So, I also submit, Sir, that Mr. Somnath Lahiri's amendment directing what the Committee should do is out of order, because actually it negatives the Resolution as a whole. When we want a committee to act in a particular way it will cease to be a negotiating committee because it will have really to carry out a pre-determined dictate of our own. We cannot afford to antagonise many sections of the people of India, and in spite of the feeling in this House that the representatives of the people of the States alone are entitled to speak to us, we will have to approach the subject cautiously and this Committee will have to work very cautiously. We should not pre-judge or prejudice the issue at this stage, and the Committee should be left to itself to determine what is the best method of attaining the object in view and serving the interests of the people of India as a whole and those of the States people. If we want to comment on their decisions there will be ample opportunity as Panditji has assured us, for this House to place our opinion before this House. So, I submit that the House should pass the Resolution and that the amendments moved should be withdrawn.

Shri V.I. Muniswami Pillai (Madras: General): I come here to support the resolution moved by Mr. Munshi. When an amendment is moved for the inclusion of a representative of Depressed Classes. I find a hue and cry being raised that communal representation is being pressed in time and out of time. I may inform the House that the condition of Depressed Classes in the State is worse than what is obtaining in other parts. The other day when my sister from Cochin was speaking about social conditions of Harijans, she did not take into account the appalling economic and political condition of the people in the States. I may instance the case of Nayadis in Cochin State, a community which is not only untouchable and unapproachable, but
unseeable. This community cannot pass through the King's highways. So I would like to urge on the Committee that has been chosen to negotiate with the representatives of the States that they should take care to have at least a few Depressed Class representatives or somebody who will represent the real needs of the Scheduled Castes.

**Sri Dayal Das Bhagat** (United Provinces: General): *[Mr. Chairman, I wish to draw your attention to the fact that I do not know English. I know Hindi and many of my worthy friends here know that language only. This we understand nothing useful from the proceedings of the House. I pray you to request those of the friends, who know Hindi, to speak in that language so that we may understand easily.]*

**Sri V.I. Muniswami Pillai:** This Resolution seeks to determine the number and distribution of seats and I would respectfully request my friends to see that the interests of these untouchable communities are properly safeguarded.

**Diwan Chaman Lall** (Punjab: General) : Though the point has been made perfectly clear by the Hon'ble mover, Mr. K. M. Munshi, to set at rest any doubts that there may still be, I should like to move an amendment to sub-para (b), viz., for the word 'deciding', substitute - and word 'fixing' and, after the word 'Assembly', add the following - 'and thereafter to report to the Constituent Assembly the result of such negotiation.

As some doubt has been expressed as to whether the result of the Negotiating Committee's efforts would be brought before the House or not, to make the position clear, I have moved the amendment.

Then, Sir, the word 'determining' in sub-para (a) of the Resolution, may also be changed to 'fixing'.

I need not say anything in regard to this matter except to emphasise the fact that it is necessary to make sure that whatever negotiation the Committee may enter into, would naturally be brought before this House and a report made to this House in order that this House may be fully seized of all the negotiations that have taken place without the knowledge of this House, between the Negotiating Committee set up by this House and the Committee
set up by the Princes Chamber. I think it is necessary that this authority, which vests in the Constituency Assembly, should be stated specifically in the body of the Resolution.

**Mr. K.M. Munshi:** Mr. Chairman, I made it abundantly clear when I moved the Resolution that whatever the result of the negotiations, it will be placed before the House and there is no reason to fear that this Committee will decide something which this House may not approve. Now that the Hon'ble Member, Diwan Chaman Lall, has moved an amendment making it quite clear that the report of this Committee will come before this House. I have no hesitation in accepting the amendment.

The second point made was that one Member of the Scheduled Classes should be added to the Committee. The Hon'ble Pandit Jawahar Lal Nehru has replied to that point. This is not a representative committee of all sections and minorities. This is a small committee with very limited functions and only intended to negotiate on a certain basis. And the Committee's report will be placed before the House.

There was another point made by one Hon'ble Member over there (in the rear seats). He asked why it was necessary to state "to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States......". There is a valid reason why the Resolution has been worded in this manner. The Cabinet Mission has stated thus:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selecting will have to be determined by consultation. The States would, in the preliminary stage, be represented by a Negotiating Committee."

Therefore it is the function if the Negotiating Committee representing the States to determine the representation. The House has been informed that a Negotiating Committee has been appointed by the Chamber of Princes. Neither the House nor I have any information as to whether the Committee that has been appointed by the Chamber of Princes represents all the States and whether all the States have agreed to treat the Negotiating Committee as
their representative. Therefore, inconceivable circumstances it may become necessary for our Negotiating Committee not only to negotiate with the Negotiating Committee appointed by the Chamber of Princes, but also with individual States. That is the reason why the words, have been used in the manner as in the Resolution. I therefore submit, Sir, that the amendment moved by the Hon'ble Member, Diwan Chaman Lall, may be accepted by the House.

An Hon'ble Member: I look at the question from a different point of view. A Negotiating Committee has been set up by the Chamber of Princes. If there are other representatives of the States, will they be in addition to those on the Negotiating Committee? I expected a reply from the Mover.

Mr. K.M. Munshi: I have made the position amply clear. We want to give our Negotiating Committee complete freedom to deal with the Negotiating Committee on the other side or with any individual States as they think proper. We do not want to fetter their right to come to any decision which they might think fit. The Resolution as it stands is very clear on this point.
Saturday, the 21st December, 1946

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. Chairman: The House, would join me in welcoming another Lady Member who has appeared for the first time this morning, having been away attending an International Conference. I request Rajkumari Amrit Kaur to sign the register.

The following members then presented their credentials and signed the Register.

Rajkumari Amrit Kaur (C.P. and Berar: General;

Sir Padampat Singnania (United Provinces: General).

RESOLUTION RE: ELECTION OF CONSTITUENT ASSEMBLY NEGOTIATING COMMITTEE

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

This Assembly resolves that the following members, namely,- (1)Maulana Abul Kalam Azad. (2)The Hon'ble Pandit Jawaharlal Nehru, (3)The Hon'ble Sardar Vallabhbhai Patel, (4)Dr. B. Pattabhi Sitaramayya, (5)Mr. Shankarrao Deo, and (6)The Hon'ble Sir N. Gopalaswami Ayyangar, do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of-
(a) determining the distribution of the seats in the Assembly not exceed in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and (b) deciding the method by which the representatives of the States should be returned to this Assembly. The Assembly further resolves that not more than three other Members may be added to the Committee later and that they be elected by the Assembly at such time and in such manner as the President may direct.

Mr. Somnath Lahiri (Bengal: General) : I should like to know what is the procedure for submitting amendment to this Motion. I presume that we should be given some hours at least to move amendments.

Mr. Chairman: Is it an amendment with regard to the substance of the Motion or with regard to the names?

Mr. Somnath Lahiri: With regard to the substance of the Motion,

Mr. Chairman: We shall see.

Shri Sri Prakasa (United Provinces: General) : It would be best to fix 1-15 P.m. as the hour by which the amendments may be moved and in the meantime we may go on with the Resolution.

Mr. Chairman: I suppose the mover and the seconder will take a little more than an hour and in that time you will be able to move the amendment.

Mr. K. M. Munshi: This is more or less a formal motion for the simple reason that the Cabinet Mission's Statement as well as Lord Pethick-Lawrence's speech both contemplate that there should be a committee appointed by this Assembly in order to negotiate with the States for the purposes mentioned in this Resolution. I may refer in this connection, Sir, to the recent remarks of Lord Pethick-Lawrence. Lord Pethick-Lawrence said that- "The manner in which the seats representing the States should be filled in the Constituent Assembly was to be negotiated between the Committee appointed by the Indian States and a committee appointed by the British India side of the Constituent Assembly. The States had appointed the Committee and when the Committee has been appointed by the British India part of the Assembly, Negotiations could begin."
It is necessary, as the House will easily see, to begin these negotiations at the earliest possible date. It is for that reason that this Resolution has been placed before the House today. The number has been restricted at present to 6 because this Committee, having to deal with delicate negotiations, has to be as small as it possibly could be. Further the purposes, for which the Committee is being appointed, are fully set out in the Statement. I therefore commend this Resolution for the acceptance of the House.

Dr. Sachchidananda Sinha (Bihar: General): I second it.

An Honourable Member: Will the result of the negotiations be placed before the Assembly?

Mr. K. M. Munshi: I mention for the information of the Hon'ble Members that so far as the Cabinet Mission's Statement is concerned, It provides for Negotiating Committee on behalf of the States. The Negotiating Committee on behalf of the Constituent Assembly will meet it and will decide the nature of the State representation to the Assembly. That so far as I understand is the meaning of the Cabinet Mission's Statement But certainly the matter will be brought before this House and. I have no doubt the House will have an opportunity to express itself upon it.

Mr. P. R. Thakur (Bengal: General): Sir, I want to move an amendment that after the name of the Hon'ble Sir N. Gopalaswami Ayyangar, the name of one of the Depressed class members of We House be added.

I press this point merely because it is important that in this Committee which is going to determine the distribution of the seats In the Assembly reserved for the States, and decide the methods by which the representatives of the States should be selected, a member from the Depressed Classes should be added. There are Depressed Classes in the States and their condition, both social and Political, is worse than that of the Depressed Classes in the Provinces. request the House therefore to add one member of the Depressed Classes from this House.

Mr. Chairman: Have you got any name?

Mr. P. R. Thakur: The House will decide who will be there.
Mr. Somnath Lahiri: I have two amendments, Sir. My first amendment is to make the point clear which was not made clear by the mover of the Resolution whether decisions of the Committee will be subject to ratification by this Assembly.

The amendments are: (1) Add the following to the Resolution immediately before the last para: "After the necessary negotiations and consultations the Committee shall place before this Assembly for ratification their final recommendations regarding the distribution of seats to the different States and the method by which the representatives of the States may be returned."

(2) At the end of item (b) of the functions of the Committee add the following: "The Committee, however, should negotiate under the clear understanding that this Assembly recognises only the subjects of the States as being eligible to send States representatives to this Assembly and on the basis of direct election."

These are my two amendments. The objects of these amendments, especially the first is to fix the question of States representatives which, as you know, is something which is not yet fixed. I know that most of the members of the Committee whom you have proposed and most of the members of this House also realise that it is the States People who should have representation rather than the autocratic Rulers of the States. Unfortunately the State paper does not make this clear. There have been different interpretations on it, as was pointed out the other day by, I think, Sir N. Gopalaswami, Ayyangar. We should make it quite clear that we do not want the Princes and the Rulers of the States to determine what should be the representation of the States in this Assembly, because we;Par that they, being autocratic Princes on the one hand and tools of British imperialism on the other, they would like to whittle down whatever little freedom constitutionally we may try to evolve. It is neither fair to the people of the States as a whole.

You know, Sir, at present throughout most of the States, a terrible regime of repression is being conducted by the Rulers of the States. You have seen how in Kashmir even Mrs. Aruna Asaf Ali's meeting was disturbed by the authorities and how the whole National Conference is being thwarted by repression even though election is supposed to be going on there under
democratic rules, or whatever it may be. We have also heard how at Hyderabad, during the last few months, 7,000 people, men, women and children have been butchered by the Military and Police of the Hyderabad State. We certainly do not want that these Rulers should come here and negotiate with us and have a hand in framing our constitution. It is for this reason, Sir, that I move the second amendment that the Committee however should negotiate on the clear understanding that this House recognises only the subjects of the States as being, eligible to send States representatives to this Assembly and on the basis of direct election.

I do not doubt that the representatives whom you have chosen will have the needs of the States people in their mind. But it is something which is finally for the people of the States themselves to decide. Therefore, keeping my good faith in the members chosen, but keeping the final ratification to this Assembly, in the light of future developments, in the light of what attitude the Rulers of the States might take up 'and in the light of what demands the people of the States might make, I have moved that it should be subject to ratification by this Assembly.

Mr. K. M. Munshi: May I say one word, Sir?

Mr. Chairman: The resolution has been moved and the amendments have been moved. The whole thing will be for the discussion of the House.

The Resolution and the amendments are now open for discussion. Any member, who wishes to speak may come.

Sri K. Santhanam (Madras: General) : I wish to move another amendment. I wish to move that after the words "for the purpose of" the following words be added: "formulating recommendations regarding. And then in (a) and (b), the words "determining" and "deciding" be deleted,
Mr. Chairman: I think your amendment is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: I have made it simpler.

Mr. Chairman: It is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: My amendment would read better. The principle that this House should be the final determining authority should be admitted and should be followed in every Committee we, appoint and in every other proceeding. Of course my amendment covers practically the ground of the amendment moved by Mr. Lahiri. But the reading of the Rule will be much better if my amendment is accepted.

Mr. Dhirendra Nath Datta (Bengal: General): Mr. Chairman, Sir, I rise to oppose the amendment that has been moved by my friend Mr. Somnath Lahiri. I have full sympathy with the sentiments expressed in the amendment but Mr. Lahiri has forgotten one thing. This is a Consultative Committee. If you refer to paragraph 19, Clause (ii) it has been stated in the Statement of 16th May, that- "It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would, in the preliminary stage be represented by a, Negotiating Committee."

So the method of selection is to be determined by consultation, and Mr. Chairman, Sir, it is clear that there should be a Consultative Committee. The States have appointed a Negotiating Committee and we are bound to appoint another Consultative Committee to consult with the States Negotiating Committee. It is impossible to believe that the whole House will be consulted with the Negotiating Committee for the purpose of determining the number and for the purpose of determining the method. So it is necessary that a Consultative Committee should be appointed and the Consultative Committee should be very few in number. The object of the Resolution will be frustrated if the amendment be accepted by us because the consultation should be made between the two small Committees, one appointed by us and another appointed by the States. Therefore, Sir, I oppose the amendments that
have been moved by my friend, Mr. Lahiri, though I am in full sympathy with the sentiments expressed therein. With these words, I support the Resolution moved by my friend Mr. K. M. Munshi and oppose the amendments that have been moved by Mr. Lahiri.

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I would make a request to my friend Mr. Lahiri to withdraw his amendments. I think he must have got a copy of the work that has been done by the Procedure and Rules Committee. Therein already is indicated that everything that the Committees may do, will be submitted at one stage or another to this House and it would be for the House to accept the recommendations or otherwise. That being the case, Mr. Lahiri’s point is met.

A member of the Depressed Classes—I do not know what the difference is between Depressed Classes and Scheduled Castes—has pleaded that one Depressed Member should be in this Committee. As far as I am concerned, I have no quarrel with the names that have been suggested by the authors of this Resolution at all. They are eminent men, they are men who have worked in the States and they know the States. But, Sir, I humbly submit that I do not think they know much of the Eastern States. The Indian States People's Conference has dealt generally with States in Northern India. Southern India and a part of Western and Central India. They have had hardly anything whatever to do with the Orissa States Agency or the Agencies of Bengal and the North East Frontier. The House must forgive me if I blow my trump a bit. Ever since my return from British West Africa, I have been traversing a lot amongst the Adibasis in the Adibasi Tracts and, in the last 9 years, I have traversed 1,14,000 miles and it has given me an idea of what the Adibasis need and what this House is expected to do for them. There are, in Indian India, in Rajasthan, the Princely India, where you have a population of a little of 90 million people, you have 17 million Adibasis, 17 million tribes. Sir. I suggest that with such a large population, there should be an Adibasi in this Negotiating Committee. I think he will be able to help the Committee. I am not obstructing the work of the Committee but I want that an Adibasi should be there to fight for the Adibasis. You need an Adibasi when you fight for Adibasis and he will fight along with the authors of this Resolution that they do include an Adibasi and make it 'We Are Seven'.
The Hon'ble Mr. B.G. Kher (Bombay: General): Mr. Chairman, Sir, I yield to none in my concern for the Depressed Classes or for the Adibasis but to press for a representative either of the Adibasis or the Depressed Classes or the Christians or for the matter of that of any other community in this Committee is to misunderstand the whole purpose and object of this Resolution. The Princes are going to set up a Negotiating Committee and if you refer to the letter that the Chancellor of the Chamber of Princes wrote to the Viceroy on the 19th June, 1946, in para. 4 it says -

"The Standing Committee have decided, in response to Your Excellency's invitation, to set up a Negotiating Committee whose personnel is given in the enclosed list. The Committee did their utmost to keep the number small, as desired by Your Excellency but they felt that it would not be possible for them to reduce the number, I shall be grateful if I am informed as early as possible of the time and place when the Committee is expected to meet, and the personnel of the Corresponding Committee which may be set up by the representatives of British India on the Constituency Assembly. The result of these negotiations are proposed to be considered by the Standing Committee of Princes, the Committee of Ministers and the Constitutional Advisory Committee, whose recommendations will be placed before a General Conference of Rulers and Representatives of States."

Now if we refer to the terms of this Resolution what it says is -

"This Committee is to be constituted to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States with the limited purpose, viz., to determine the distribution of the seats in the Assembly not exceeding 93 in number and secondly to decide the method by which the representatives of the States should be returned to this Assembly."

So that, Sir, we have now to elect on behalf of British India those who have upto now shown their interest not only in the best interests of the people of British India but also of Indian India. There is Pandit Jawahar Lal Nehru who is the President of the States People's Conference; there is Dr. Pattabhi Sitaramayya, Shankarrao Deo and others. Now, a mover of an amendment said that there are Depressed Classes residing in the States and therefore they should be represented on this Committee. If that is so, then there are also
Sikhs, Indian Christians and Anglo-Indians residing in the States. The Committee is only a body for determining the method by which the representatives of the States should be given representation in this House. For this limited purpose, it is not necessary to bring in the principle of communal representation. The wording of the Resolution makes it clear that our Committee will confer with the Negotiating Committee and the Mover of the Resolution has made it clear that the result of their negotiations will come up before this House for final assent. I therefore do submit the movers of the amendments, including Mr. Santhanam, to withdraw their amendments. The scope of the Committee is so limited. The other considerations of communal representations, etc. do not, in my opinion, affect the main purpose. There may be some States, the population of which is so small, that to represent a group of them, there may be only one representative. We know there are about 650 States and we cannot expect that there should be 650 representatives. It is for the purpose of giving proper representation to all these States that this Committee has been formed; it is not right to fetter their discretion and I would once again appeal to the movers of the amendments to withdraw them. I support the proposition moved before the House and hope that it will be passed unanimously.

Mr. K. Santhanam: If it is the ruling of the Chairman that the proposals of this Committee will come before this House for ratification, then I would gladly withdraw my amendment.

Mr. Chairman: Pandit Jawahar Lal Nehru

Mr. Somnath Lahiri: If you can give a ruling, Sir, that the proposals of this Committee will be subject to ratification, then I also withdraw my amendments.

Mr. Chairman: I will give my ruling in time. Pandit Jawahar Lal Nehru.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): Mr. Chairman, Sir, the Resolution that has been placed by Mr. Munshi before the House is a very limited Resolution. It is meant only to fix the method of representation in this Assembly for the representatives of the States, and not to deal with the innumerable problems which the States have in common with
Mr. Lahiri mentioned the case of one or two States where political struggles are going on. Obviously, this Committee will have nothing to do with the internal structure of the States. That matter will have to be considered, I hope, by us when the States representatives come. We can confer with them and discuss and settle these matters; so we have for the presently only to consider the method of their representation.

Now, Sir, the amendments that have been moved in regard to members of the Depressed Classes or the Adibasis coming in, seem to ignore the fact that we are only considering this limited problem. Obviously, the Depressed Classes have their particular interests to be protected, but that question does not come in before this Committee. This Committee representing, if I may say so, that part of India which is not the States, will meet representatives of the Rulers - I might say frankly that we have to meet the Rulers Negotiating Committee. I think there should have been on the Negotiating Committee representatives of the peoples of the State and I think even now that Negotiating Committee. If it wants to do the right thing, should include some such representatives but I feel that we cannot insist upon this at this state. Unless we appoint a Committee to negotiate this matter the proper representation of the States representatives may not be secured. Therefore, in this Resolution we have said not only that we shall meet the Negotiating Committee set up by the Chamber of Princes but also the representatives of other States who are probably not included therein, and as I have already explained, the object of our meeting them is to ensure a proper method of representation for the State people. If that is so, and if you try and think of the States, as they are, you will see that apart from some States which are big, there will be many small States whom we may have to get represented by doing some kind of grouping or some other way of representing them, because for each State we may not be able to give one representative. Just see how many States there are how many will be required. States like Hyderabad and Kashmir will get adequate representation on the population basis. Some of the big States may get two, three or four, but most of them just barely one. Many of them may not even get that one. We may have to group them or devise some method. These are our problems. Apart from these, no other problem affecting any particular class or even affecting the internal structure of the States will come up before this Committee. Those problems will have
to come up before this Assembly at a later stage, when the State representatives are also here.

I submit that the question of any particular group-communal, provincial or State - coming into this Committee will not arise. We should take of course, competent men who are here, but in this particular matter you cannot enter into group representation, because if we do there is no particular reason why we should deny that representation to the many separate interests that exist here. If you take the Travancore State, thinking only or religious lines, you will find a very great part of the population of the State consists of Christians - Roman Catholics. Now, Travancore is a very important State, the people of which have often come into conflict with the Government authorities. Kashmir, of course, is another important State. In this way, you will get into enormous difficulty if you are going to think of people being represented on a communal basis in this small Committee. (Obviously, this committee ought to be a small Committee because it will be very difficult to deal with the representatives of the Rulers if it is a large committee). This Committee should not, therefore, be formed on the basis of separate interests, as suggested by some people.

Now, Mr. Jaipal Singh made a statement, from which I beg to differ, and that is that the States People's Conference is not taking sufficient interest in the Orissa States. The States People's Conference has not done all that it should do because the problem is a vast one, but as a matter of fact the Orissa States have been frequently before the States Peoples' Conference and one of our members of the Standing Committee of the States Peoples' Conference comes from there.

Now, some of the amendments moved by Mr. Santhanam and others say that this final authority should remain with this House. They agree, however, to withdraw them if the Chair could give a ruling in this matter. I have no doubt in my mind that the final decision on such matters should vest in this House, and that this Committee should only be a Negotiating Committee, that it should negotiate and report to this House. If this House does not agree with anything that they have done, they have got to go back and negotiate still further. Of course, in all such matters, a certain discretion is given. For instance, you do give a large measure of authority to your plenipotentiaries to
go and negotiate with other countries. The countries have got a right to accept or reject, but normally speaking, when the representatives of two parties come together and discuss a matter and come to an agreement, unless a vital principle is involved, the agreement is accepted because third parties are concerned in it. That will apply to our case also. But I suggest, if possible, I have not the wording before me, that is might be possible to have some such words as that the Committee should report to the House.

Shri Ajit Prasad Jain (United Provinces : General) : May I ask a question? This Resolution contemplates three bodies, a Negotiating Committee set up by this House, another Negotiating Committee set up by the Princes, whose, names have been announced, and a third, other representatives of the States. How are these bodies going to function and to reconcile differences? Supposing the Princes take up one attitude and other representatives of the States take up a different attitude and other representatives of the States take up a different attitude and so on, how are they going to work?

Mr. Chairman : I suppose it is the function of the Negotiating Committees to reconcile differences, and this Committee and the other Committee, that you refer to will work in that way, I think

Dr. P.S. Deshmukh (C.P. and Berar : General) If I may reply to my Hon'ble friend that is exactly the purpose of this Resolution. If there are differences of opinion between various representatives of the States, we know, Sir, that differences of opinion exist in this Assembly as between various sections of the people of India, as well as States and the people of British India. This Resolution proposes to set up a body, in whom we have confidence, and it will deal with the representatives of the States who have been elected or selected to a Negotiating Committee. It is precisely because this house cannot be expected to enter into negotiations with the Rulers and representatives of the people of States that this small committee has been proposed. Mr. Chairman, Sir, I am here to support the Resolution as it stands and oppose all the amendments that have been moved. Most of the points made have been met by speakers who preceded me and I am not going to repeat them. I want to draw the attention of the House to one particular factor, and that is, the limit within which this Committee is expected to work.
In doing so, I would like to draw attention of the Hon'ble Members to the exact wording in paragraph 19(ii) of the Cabinet Plan. You will be pleased to observe that this Committee is to enter into negotiation with the Negotiating Committee which has already been selected by the States or is likely to be selected. The wording is, “the method of selection will have to be determined by consultation”. It is very likely that the word “selection” will have to be interpreted in several different ways. The States representatives may probably place a different interpretation from the one we may put on it and so on. So, it is no good tying he hands of this Committee one way or the other or insisting on a particular method of representation. We must leave it to the negotiators. So, I also submit, Sir, that Mr. Somnath Lahiri’s amendment directing what the Committee should do is out of order, because actually it negatives the Resolution as a whole. When we want a committee to act in a particular way it will cease to be a negotiating committee because it will have really to carry out a pre-determined dictate of our own. We cannot afford to antagonise many sections of the people of India, and in spite of the feeling in this House that the representatives of the people of the States alone are entitled to speak to us, we will have to approach the subject cautiously and this Committee will have to work very cautiously. We should not pre-judge or prejudice the issue at this stage, and the Committee should be left to itself to determine what is the best method of attaining the object in view and serving the interests of the people of India as a whole and those of the States people. If we want to comment on their decisions there will be ample opportunity as Panditji has assured us, for this House to place our opinion before this House. So, I submit that the House should pass the Resolution and that the amendments moved should be withdrawn.

Shri V.I. Muniswami Pillai (Madras: General): I come here to support the resolution moved by Mr. Munshi. When an amendment is moved for the inclusion of a representative of Depressed Classes. I find a hue and cry being raised that communal representation is being pressed in time and out of time. I may inform the House that the condition of Depressed Classes in the State is worse than what is obtaining in other parts. The other day when my sister from Cochin was speaking about social conditions of Harijans, she did not take into account the appalling economic and political condition of the people in the States. I may instance the case of Nayadis in Cochin State, a community which is not only untouchable and unapproachable, but
unseeable. This community cannot pass through the King's highways. So I would like to urge on the Committee that has been chosen to negotiate with the representatives of the States that they should take care to have at least a few Depressed Class representatives or somebody who will represent the real needs of the Scheduled Castes.

**Sri Dayal Das Bhagat** (United Provinces: General): *[Mr. Chairman, I wish to draw your attention to the fact that I do not know English. I know Hindi and many of my worthy friends here know that language only. This we understand nothing useful from the proceedings of the House. I pray you to request those of the friends, who know Hindi, to speak in that language so that we may understand easily.]*

**Sri V.I. Muniswami Pillai:** This Resolution seeks to determine the number and distribution of seats, and I would respectfully request my friends to see that the interests of these untouchable communities are properly safeguarded.

**Diwan Chaman Lall** (Punjab: General): Though the point has been made perfectly clear by the Hon'ble mover, Mr. K. M. Munshi, to set at rest any doubts that there may still be, I should like to move an amendment to sub-para (b), viz., for the word 'deciding', substitute - and word 'fixing' and, after the word 'Assembly', add the following - 'and thereafter to report to the Constituent Assembly the result of such negotiation.

As some doubt has been expressed as to whether the result of the Negotiating Committee's efforts would be brought before the House or not, to make the position clear, I have moved the amendment.

Then, Sir, the word 'determining' in sub-para (a) of the Resolution, may also be changed to 'fixing'.

I need not say anything in regard to this matter except to emphasise the fact that it is necessary to make sure that whatever negotiation the Committee may enter into, would naturally be brought before this House and a report made to this House in order that this House may be fully seized of all the negotiations that have taken place without the knowledge of this House, between the Negotiating Committee set up by this House and the Committee
set up by the Princes Chamber. I think it is necessary that this authority, which vests in the Constituency Assembly, should be stated specifically in the body of the Resolution.

Mr. K.M. Munshi: Mr. Chairman, I made it abundantly clear when I moved the Resolution that whatever the result of the negotiations, it will be placed before the House and there is no reason to fear that this Committee will decide something which this House may not approve. Now that the Hon'ble Member, Diwan Chaman Lall, has moved an amendment making it quite clear that the report of this Committee will come before this House. I have no hesitation in accepting the amendment.

The second point made was that one Member of the Scheduled Classes should be added to the Committee. The Hon'ble Pandit Jawahar Lal Nehru has replied to that point. This is not a representative committee of all sections and minorities. This is a small committee with very limited functions and only intended to negotiate on a certain basis. And the Committee's report will be placed before the House.

There was another point made by one Hon'ble Member over there (in the rear seats). He asked why it was necessary to state "to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States....". There is a valid reason why the Resolution has been worded in this manner. The Cabinet Mission has stated thus:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selecting will have to be determined by consultation. The States would, in the preliminary stage, be represented by a Negotiating Committee."

Therefore it is the function if the Negotiating Committee representing the States to determine the representation. The House has been informed that a Negotiating Committee has been appointed by the Chamber of Princes. Neither the House nor I have any information as to whether the Committee that has been appointed by the Chamber of Princes represents all the States and whether all the States have agreed to treat the Negotiating Committee as
their representative. Therefore, inconceivable circumstances it may become necessary for our Negotiating Committee not only to negotiate with the Negotiating Committee appointed by the Chamber of Princes, but also with individual States. That is the reason why the words, have been used in the manner as in the Resolution. I therefore submit, Sir, that the amendment moved by the Hon'ble Member, Diwan Chaman Lall, may be accepted by the House.

**An Hon'ble Member**: I look at the question from a different point of view. A Negotiating Committee has been set up by the Chamber of Princes. If there are other representatives of the States, will they be in addition to those on the Negotiating Committee? I expected a reply from the Mover.

**Mr. K.M. Munshi**: I have made the position amply clear. We want to give our Negotiating Committee complete freedom to deal with the Negotiating Committee on the other side or with any individual States as they think proper. We do not want to fetter their right to come to any decision which they might think fit. The Resolution as it stands is very clear on this point.

(Mr. P.R. Thakur rose to speak)

**Mr. Chairman**: The Mover has already replied.

(Mr. P.R. Thakur came to the rostrum)

**An Hon'ble Member**: Sir, is it competent for any Member to make a speech after the Mover has replied?

**Mr. Chairman**: Mr. Thakur is withdrawing his amendment.
Mr. P.R. Thakur: In view of the statement made by the Hon’ble Pandit Jawahar Lal Nehru, I want to withdraw the amendment that I have moved. But I want to mention......(Voices: 'No, no') one thing only. (Several Members: 'No, no'). I want this assurance that at least five out of the 93 seats will be given to the Depressed Classes.

Mr. Somnath Lahiri: Sir, I withdraw my amendment in view of the amendment already accepted.

I want Diwan Chaman Lall's amendment to be read out in full so that we can understand it properly.

Mr. Chairman: Sub-para. (b) of the Resolution as amended would read thus:

"fixing the method by which the representatives of the States should be returned to the Assembly and thereafter to report to the Constituent Assembly the result of the negotiation".

The Resolution with the amendment accepted by the Mover, Mr.K.M. Munshi, will read thus:

"This Assembly resolves that the following members, namely,-

(1) Maulana Abul Kalam Azad,

(2) The Hon’ble Pandit Jawahar Lal Nehru,

(3) The Hon’ble Sardar Vallabhbhai Patel,

(4) Dr. B. Pattabhi Sitarammaya,

(5) Mr. Shankarrao Deo, and

(6) The Honble Sir N. Gopalaswami Ayyangar,

do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of-
(a) fixing the distribution of seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations.

The Assembly further resolves that not more than three other members may be added to the committee later and that they be elected by the Assembly at such time and in such manner as the President may direct”.

Now, what about the other amendment of Mr. Lahiri?

Mr. Somnath Lahiri: In view of the fact that we will be able to consider the report of the negotiations and at that time press the claims of the States people, if they had not been fully realised, I withdraw the other amendment of mine.

Mr. Chairman: All the amendments have therefore been disposed of.

The Resolution, as amended, was adopted.

STATEMENT BY PRESIDENT POSTPONING CONSIDERATION OF RESOLUTION ON AIDS AND OBJECTIVES

Mr. Chairman: The next item is the consideration of the report of the Committee on the Rules of Procedure. Before we go to that, I desire to make one statement which I think I should have made earlier in the day but I did not make it by oversight. We were discussing the Resolution moved by Pandit Jawahar Lal Nehru day-before-yesterday when we rose, and the discussion on that Resolution has not been completed. The list of names of
the proposed speakers is very large. I have about 50 names still before me. It is obviously not possible to carry on that discussion any further without holding up the other important work of this Assembly. I, therefore, interrupted the discussion on that Resolution, and now I propose to allow these other important items to be interposed. If we have time thereafter, we may take up further discussion on that Resolution. It may be that before we rise for Christmas, there will be no more time for discussing that Resolution. So further discussion will be taken up when we meet again. In the meantime we may have the advantage of others, who are not present here today, coming in, and we may have the advantage of their views also on that Resolution. So, further discussion remains suspended till we meet again.

CONSIDERATION OF THE REPORT OF THE COMMITTEE ON RULES OF PROCEDURE

Mr. Chairman: Mr. Munshi will present the report of the Rules Committee.

Mr. Somnath Lahiri: I should like to know the time limit during which amendments to that Resolution may be accepted.

Mr. Chairman: By this evening.

Mr. Somnath Lahiri: Tomorrow morning, 11 o'clock.

Mr. Chairman: Yes, tomorrow morning 11 o'clock. But we shall not stop the discussion. We shall go on. If there is any amendment, we may reconsider that point, but I will not stop the discussion. We shall go on discussing the Resolution.

Mr. K.M. Munshi: Mr. Chairman; Sir, I have the honour to present to the House the Report of the Rules Committee. A copy of the Report is
already before the Members of this House, and I only propose at this stage to
draw the attention of the House to a few of the important features of the
Rules. But before I do so, I invite the indulgence of the House towards the
Rules Committee. The Rules Committee have been working under great
pressure. As the House, Sir, knows very well, it is highly essential that before
we disperse, we should have the Rules adopted and the organisation set
functioning in order to complete the organisation of the Constituent
Assembly. The Members of the Committee, I may mention, have devoted
careful attention to every aspect of the Rules and we have had the assistance
of the able and distinguished jurist, our Constitutional Adviser, Sir B.N. Rau.
The Committee had done its best to give it as perfect a shape a is possible.
But I dare say there may be many defects still left, and the House may find
some discrepancies. I am sure, points of view may have been omitted; I seek
therefore the indulgence of the House. These are the Rules of the Assembly.
They can be altered or added to when we next meet. We can always add new
points of view if some one are omitted. But it is highly essential that we
should adopt the Rules and appoint one or two committees which would keep
the organisation of the Constituent Assembly going.

With these remarks, I would now shortly deal with some of the
important points in the Rules so that the structure of the organisation which it
is proposed to set up may be clear to the members of this House.

Sir, I may refer the house to Rule 2, Clause (d). We have altered the
nomenclature of this extent that our permanent Chairman will be styled the
President. The reason is two-fold. First of all, there are going to be a number
of Chairmen, Chairmen of Sections, Chairmen of Committees, Chairmen of
the Advisory Committees, and so on. It is necessary that the permanent
Chairman should have a name which is easily distinguishable from other
Chairman. The second reason is that we are functioning as an independent
body. For the moment, an organisation has been lent to this Assembly by the
Government of India, but immediately the Rules are passed, we will have an
organisation of our own, and the President will naturally be the highest
executive authority of the organisation. The word 'Chairman' therefore would
be inappropriate in its application to our Chairman as the head-of the
organisation. In this connection, I may perhaps refer to Rule 27, sub-para.
(8)-
"The President shall be the Guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority."

It is for this reason that the Rules Committee proposed that the permanent Chairman should be styled 'President'.

Chapter II deals with admission of members and vacation of seats. It is more or less mechanical, if I may so put it.

Chapter III deals with the business of the Assembly. It largely deals with the procedure to be adopted in conducting the business of the Assembly and its several branches. The only important provision is the one on page 5, containing Rule 7.

"The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly."

As the Chairman was pleased to say in his inaugural speech, we are a sovereign body, and as such it must solely depend upon us whether to dissolve the Assembly or not. This has been made clear in this Rule.

The next important rule to which I would like to draw your attention in Rule 15. Rule 15 lays down the quorum not only for the Assembly but for its branches. When a provincial constitution is being settled, it is required that the quorum should be at least two-fifths of the representatives of that province.

The next important point to which I would like to draw the attention of the House in Rule 18. It lays down that-

"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member unacquainted with either language to address the Assembly in his mother tongue. The Chairman shall make arrangements for giving the Assembly, whether he thinks it, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the Assembly."
Only a few minutes ago there was a complaint from a member who did not know English that he did not understand what was going on. This Rule is intended to obviate that difficulty. Sub-clause 2 of the Rule says this;

"This official records of the Assembly shall be kept in Hindustani (both Hindi, and Urdu) and English".

"The result is that our official record will be kept in 3 languages, Hindi, Urdu and English."

The next important point is dealt with in Rules 23 and 23-A on page 9. This follows the procedure laid down in the Cabinet Mission's Statement.

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

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

That forms part of the Statement.

"Provided further that no Section shall trespass upon the functions of the Union Assembly or vary any decision of the Union Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement."

The Advisory Committee's functions have been set out in detail in Rule 23-A.

"It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals and to make a report to the Assembly upon fundamental rights, clauses for the protection of minorities and the administration of tribal and excluded areas; and it shall be the exclusive function of the Assembly to take decisions upon such report and further to decide the question of the incorporation of these rights in the appropriate part of the Constitution."
The function of the Advisory Committee is to deal with the specific matters in view of India as a whole, as also in view of the provincial difficulties. And therefore according to Rule 20 they have to be considered by the Union Assembly when it meets.

Chapter IV dealt with the President and the procedure for filling up vacancies if and when it arises. These are more or less formal as the House will see.

Chapter V deals with the Vice-Presidents, and it is proposed that there should be 5 Vice-Presidents. Two should be elected by the House, while the President of each Section, when a section elects its Chairman, will be an ex-officio Vice-President of the Assembly, with the result that the President and the 5 Vice-Presidents will meet together and co-ordinate all the activities of the Assembly and its different branches.

Chapter VI deals with the office of the Constituent Assembly. It is divided into two branches, the Advisory Branch and the Administrative Branch; the Constitutional Advisor will be the head of the Advisory Branch, while the full time Secretary shall be the head of the Administrative Branch.

Chapter VII deals with the Committees and the first and perhaps the most important of the Committees is the Steering Committee, and as Hon'ble Members will see, in Rule 39, the functions of the Steering Committee have been defined. The business of the Steering Committee, as constituted therein, is to group similar motions and amendments and secure, if possible assent of the parties concerned to composite motions and amendments; and to act as a general liaison body between the Assembly and its Office, between the Sections inter se, between Committee inter se and between the President and any part of the Assembly. Thus it becomes the central administrative organisation which will coordinate the different activities of the Assembly in all its branches.

Then follows the constitution of the Staff and Finance Committee. The Credentials Committee have also to be appointed for the purpose of deciding questions relating to the validity of the title of elected or other members. There is provision also made for other Committees.
Chapter VIII deals with the Budget.

Chapter IX deals with doubts and disputes as to elections. Those provisions are more or less mechanical and follow the general lines of those legislation which deal with disputed elections in India. The only important point which is let out is dealt with in Rule 55. Rule 55 says:

"Where such a recommendation has been made, the President shall appoint an Election Tribunal consisting of one or more than one person to inquire into the petition."

Now so far as the matters to be dealt with by the Tribunal are concerned, they cannot form part of the Rules. What is will be doing is to adjudicate upon the Status of a Member of this House and it is felt that that could only be done by an Ordinance, so that it can become part of the law. Otherwise serious difficulties are likely to arise. It will be therefore for the President to move the appropriate authority for the purpose of issuing the necessary Ordinance.

Chapter XI deals with certain provisions about taking the opinion of the whole country and the provincial constitution. As the House can see, Rule 58 (1) deals with provisions to give an opportunity to the several Provinces and States through their legislatures to formulate their views upon the resolutions of the Assembly, outlining the main features of the Constitution, or, if the Assembly so decides upon the preliminary draft of the Constitution.

Then clause 2 provides a similar opportunity to the Provinces concerned to formulate their views on their respective Constitution. It says-

"Before the constitution of any province is finally settle, an opportunity shall be given to it to formulate, within such time as may be fixed for the purpose, its views, upon the resolutions and the decisions of the Sections, etc."

This naturally gives the whole country an opportunity to consider the various proposals that may be discussed by the Assembly, the Sections or any other Committee dealing with parts of the Constitution.
Rule 59 deals with the application of the principle of proportionate representation to all our elections. The amendment of the Rules is dealt with in Rule 61, and Rule 62 provides that the provisions of these Rules shall apply mutatis mutandis to the Sections and the Committees of the Assembly. The Sections may make standing orders not inconsistent with these rules.

Rule 63 gives the power to the President to deal with difficulty, if any, which may arise in carrying out these Rules. This is the general framework of the Rules and I hope it will meet with the acceptance by the House. I therefore now formally present the report of the Committee to the House and I further beg to move also that, in order to secure informality of discussion and despatch, the House do go into a Committee of the whole Assembly and that its proceedings may be held in camera.

Shrimati G. Durgabai (Madras : General) : I second it.

(The motion was adopted)

Shri B. Shiva Rao: (Madras : General) Sir, I want to make a suggestion to the House, which I know, has a fair amount of support of several members.

The Report reached us late last night or early this morning and most of us have not had an adequate opportunity of looking through the Report. The suggestion I want to make is this. Let not the House meet this afternoon, so that those of us who are interested in the Rules may have an opportunity of meeting for ourselves, sorting out our amendments and picking out the major ones to be discussed in the House tomorrow morning. It is possible that if we adopt this procedure, a great many of the amendments which might be moved here today would be disposed of at the preliminary stage, and we might be able to get through the whole work tomorrow itself. Therefore, I suggest that we may not meet this afternoon but meet only tomorrow morning.
Mr. Chairman: Personally, I have no objection. Then, we shall have tomorrow only for dealing with the Rules. The day after tomorrow we have to elect some Committees which are provided for in the Rules. If the House thinks that it will be able to go through the Rules and pass them tomorrow and the day after, I have personally no objection. But I do not know if anyone will be able to give an undertaking on behalf of the House that we shall be able to complete the work.

An Hon'ble Member: We shall sit tomorrow.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I got the Rules only this morning. I went through the Rules and I find, Sir, most of the Rules are non-contentious. There is nothing to which we can add except those contentious portions in Rules 20, 23 and 23-A, which are more in the nature of substantial amendments. Therefore, let us not waste time by asking for an adjournment. Tomorrow never comes, let us go on today.

Mr. Somnath Lahiri: Sir Hon'ble Gentleman has said that there is nothing to add. At any rate, we have got to go through them to make the same discovery that the Hon'ble Member has made.

Mr. K.M. Munshi: Sir, I beg to oppose the proposal made by my Hon'ble friend, Mr. Shiva Rao. After all there is no point in adjourning. Tomorrow, we will be sitting and there will be a free and full discussion. As an Hon'ble Member said just now, most of the Rules have been drawn up with care. There may be some defects which may be corrected. Only questions of principle or controversy will take time. As to others we will take up rule by rule and if there is no controversy, we can easily adopt them. I submit this is the shortest way to deal with the Rules.

Sri M. Ananthasayanam Ayyangar: Sir, my Hon'ble friend, Mr. Munshi will read rule by rule and stand for a while, and we will adopt it immediately if there is nothing to add. Then we will pass on to the next rule. Whichever rule is contentious may be passed over till tomorrow. By that time we may find out if any amendment is necessary.

Mr. Chairman: May I take it is the wish of the House that we will go on with the consideration of the Rules?
Many Hon'ble Members: Yes.

Mr. Chairman: those who are opposed?

(None).

Mr. Chairman: We shall take up the Rules. As there is only half an hour more for 1 o'clock, we began at half past two or three o'clock.

Many Hon'ble Members: Three o'clock.

Mr. K.M. Munshi: We may be able to do a few Rules in half an hour.

Mr. Chairman: We shall begin at 3 o'clock and then in camera, the House will go into a Committee and meet at 3 o'clock.

The Assembly then adjourned for Lunch till 3 p.m.

The Assembly re-assembled after Lunch, at Three of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad), in the Chair.

(The Proceedings were then conducted in camera.)
Monday, the 20th January, 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. Dr. H. C. Mukherjee.

2. Shri Balkrishna Sharma.

STATEMENT BY PRESIDENT RE: ALLEGATIONS IN PARLIAMENT ABOUT THE REPRESENTATIVE CHARACTER OF THE CONSTITUENT ASSEMBLY

Mr. President: Before we begin, I should like to make two statements in connection with certain matters.

In the course of the debates on India in the House of Commons and in the House of Lords in December last, certain statements were made detracting from the representative character of this Assembly during its last session. Notable among those who spoke in this strain were Mr. Churchill and Viscount Simon. Mr. Churchill observed that the Assembly, as it was meeting then, represented "only one major community in India". Viscount Simon was more specific and referred to the Assembly as "a body of Hindus". He went on further to ask "whether this meeting of Caste Hindus at Delhi can be regarded by the Government as the Constituent Assembly they meant at all".

Both these gentlemen have held the highest offices of responsibility and have had a long and intimate connection with the affairs of India; and whatever may be their views on current political controversies, they would not, I am sure, like to make statements which are wholly contrary to facts and lead to mischievous inferences. It is for this reason that I have
considered it necessary in this occasion formally to state the facts. Out of a total of 926 Members who were to take part in the preliminary session, 210 Members attended. These 210 Members consisted of 155 Hindus out of a total of 160, 30 Scheduled Caste representatives out of a total of 33, all the 5 Sikhs, 5 Indian Christians out of a total of 7, all the 5 representatives of Backward Tribes, all 3 Anglo-Indians, all 3 Parsis and 4 Muslims out of 80. The significant absence is of course that of the representatives of the Muslim League—an absence which we all deeply regret. But it is clear from the figures I have quoted that, with the exception of representatives of the Muslim League, every community in India, whatever the party affiliation of the persons representing that community, was represented in the Assembly; and, therefore, to describe the Assembly as representing "Only one major community in India" or as "a body of Hindus" or as a "meeting of Caste Hindus" is a complete travesty of facts. (Cheers).

STATEMENT BY PRESIDENT RE: THE DISCREPANCY BETWEEN THE CABINET MISSION'S STATEMENT OF MAY 16, 1946, AS PUBLISHED IN INDIA AND THE PRINTED PAMPHLET CIRCULATED TO MEMBERS

Mr. President: Members may recollect that, in the course of the debates in the Constituent Assembly on Pandit Jawaharlal Nehru's Resolution, Mr. Jaipal Singh pointed out that there was a discrepancy between the Cabinet Mission's Statement of May 16, 1946, as published in India, and the printed pamphlet circulated by the Assembly Office. The discrepancy referred to was in paragraph 20 of the Statement. His compliant was that whereas the Statement originally published in India referred to full representation of the interests affected, our reprint referred only to due representation. I have had the matter investigated since.

The Principal Information Officer of the Government of India, who originally published the Statement in India, and who has been consulted, has informed us that it was printed exactly in accordance with the copy handed over to him by the Information Officer of the Cabinet Mission. Our own pamphlet is an exact reprint of the White Paper submitted to Parliament. It appears that the Statement as published in India, underwent some small alterations at the hands of the Cabinet Delegation before being presented to Parliament.

The discrepancy pointed out by Mr. Jaipal Singh is not, the only one; there are a few others also. I am, however, satisfied that in practically all cases these changes are purely verbal. Whether the change in paragraph 20 is also purely verbal or not is a matter of opinion. I personally do not think that any material difference has been introduced.
RESOLUTION RE: STEERING COMMITTEE

Mr. President. The next item on the Agenda is the motion by Shri Satyanarayan Sinha.

Shri Satyanarayan Sinha (Bihar: General): Mr. President, I beg to move the following motion which stands in my name:

"Resolved that the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering Committee."

Sir, with your permission, I should like to read out to the House the Rules which we have passed regarding this Committee in the last session.

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

The President shall be an ex-officio member of the Steering Committee and WWI be its ex-officio Chairman. The Committee may elect a Vice-Chairman from among its members to preside over the Committee in the absence of the President.

The Secretary of the Assembly shall be ex-officio Secretary of the Steering Committee.

Casual vacancies in the Committee shall be filled as soon as possible after they occur by election by the Assembly in such manner as the President may determine.

41.(1) The Committee shall

(a) arrange the order of business for the day

(b) group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments;

(c) act as a general liaison body between the Assembly and the Sections, between the Sections inter se, between Committees inter se, and between the President and any part of the Assembly; and
(d) deal with any other matter under the Rules or referred to it by the Assembly or the President. (2) The President may make Statemng orders for the conduct of the business of the Steering Committee.

If the House accepts my motion, the President will announce the date and time of receiving nominations and also of the election to be held, if necessary.

Shri Mohanlal Saksena (United Provinces: General): I second it.

Mr. President: Does any one want to speak on this motion? .... As nobody wants to speak, I will put the motion to the vote of the House. The motion is:

"Resolved that the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering Committee".

The motion was adopted.

Mr. President: I have to inform Hon'ble Members that nominations for the Steering Committee will be received in the Notice Office up to 5 p.m. today. Elections, if necessary, will be held in the Under Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 P.M. on the 21st January.

Mr. President: We will now take up the discussion of the Resolution moved during the last session by the Hon'ble Pandit Jawaharlal Nehru.

Sir S. Radhakrishnan (United Provinces: General): Mr. Chairman. Sir, I have great pleasure in commending this Resolution to the acceptance of the House. From the list of amendments tabled, I see that there are three different questions raised: whether a declaration of this character is essential; whether this is the proper time for considering such a declaration; and thirdly, whether the objectives included in this Resolution are matters of general agreement or they require modification or Amendment.

I believe that such a Declaration is essential. There are people who are suspicious, who are wavering, who are hostile, who look upon the work of this Constituent Assembly with considerable misgivings. There are people who affirm that, within the Cabinet Plan, it will not be possible for us to effect either real unity in the country or true freedom or economic security. They tell us that they have seen before squirrels move round in a cage, and
that within the limits of this Cabinet Statement, it will not be possible for us to effect the revolutionary changes which the country is aiming at. They argue from history that revolutionary chances are generally effected by violent action overthrowing established Governments. The British people were able to end monarchical despotism that way; the United States of America attained her primary freedom through direct action; the French, the Bolshevist, the Fascist and the Nazi revolutions were also effected by similar methods. We are told that we can not effect revolutionary changes through peaceful methods, through negotiation and discussion in constituent assemblies. We reply that we have similar ends; we wish to bring about a fundamental alteration in the structure of Indian society. We wish to end our political and economic dependence, but those who are strong of spirit, those who are not short of sight, take their chances -they make their chances. Here is a chance that is open to us and we wish to use this to find out whether A will be possible for us to gain the revolutionary ends by methods which are unusual so far as past history is concerned. We want to try whether it will not be possible for us to effect a smooth and rapid transition from a state of serfdom to one of freedom. That is the undertaking which this particular Assembly has on 'hind. We wish to tell all those who are abstaining, from this Assembly that it is not our desire to establish any sectional Government. We are not here asking anything for a particular community or a privileged class. We are here working for the establishment of Swaraj for all the Indian people. It will be our endeavour to abolish every vestige of despotism, every heirloom of inorganic tradition. We are here to bring about real satisfaction of the fundamental needs of the common man of this country, irrespective of race, religion or community. If the trumpet gives an uncertain sounds, we cannot rally the people to our support.- It is therefore essential that our bugle call, our trumpet-sound, must be clear, must give the people a sense of exhilaration, must give the suspicious and the abstaining a sense of reassurance that we are here pledged to achieve full independence of India, where no individual will suffer from undeserved want, where no group will be thwarted in the development of its cultural life. Therefore I believe that a declaration of objectives of this character is essential and it is not necessary for us to wait till this Assembly is fuller than it happens to be at the present moment.

Now let us turn to the objectives themselves. We resolve that India shall be an Independent, Sovereign Republic. On the question of independence there is no difference of opinion. Premier Attlee, in his first statement, made on 15th March, said:

"I hope that the Indian people may elect to remain within the British CommonWealth. I am certain that she will find great advantages in doing so; but if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of
external compulsion. If, on the other hand, she elects for independence, in our view she has a right to do so."

The Muslim League and the Princes have all agreed to it. In the Memorandum on States’ Treaties and Paramountcy, presented by the Cabinet Mission to the Chancellor of the Chamber of Princes on the 12th May, 1946, it is said that-

"The Chamber has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature. His Majesty's Government have now declared that, if the Succession Government or Governments in British India declare independence, no obstacle would be placed in their way. They effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth."

All those concerned with the future of India, the Congress, the Muslim League, and other organisations and the Princes also, they all desire independence for India within or without the British Commonwealth.

Mr. Churchill, in the House of Commons, referring to His Majesty's Government's offer of independence, said on the 1st of July, 1946-

"However, it is another matter when we try to short-circuit the process and my 'Take independence now'. That is what the Government are going to get and they are going to get it very soon. They should not blind themselves to the idea. Them is going to be no hesitation on the part of those with whom the Government is dealing in taking full and immediate independence. That is what is going to happen,

This Resolution on the objectives does not wish to disappoint Mr. Churchill. (Hear, hear). It tells him that the expected is happening. You gave us the choice to get out of the British Commonwealth. We are electing to go out of the British Commonwealth. May I say why? So far as India is concerned, it is not a mere Dominion like Australia, like New Zealand or Canada or South Africa. These latter are bound to Great Britain by ties of race, religion and culture. India has a vast population, immense natural resources, a great cultural heritage and has had an independent career for a very long time, and it is inconceivable that India can be a Dominion like the other Dominions.

Secondly, let us consider the implications of what happened at the United Nations Organisation, when the Indian Delegation, headed by our distinguished colleague, Mrs.
Vijayalakshmi Pandit, so ably defended—the rights of Indians in South Africa—look at the attitude that was adopted by Great Britain. Great Britain along with Canada and Australia supported South Africa, New Zealand abstaining from voting. It shows that there is a community of ideals between Great Britain and the other Dominions in which India has no share. There is no sense of belonging in the British Commonwealth. We do not feel that we are all members, enjoying similar rights as parts of the British Commonwealth. Some of you may also have heard of the recent move launched by Mr. Churchill and Lord Templewood for a European Union under the fostering care and leadership of Great Britain. That also shows in what way the wind is blowing.

Yet, even though India may elect to quit the British Commonwealth, there are a hundred different ways of voluntary co-operation, ways of mutual collaboration, in trade, in defence, in matters of culture; but whether all these forms of mutual co-operation are going to develop in a spirit of friendship, trust and harmony, or whether they will be allowed to die out in mutual distrust and recrimination, depends entirely on the attitude which Great Britain will adopt in this crises. This Resolution about the Indian Republic seems to have irritated Mr. Churchill and his followers. Our Chairman today referred to one statement by Mr. Churchill and I will refer to some others.

When the debate on Burma took place, Mr. Churchill stated that the annexation of Burma happened during his father's Secretaryship, and that now Burma is given the liberty to get out of the British Commonwealth. He seems to look upon Burma and India as parts of his ancestral estate and now when they are passing out, he seems to be terribly disheartened.

On the debate on India, he asked His Majesty's Government to remember its obligations "to the Muslims, numbering 90 millions, who comprised the majority of the fighting elements of India"—truth is not rated high in Indian debates and international intercourse—"and of untouchables of anything from 40 to 60 millions." He refers to the representatives of the Great Congress Party as the mouthpiece "of actively organised and engineered minorities who, having seized upon power by force, or fraud or chicanery, go forward and use that power in the name of vast masses with whom they have long since lost all effective connection." A party of men who have braved the perils of life, who have suffered for their patriotism whose love of country and capacity for sacrifice are second to none in the whole world who are led by one who is today leading a lonely trek in a far off corner of India, bearing on his aging shoulders the burden of a nation's shame and sorrow, to talk of that party in the way in which Mr. Churchill has done is I do not know how to describe it (Cries of shame). Mr. Churchill's outbursts are bereft of dignity or discretion. Provocative and irrelevant remarks, sneers of
derision in regard to our communal divisions, have punctuated his speech on that occasion and on other occasions. I shall only say here that such speeches and such statements cannot prevent the end but can only postpone it and thus prolong the agony. The British connection will end, it must end. Whether it ends in friendship and goodwill or in convulsions and agony, depends upon the way in which the British people treat this great problem.

Republic is a word which has disturbed some of the representatives of the States in this country. We have said from this platform that a Republican India does not mean the abolition of Princely rule. Princes may continue; Princes will be there so long as they make themselves constitutional so long as they make themselves responsible to the people of the States. It the great paramount power which is sovereign in this country by conquest, is now transferring responsibility to the representatives of the people, it goes without saying that those who depend on that paramount power should do what the British have done. They must also transfer responsibility to the representatives of the people.

We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of the Deccan asked the question. "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings."

Kecid deso ganadhina kecid rajadhina.


Much has been said about the sovereignty of the people. We have held that the ultimate sovereignty rests with the moral law, with the conscience of humanity. People as well as kings are subordinate to that. Dharma, righteousness, is the king of kings.

Dharmam Kshatrasya Kshatram.

It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted. The Princes--I count many of them amongst my personal friends--have agreed with the Cabinet Statement and wished to take their share in the future development of this country, and I do hope that they will realise that it is their duty to take notice of the surging hopes of their peoples and make themselves responsible. If they do so, they will play a notable part in the shaping of our country. We have no ill-will towards the Princes. The assertion of republicanism, the assertion of the sovereignty of the people, do not
in any manner indicate any antagonism to the Princely rule itself. They do not refer to the present facts of past history of the Indian States but they indicate the future aspirations of the peoples of the States.

The next thing that we find in this Resolution is about the Union of India- The Cabinet Statement has ruled out the partition of India. Geography is against it. Military strategy is against it. The aspirations of Hindus, Muslims and Sikhs from the very beginning have been against it. The present tendency is for larger and larger aggregations. Look at what has happened in America, in Canada and Switzerland. Egypt wishes to be connected with Sudan, South Ireland wishes to be connected with North Ireland. Palestine is protesting against any division. Again nationalism, not religion, is the basis of modern life. Allenby's liberating campaigns in Egypt, Lawrence's adventures in Arabia, Kemal Pasha's defiant creation of a secular Turkey, point out that the days of religious States are over. These are the days of nationalism. The Hindus and Muslims have lived together in this country for over a thousand years. They belong to the same land, speak the same language. They have the same racial ancestry. They have a common destiny to work for. They interpenetrate one another. It is not a kind of Ulster, which we can separate; but our Ulster is a ubiquitous one. Even if we have two States, there will be large minorities and these minorities, whether really oppressed or not, will look across their frontiers and ask for protection. This will be a source of continual strife which will go on, as long as we do not have a United India. We realise that while a strong Centre is essential to mould all the peoples into one united whole, on account of the grievances real or imaginary, we have to be satisfied with a Centre which is limited to the three subjects, which the Cabinet Plan has put before us. Therefore, we are proceeding on the principle of Provincial Autonomy, with the residuary powers to the Provinces themselves. Events that have happened in Bihar and Bengal, tell us that there is an urgent need for a strong Centre. Yet as there are these difficulties, we propose to develop a multi-national State which will give adequate scope for the play of variations among the different cultures themselves.

Grouping has given us a lot of trouble. But grouping is subject to two essential factors-which are the integral parts of the Cabinet Plan,-a Union Centre and residuary powers in the Provinces; and in these Groups also we will have large minorities. Those who are insistent on the rights of minorities will have to concede these rights to others who happen to be included in the Groups. In a statement made by Sir Stafford Cripps on July 18, 1946, he said:

"A fear was expressed that somehow or other the new Provincial Constitutions might be so manoeuvred as to make it impossible for the Provinces afterwards to opt out. I do not myself
see how such a thing would be possible, but if anything of that kind were to be attempted, it would be a clear breach of the basic understanding of this Scheme."

That is what Sir Stafford Cripps said. If any attempt is made to so manipulate electorates as to make it difficult for the Provinces to opt out, then that would be, in the words of Sir Stafford Cripps, "a clear breach of the basic understanding of this Scheme". After all we have to live together and it is impossible to impose any constitution against the wishes of the people who are to be governed by that Constitution.

There is also a reference to fundamental rights in this Resolution. It is a socioeconomic revolution that we are attempting to bring about. It is therefore necessary that we must re-make the material conditions; but apart from re-making the material conditions, we have to safeguard the liberty of the human spirit. It is no good creating conditions of freedom without producing a sense of freedom. The mind of man must have fall liberty to flower and mature and to grow to its fullest Stature The progress of man is due to the play of his mind, now creating now destroying, always transmuting. We must safeguard the liberty of the human spirit against the encroachments of the State. While State regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.

We are actors today in a great historical drama. We are involved in it and therefore we are unable to perceive the large contours. of it. This declaration, which we make today, is of the nature of a pledge to our own people and a pact with the civilized world.

The question was put by Mr. Churchill to Mr. Alexander whether this Assembly is functioning validly. Mr. Alexander said:

"I repeat the scheme for elections for the Constituent Assembly was carried out.. if the Muslim League abstained from going there, bow can you prevent a duly elected Assembly from going on to do its business?"

That is what Mr. Alexander said. There was

some difficulty about the interpretation of the grouping. Much against its will, the Congress has accepted His Majesty's Government's interpretation. The only two clauses that remain are adequate safeguards for minorities, and a treaty on the problems which arise out of transfer of power. The Constituent Assembly is legally functioning. Every part of the State Paper has been completely accepted and if we are able to frame adequate safeguards for minorities, safeguards which will satisfy not so much the British or our own people, but the civilized
conscience of the world, then while yet the British have the power to put it into action, they must give this Constitution the force of law. It is essential that they should do so. If after all these conditions are satisfied, if some excuse is invented for postponing the independence of India, it would be the most callous betrayal of history. If, on the other hand, the British argue that the Constituent Assembly has started functioning on the basis of the Cabinet Plan and they have accepted every clause of the State Paper of May 16, and have provided adequate safeguards for all minorities and therefore they should implement it, then it will be an achievement of history which will secure the co-operation and goodwill of two great peoples. In that very speech which Mr. Attlee made as the Prime Minister on March 15th, he said:

"In the mass of Asia, an Asia ravaged by war, we have here the one country that has been seeking to apply the principles of democracy. I have always felt myself that political India might be the light of Asia nay, the light of the world giving to its distracted mind an integral vision and to its bewildered will an upward direction.

Here are the two alternatives. Accept the Constituent Assembly. Take its findings. Find out whether there are adequate safeguards for minorities or not. If they are there, give them the force of law and you may get cooperation. If, after all these conditions are fulfilled, you still try to make out that something is lacking, the British will be understood as violating the spirit of the whole State Paper, and the dark possibilities which will lie ahead of us in the present world conditions, I do not wish to contemplate.

Mr. N. V. Gadgil (Bombay: General): Mr. Chairman, I have great pleasure in supporting the Resolution which has been moved by The Hon'ble Pandit Jawaharlal Nehru. In the course of the discussion it was pointed out that this Constituent Assembly was not competent to pass a resolution of this character. In this connection, I respectfully draw the attention of this House to the opening paragraph of the Statement in which a quotation from the speech of the Premier Mr. Attlee is given. Therein he says that-

"My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision."

It is clear, Sir, that this Assembly is here to evolve not only the form of Government but to lay down what the content of the same will be. I wish to state here, Sir, that we are not here as mere drafters of a constitution or choppers of logic. We are here, as a matter of fact, as a
council of action, and this meeting of the Constituent Assembly is a stage in the progress of the struggle for freedom. It may possible be the penultimate battle or the last battle that will end the war of freedom, which has been carried on for over 75 years or more, from generation to generation. An inheritance of struggle has been left to us by our predecessors; but I do hope that when this generation is over, the inheritance it will leave, will not be an inheritance of struggle, but an inheritance of creative effort, whereby the future society of India will be built up.

Sir, there is a clear necessity for defining the objective. In the past those who have really contributed to this struggle are not the few professors and Privy Councillors, but they are the people who have been toiling in poverty, in ignorance. They have got to know what is it that they have fought for so far, and what is it in the ultimate they will be asked to fight for in case the Constitution we may frame here is not acceptable to the British Government. Now, Sir, in this Resolution, as I see it, there is nothing to which any person or any party, who is anxious to have freedom, can take objection. In the first place, the main objective is defined as an, Independent Sovereign Republic. As far as I know, Sir, from the various resolutions that have been passed by the Muslim League in the course of the last six years or more, they have always stated that they are for democratic freedom. In fact, the Islamic country that leads the Islamic world, namely, Turkey, today, is a Republic. Therefore, there is nothing in this to which the Muslim League can take any objection. Let us therefore see what are the merits in this proposition and if it can be pointed out that there is anything objectionable, then, certainly, it is a matter which can be adjusted when those who want to take objection are here. But as far as I am able to see there is nothing, no phrase, no clause in this Resolution to which anybody can take objection.

Taking the several sub-paragraphs in this Resolution, the main thing that is provided for is one State, one Union. At the same time here is enough scope for every province to grow and expand and there is nothing to prevent any province from reaching its utmost goal, consistent with the common obligation. At the same time, I wish to point out that it provides a field which gives wider scope for higher statesmanship, for better scholarship, for better commerce and larger industries. If there is such a Union, it means there is greater political security and the Union will have economically more bargaining power. Viewed from any point of view, a State covering all the geographical unit, known as India, is a necessity for every province, for every constituent State that may go to constitute this Union. By joining they will have nothing to lose and, in my humble opinion much to gain.
Now, Sir, it also provides for fundamental rights and these fundamental rights are, what are most cherished by the common man. It provides freedom of association, freedom of speech and all other civil liberties which are to found in the Constitution of every country. Some objection was raised because many things are not clear. Obviously, all things cannot be included in a Resolution of this kind. But if one carefully goes through the relevant portion which deals with fundamental rights, it lays down that there will be economic justice, which can only he secured if the production in the country ultimately comes to be socially owned. Private enterprise may be there, but in a limited manner. If economic justice is to be secured, it can. only be, if the means of production come to be owned by the State as such. Therefore, if matters today appear somewhat not very clear, I am sure, that when these principles are incorporated in the sections of the Constitution, these matters will be made perfectly clear.

Sir, this is a sort of building. The whole Resolution has a unity just as this hall in which we are assembled. The dome is standing on the various arches down below. Similarly, the freedom contemplated is supported by the various principles which are incorporated in the Resolution and that has given balance and poise to the structure. As I said, this Resolution is absolutely necessary and though textually it may not be a part of the Constitution, that may come ultimately to be framed, it is a sort of a spiritual preamble which will pervade every section, every clause and every schedule and as I said, Sir, it is necessary. It is a sort of a dynamic, a driving power which will be available to those who will be charged with the framing of the Constitution in detail. This is in fact the foundation. People will know what they are to get. It will be a constitution which will evoke the necessary loyalty from every citizen whom it is to govern. For no constitution can evoke loyalty, no constitution can evoke the necessary sentiment unless it offers every citizen sufficient inspiration to defend it, if it comes to it, by laying down his own life.

Sir, as I said, this is not an assembly in which are gathered mere drafters of the Constitution; it is a sort of a council of action. We are here because of the struggle that has been carried on by the people, and we have to frame the Constitution. If that Constitution is- framed and not granted, people ask what is the sanction. To that my humble answer is that there are two kinds of sanctions, one, the moral sanction and the other. physical If our Constitution is just and fair to every legitimate interest in this country, that provides the first kind of sanction; and the second kind of sanction is the determination of the people to see that whatever form of Government they have decided to adopt, is there, and if it is not granted by any power, then that determination will not be merely academic but it will work in concrete forms, though the
forms may be stated today. I submit that as the Constitution proceeds from clause to clause and section to section, people will gradually know how things are moving and in fact, I feel, Sir, that there will be created such an atmosphere in the country that the necessary temper for revolution will be augmented and will be ready for use. I submit that as we proceed from clause to clause and section to section, British power in this country will be withering and by the time we reach the last schedule, we will find that the British State, so far as India is concerned, has withered away. What will be left then, will be a formal repeal of the British power, for do we not read the writing on the wall, do we not see that the pictures of those who ruled India with repression ruthless repression, with extraordinary laws and Ordinances gone? Where are the pictures? They are all gone. There you can see the writing on the wall. Mr. President, it has been pointed out that the Britishers are very anxious to leave this country. In fact years ago, Macaulay wrote that it would be a glorious day for Britishers when Indian people would ask them to vacate. We have been asking them so long; but apart from what Lord Macaulay has said, the Empire that had begun in perjuries and forgeries of Clive and Hastings, sustained throughout by broken promises, and which is still sought to be continued by diplomatic clarifications, by fleeting and flexible explanations, must end. These explanations will not make it survive a day more. There must be an honest deed of transfer in favour of the masses who have suffered so long and so much under the foreign rule. The day must come when they must come into their own. If the transfer is peaceful, well and good; but if it does not come peacefully, and if a struggle becomes necessary and history demands that there must be a struggle, I ran only say that we do not want to fight but if we have to, then we have got the men, we have got the material and we have got the mind too. But in that case what will happen? Britishers will go-stocks and shares, shops and workshops,-they will leave nothing behind, not even goodwill or good memories. Their trade and flag both will disappear. It is for them to decide whether they want to live upto their great ideal which was stated by Lord Macaulay or they still want to cling and ultimately meet the fate which I have just visualized.

Mr. President, we have come to a stage when it becomes necessary to say in the clearest possible terms what we want to have. We have been told that other questions, such as minorities are there, difficult of solution, I want to make it clear, Sir, that this is a problem which is the creation of foreign power. Nobody has ever succeeded in preventing the coming together of the waters of Jumna and Ganges beyond Allahabad (hear, hear); because there the three streams Ganges, Jumna and Saraswati (Wisdom) join and after that nobody can distinguish the waters -of Jumna from the waters of Ganges. The time has come when wisdom will dawn on both the communities and the result will be that they will form a
higher unity, a higher synthesis, in which everybody will have his opportunity to rise to the highest level of life and personality. Now it has been said that it will not be possible in the near future to get what we desire. It may be a short or a long struggle but whether it is a long struggle or a short struggle although we do not want it or invoke it, if it comes, everyone of us must be prepared for it. Sir, the task that has been cast on these representatives who are gathered here, is great and historic. I have no doubt that they will rise to the occasion and lead this ancient country to its goal of freedom. They will bring into existence a society where men will be valued not by what they have, but by what they are, where men will be measured in terms of character and not in terms of coin, where pride will be a back number and prejudice will be tongue-tied, where men and women can hold their heads high, where they will be happy, because they will be equal, where religion will not be a battle-field, for all will be the worshippers or one Goddess--the Goddess of Duty, where race will not evoke arrogance on one hand and inflict humiliation on the other, for all will belong to one race., viz., the race of workers, where creeds will not disintegrate the people, for their creed will be of service to all, where freedom and plenty will be available, for none will have the monopoly of power or prosperity. All will be happy because all will be equal. It is a vision no doubt but a vision is necessary if one wants to live a life, a life with aim and purpose and for that one must have a vision; otherwise it will be the life of a crow.

Kakoni Jivati Chiraya Balimcha Bhunkte. "Even a crow lives long on crumbs".

We do not want that sort of life. It is a vision no doubt. All I can say in conclusion is, that unless we have vision, we cannot progress, for a people without vision perish. (Cheers.)

The Hon'ble Mrs. Vijayalakshmi Pandit (United Provinces: General): Mr. President, it was my privilege in 1937 to move the first resolution after the inauguration of Provincial Autonomy in my Province, demanding a Constituent Assembly to draw up a constitution for an independent India. Today, ten years later, that Constituent Assembly is meeting here. This is a historic milestone in our progress toward freedom and yet, Sir, freedom remains just a little beyond our grasp. Imperialism dies hard and even though it knows its days are numbered, it struggles for, survival. We have before us the instance of what is happening in Burma, in Indonesia, in Indochina, and we see, how in those countries, in spite of the desperate efforts that the peoples are putting up to free themselves, the stranglehold of imperialism is so great that they are unable easily to shake it off. Reactionary elements in every country are getting together, Sir, under the guise of seeking protection, clinging to the Imperialist power and trying Thereby to strengthen it. We have seen the sorry spectacle of what happened in San Francisco when the United Nations Organization was being born. The
Asiatic nations assembled there, were dominated by the Imperialist powers and could not speak independently but only echoed the voice of their respective Imperialist powers. The result has already been seen in the fact that in spite of the brave words of the Charter, that came into existence at that time, no implementation of that Charter was possible because there was not enough strength behind it. The peoples of Asia were silent and could not insist upon its implementation. Even today, Asia is far behind the peoples of Europe -in. representation in the United Nations and it was perhaps the first time in history that at the last United Nations Assembly, a country, not free itself, was able to raise its voice for the freedom of oppressed and dependent peoples all over the world. (Cheers.) The fact, that the United Nations Assembly has recognized this, is because India even today has shown within herself the power of giving a lead to the world. An Independent India would no doubt assume leadership not only of Asia but of the world, and so when we meet here in this Assembly to draw up the future Constitution of our country, we must not forget that it is not only to ourselves we owe a duty but also to the world which looks to us.

The Resolution before us stresses complete freedom for the individual and concedes guarantees to every legitimate group. Therefore in this there is no justification for fear for the minorities. Even though certain minorities have special interests to safeguard they should not forget, that they are parts of the whole, and if the larger interest suffers, there can be no question of real safeguarding of the interest of any minority. In an Independent India minorities will not be able to look to outside powers for help without being termed 'traitors'. We have had too much talk of rights in recent years and very little about obligations. This approach to any problem is unfortunate. The Resolution before us deals with problems which are fundamental to all of us and only to the extent that they are solved, can we safeguard the rights of any special minority. The Resolution indicates clearly that in an independent India the fullest social, economic and cultural justice to individuals and groups will be conceded and through our design for living, we shall be helping other nations to decide the pattern of their own lives. Our own design must therefore be right and must be made with the cooperation and strength of the entire country.

Of all the Asiatic countries, India alone has stood for democracy throughout the years. In all our chequered history we have fought for the will of the people to triumph. In recent years, even at great peril and at personal sacrifice, the people of this country have adhered to the ideal of democracy, and, today, we are in a position of showing to the world that we can implement our ideals. The Resolution under discussion is clear in substance and in wording, but I would like to stress two points.
We have before us two aspects—the positive and the negative. The negative aspect is concerned with the ending of the imperialist domination of our country and in that we all agree. But the more important side to the question is the positive side, which means the building up in our country of a social democratic State which will enable India to fulfil her destiny and point the path of lasting peace and progress to the world. At this moment in our national history, we cannot afford to fritter away our energies in any talk or action which will defeat our objective, nor must we indulge in unreasoning fears. We must accept the challenge that has been offered and march together in order to realize the positive side of this picture.

The end of the War has created many problems, difficult in themselves and made more complex by the fact that individual demands are placed before the interest of the whole; that many nations, being still dependent, are unable to raise their voice in support or protest. But India is in a position to contribute substantially to a solution of the present problems and also in maintaining peace and security in the world. A free India becomes a power for the forces of progress. In this age of the building up of one world, we cannot talk of separate nations. We have to work in order to build up one world, of which India shall be a worthy partner. India has the right to lead because of her heritage, and also because of her present, when, in the face of the complexity of her own problems, she has stood up and estimated values and not let go all those ideals which she had placed before her. Our contribution to the future is one of neutralisation of political and social discontents and to that end, we must work by the establishment of freedom in our own country and helping all those who strive for freedom in the world. Unless Asia comes into her own, the world cannot function as a whole. A world which is divided into groups cannot be secure. A famous American has said, "No nation can exist half slave and half free". The same applies to the world, since freedom is not divisible. India must free herself socially, economically and then free others, and in the Resolution before us we find an attempt to work towards that end. By it, we redeem the pledge we have taken. I appeal to the Members of this House to pass the Resolution in order to show that this ancient land is conscious of the challenge that has been presented to her and can live up to the ideals and heritage of her past.

Prof. N. G. Ranga (Madras: General): Mr. Chairman and friends, I am extremely glad to be able to support this Resolution. It does not mean that I am quite satisfied with it; but so far as this Resolution goes, it places before us the most effective, the most comprehensive and liberal idea of the future that our people can look forward to, once our new Constitution comes into existence. But it is much more than a liberal view of things, because it is not content with placing high ideals and noble ideas before our people. It also takes into
consideration the need for assuring to our people the actual enjoyment of the rights that are stated herein, and it is in this manner that this Resolution goes far beyond similar resolutions that had been moved in other constituent assemblies and similar ideas incorporated in other constitutions of the world.

There is one other respect also in which this Resolution is very much in advance. While in other constitutions, no specific mention has been made to assure the people the right of freedom of action in pursuance of their ideals, in pursuit of their aims, this Resolution makes it perfectly clear that our people will have the right to act whenever they find it necessary, provided such action is within the law and also in conformity with the moral standards of our people. That is a very important matter, because from time to time, both in this country and in other countries, governments used to come forward to deny the right of the people to rebel against any particular law, any particular ordinance, nay particular dictate of that particular government, and threatened the people and told them that they had absolutely no right whatsoever to go against the established law. But, Sir, while political philosophers were merely content in other countries, philosophers like Harold Laski and others, with exhorting the people to be ever ready to stand up to their rights, their obligations and civil liberties, here in India alone, the opportunity has been given—thanks to the leadership of Mahatma Gandhi—to offer satyagraha on a mass scale and to claim that right not only for large bodies of people, organised and unorganised, but also for individuals. Again and again, we have been able to reiterate our right to rise against injustices to go against any particular law or system of laws and thus maintain that only in that way can the civil liberties of the people and also all their personal and individual rights be maintained. The State as well as human beings are liable to err and there must be some safeguard against their mistakes, and the only safeguard that can be found will be satyagraha. Therefore, Sir, I welcome this Resolution for that reason also.

Several people in this country have been complaining that such and such parties have not taken part in this Assembly and such and such other sections have not been able to come into the orbit of this Assembly and its work, and therefore, we have no right whatsoever to consider a resolution like this. Is it necessary, Sir, that all the members in a family should be present in council where the point for consideration is that the total property of that family should be increased, should be augmented? Can there be a member of any family who would be opposed to the increase of the moral and material prosperity and the rights of that particular family? This Resolution is nothing but that. We are here assembled to consider in what
manner the rights and obligations, the powers and duties of every individual in this country
groups of people and the whole country, can be raised, increased and augmented. At this
juncture it does, not matter, It some of us are not able to be in this House. It may be that for
various reasons of their own, certain parties have kept themselves away; but that need not
prevent us from trying to go ahead in order to increase the total heritage of our people, in
order to augment the total rights and strength of our country.

Sir, at the same time, I said this is not enough and I would like to say a few words about that.
It is all very well to go back to our villages and to our friends and tell them that we have
passed a resolution like this and that in future all their rights will be safeguarded and they will
have no fears in regard to the future. But will it be enough if those people get the right to live,
to have full employment, to gain their fundamental rights, if they are only told that they will
be able to have their meetings, their conferences, their associations and various other civil
liberties? Is it not necessary to enable them to create such conditions in life as will enable
them to enjoy these rights that we have enumerated here? It is a fact, Sir, it is a miserable fact,
that millions and millions of our countrymen are not yet able to take advantage of the various
liberties that we have laid down here, the various privileges, that we say, are being thrown
open for everyone to enjoy. They are not educated. Economically, they are oppressed and
suppressed also, and socially, they are backward and down-trodden. For all these people, so
many more things have to be done, may be for some time to come, before they come to enjoy
these rights. They need props. They need a ladder by which they can reach on to the stage
when it will be possible for them to come to appreciate the value of the rights that we are
placing before them and enjoy them.

Sir, there is a lot of talk about minorities. Who are the real minorities? Not the Hindus in the
so-called Pakistan provinces, not the Sikhs, not even the Muslims. No, the real minorities are
the masses of this country. These people are so depressed and oppressed and suppressed till
now that they are not able to take advantage of the ordinary civil rights. What is the position?
You go to the tribal areas. According to law, their own traditional law, their tribal law, their
lands cannot be alienated. Yet our merchants go there, and in the so-called free market they
are able to snatch their lands. Thus, even though the law goes against this snatching away of
their lands, still the merchants are able to turn the tribal people into veritable slaves by various
kinds of bonds, and make them hereditary bond-slaves. Let us go to the ordinary villagers.
There goes the money-lender with his money and he is able to get the villagers in his pocket.
There is the land-lord himself, the zamindar, and the malguzar and there are the various other
people who are able to exploit these poor villagers. There is no elementary education even
among these people. These are the real minorities that need protection and assurances of
protection. In order to give them the necessary protection, we will need much more than this. Resolution.

But it is quite possible that we cannot incorporate all those things in a resolution of this character. It is the spirit of the Resolution that has got to be taken into account; it is in that light that the Constitution has got to be formulated. And in framing that Constitution we will have to see that there is a charter of fundamental rights. We are agreed upon that, but that will not be enough. Several other countries also have had their charters of fundamental rights. Yet these fundamental rights have been neglected by their own Governments. Therefore we will have to stipulate certain provisions in our own Constitution, by which it will be possible for our masses to invoke the aid of the law as against the State, as against the Government and its incumbents from time to time in order to see that these fundamental rights are actually enforced. For instance, in France they had noble ideals of equality, fraternity and liberty, and they laid it down that no Member of Parliament could possibly be put in jail while the House was in session. Yet that right was denied. Several Deputies of the French Parliament were put in jail and there was no safeguard against it. In America, before the law all, the people are equal, but yet you know how depressed are the Negroes in that country. We have to prevent a repetition of that sort of thing in our country. In order to be able to do that, we must enable our own workers, our own peasants, our own ordinary masses to demand from the State necessary financial assistance to go to the Courts, the Supreme Court of the country and to seek its protection. Poor men, as you know, are not able to go to Court, and when they have to fight against the State, it is impossible for them to think of it at all. Just as you provide for a poor man's lawyer in criminal cases, so also if you were to make a similar provision for enforcement by the ordinary masses of the fundamental rights that we formulate, then there might be some safeguard.

The masses are the real minorities, and yet they are not asking for all these safeguards, and even when they ask for the safeguards they do not make it a condition precedent to constitutional progress. What is more, they care more for the country, for our own national progress and therefore, they not only say, let us go ahead, but they exhort us to go ahead. They stand by us, and I appeal to our own so-called religious minorities to take a lesson from these people. Whom are we supposed to represent? The ordinary masses of our country. And yet most of us do not belong to the masses themselves. We are of them, we wish to stand for them, but the masses themselves are not able to come up to the Constitutional Assembly. It may take some time; in the meanwhile, we are here as their trustees, as their champions, and we are trying our best to speak for them. While we are doing this, our friends, the Muslim Leaguers, wish the rest of the world to believe that we are trying to do them some harm
therefore they cannot hope to come over here, they cannot be expected to come over here. I wish to tell them from this forum I it would be the greatest possible tragedy not only for the Muslim masses but also for the masses of the country in general, if the Muslim League were to follow this policy of non cooperation, this policy of do-nothing. What more can the Indian National Congress be expected to do in order to conciliate them than what it has already done? Our friends, the Muslim Leaguers, instead of trying to come to us and negotiate with us, reason with us or argue before us.-they have gone over to the Britisher. They have tried to gain one after another a number of concessions. Each one of these concessions has come down as a sort of black curtain in blotting out the vista of freedom and Swaraj that this country is aiming at; and in addition they have done enough to embitter the people of this country. In spite of all this, the Indian National Congress has chosen to accept all these various safeguards and rights and various other things that they have been gaining from the British with the only hope, with the only intention, with the only appeal to our Muslim League friends, to come over here and co-operate with us in the shaping of the Constitution for our country. If they do not come, are we going to stop where we are? Certainly not. They ought to know, and other people also who are backing them ought to know, that the Indian National Congress cannot be stampeded in this fashion. We are making history, we have been making history for the last 25 years. Again and again, in spite of our constitutionalists who have been telling us, "for God's sake do not go against the law, these things will not get us Swaraj, you negotiate with the British, work with the British", we have resorted to saytagraha on many an occasion in order to safeguard the rights and privileges of our people. We have made progress,-who can deny- that? Could we have been in this Constituent Assembly if we had not been able to launch direct struggles"? Could there have been even this possibility for the Muslim League to try and obstruct as they are doing now, if it had not been for the sacrifice and struggle that we have been carrying on all these years? We have reached a stage when it is impossible for British imperialism to prevent us from making progress. British imperialism goes to the piteous plight -of trying to have some allies in order to arrest our progress-may be for a day, may be for a few minutes. But British imperialism will not succeed, and these allies of British Imperialism cannot succeed. What is more, our own masses will soon be in a position to set aside not only British imperialism but also their allies in this country and go ahead and help us to go ahead. What has been the position of the Muslim League itself? There was a time when Mr. Jinnah used to say that independence was a sort of mirage, that it was absurd for India to claim independence for India. He himself said that direct action was an absurdity, and yet he has himself come to claim independence for India, he has declared himself in favour of independence. He has himself come to declare from the Muslim League rostrum the "Quit India" slogan, though he
would like to have it, as "divide the country between us, and quit India." Nevertheless he followed in our own footsteps. He wants to-day two Constituent Assemblies, whereas not long ago he was not prepared to think of any Constituent Assembly at all. What does this show? I say, that if we go ahead, the Muslim Leaguers also are obliged to go ahead for the simple reason that the ordinary masses, whether Hindus or Muslims, to whichever community they belong, are impelling their political leaders, in spite of their own peculiar partisanship, to go ahead in the manner in which alone India can go ahead. Therefore, I appeal to our Muslim Leaguers, at least in the name of their own masses, to come into this House and co-operate with us, if they are not for their own vested interests, for their Nawabs, or for their Jagirdars.

Mr. Jinnah and others have been claiming in recent past that they are also as democratic as the Indian National Congress. If they are democratic, let them think over the fact as to which of the communities contains the largest number of poor people. Among the Hindus a good percentage are not poor, but among the Muslims, the rich people can be counted on your fingers. The poorest among our people are the Muslim masses. They need most urgently a free India without which there is no chance for the Tribal people or for the Harijans or for the Muslim Mazdoor or the Kisan, and, the longer Mr. Jinnah and others prolong this agony of slavery, the longer they will be delaying the possibility of their own masses making any progress.

Lastly, I wish to appeal to this House to see to it that the necessary provisions are made in the Constitution proper in order to enable our people to enjoy the various rights indicated in this Resolution. Without such provisions this Resolution will have become useless. It will only be a sort of pious hope and nothing more. It is true that, when it comes to be incorporated in our text-books and our boys and girls read them in their lessons, it will do a lot of educational work. But that will not be enough. Similar work was done in America and yet the ordinary rights of the people were set at naught by the Government. Therefore we should take care to incorporate the necessary sanctions in the Constitution in order to safeguard the interests of the masses and to ensure to them the necessary opportunities which are needed to enable them to enjoy these rights.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I rise to accord my heart-felt support to the Resolution. A great many speakers have spoken before me during this session as well as in the last and a great many aspects have already been discussed fully. I do not with to go over those aspects again or repeat any of their observations. But I do feel that this Resolution, in all its different branches, is very very necessary before we undertake to it down
and frame a constitution for an Independent India. It is also important that we should proclaim, as the Resolution does, India an independent Sovereign Republic.

As the Hon'ble Member, who spoke first today observed, there are many who may be regarded as doubters, waverers and scoffers. It is necessary, therefore, that we should proclaim to the world our determination to carry out our undertaking and frame a constitution for an Independent Sovereign Republic a Republic in which the ultimate power is vested in the people and all power and authority are derived from the people. There can be no doubt at all to-day that all sections of people are agreed on this point. Whether we speak of our friends of the Muslim League or of the Congress or of the different 'minorities', so-called, or of the Untouchables a word that I hate—or the suppressed, depressed to oppressed people,—indeed, all are our brothers who have been put under Schedule Castes' classes. Take any of these sections of political opinion, is there any doubt whatsoever today that their common, objective is Independence? Even the British Government, which is now prepared to transfer power, has definitely declared 'the objective as being Independence and Freedom. Under these circumstances it is incumbent upon us to frame our Resolution in these terms.

I remember some of the words with which the Hon'ble Mover introduced this Resolution,—they are ringing in my ears. He said: "It is a resolve, an undertaking, a dedication...." Yes, it is a dedication. We have just come to the threshold of our work—we have not as yet crossed the threshold. We are, as it were, pilgrims gathered together in the vestibule and on the point of crossing the threshold to the temple. Now is the time and the moment for a vow of dedication and self-consecration to the task which we have taken upon ourselves. A tremendous responsibility rests upon our shoulders and it is but meet and proper that, at this moment, before we have actually commenced the work, we should make a firm resolve in our mind to discharge our duty, as befits the worthy representatives, of framing a constitution for a free and independent sovereign republic.

There is another aspect of the matter which the Hon'ble Member touched upon and that I think is a very important one. If what I have already spoken of is the subjective side of the Resolution, this is the objective side of it. We have to think not only of ourselves, but of those who are not here yet. Behind the 'visible We' are the 'invisible We'—our friends of the Muslim League, and the representatives of the States are yet to be ascertained. Even when they are here, when this House is fully constituted and is full to capacity, the 400 million people whom we represent will not be here. Therefore, I repeat, in the work that lies before us, we have always to be intensely conscious that this 'visible We' is not all that constitutes the Constituent Assembly, but that it has the 'invisible We' behind it. Then only shall we be able to frame a
constitution which will really confer upon this nation at large, true freedom, true right of living as human beings,—call it fundamental rights, call it rights of minorities, or call it what you like. It is only when we realise that we are framing a constitution for an Independent Indian Republic that, as we get along with the work, these problems will gradually clear up and we shall see with a clearer vision further problems that await solution. In all the work we cannot help feeling every moment the presence with us in spirit, 'of Mahatma Gandhi, that lone but luminous figure who carries on his shoulders the sorrows and afflictions which spring from narrow-mindedness, envy, jealousy, suspicion and distrust, between man and man, and community and community; but who carries in his heart the hope that springs eternal from faith in the Province that shapes our ends. There can be no doubt that in this Constituent Assembly is visible the hand of Providence that shapes the destinies of this country, as of others. Inspired by that conscious hope and trust, I have no doubt this Resolution will be passed unanimously with our heart-felt support.

Sri S. Nagappa (Madras: General): Mr. Chairman, Sir, I have great pleasure in supporting the Resolution moved by our Hon’ble Vice-President of the Interim Government, Pandit Jawaharlal Nehru. This is a resolution Sir, that gives wide scope for all the communities and classes of this country. Sir, some of my friends who were speaking prior to me have been expressing some sorrow for the sections that are not present here. I think Sir that we should not have any sorrow for the people who are not present. Really speaking, they do not deserve to be here because they are not Indians. They are more Arabs than Indians; they are more Persians than Indians; they are more Turks than Indians. That is why they look towards foreign countries than towards the independence of this country. If they were really interested in the independence of this country, they would have been present here in this august body and helped this country to be free. Now, Sir, I think those of my friends who felt sorrow for them, can also vacate and go out, if they like. We, the Harijans and Adivasis are the real sons of the soil, and we have every right to frame the Constitution of this country. Even the so-called Caste Hindus who are not real Indians, can go, if they want. (Interruptions.) Sir, today we are asking the Britisher to quit. For what reason? Is he not a human being? Has he not a right to live in the country? We ask him to quit because he is a foreigner. So, Sir, we have also a right to ask the Aryan, the migrator to go. We have a right to ask the Mohammedan, the invader, to go out of this country. There is only one consideration. The Caste Hindus of this country do not have any other place to go to. That is the only consideration that they deserve. Sir, now we are all Indians. Everyone of us must feel like that. With-fellow feeling, we must
all join together and help to see our country free as early as possible. None of us want to be a slave to a third person or a second person. Everyone wants to be free. Now, Sir, this Resolution gives equal opportunities to all. Equal opportunities should not be in the statute book only. They must be translated into action. Every individual of this country must realise that he is the administrator of the country. He must be made to realise, he must be made to understand that he is the real ruler of this country.

Now, Sir, I need not dwell on the safeguards for the unfortunate children of the soil. Ever since we were defeated by the Aryans, we have been slaves of these people. We have been suffering, but we are prepared to suffer no more. We have realised our responsibilities. We know how to assert ourselves.

Now, Sir, much has been said by so many friends who spoke, before me as regards the minorities. Well, Sir, I do not claim that we are a religious minority or a racial minority. I claim that we are a political minority. We are a minority because we were not recognised all these days and we were not given our due share in the administration of the country, but that cannot be for ever, You know, Sir, what has been our position? This Resolution gives us a scope and a chance and an opportunity to be equal, to feel like equals and take our due share in the administration of the country.

Now, Sir, we are one-fifth of the population of the whole country. It is impossible for a democratic country to ignore one-fifth of its population. My friends who are outside this House, or who are not taking part in this august Assembly, it is for them to realize. Congress has gone too far In order to facilitate them. Even in accepting this Statement, I fear, Sir, we have been granting what all they have been asking. Our aim should not be simply because a particular section cries, we must be liberal and go on

granting whatever they want. It looks as if you have been going on in order to placate a particular community or a section. You have been so tolerant, so liberal, even without caring for your own interest, you have been granting. Now, Sir, what I would request you is that you must be fair to all. If you give any weightage to any minority, that itself gives a scope and chance for other minorities to ask. At that rate I ask you is it possible for any majority to satisfy all such minorities? So I want you to be firm, to be strong, to be fair to all communities. Simply because one section asks, we should not go on granting. It has been said here-I am glad Panditji was kind enough to accept and include in the Resolution safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and Backward Classes. This gives equal opportunity to all communities, irrespective of their races or religions. I do not understand, why a particular section should go on asking what is not due,
and what is not fair. Simply because they ask, you have been granting. Now it gives an opportunity for the minorities to ask for more and more. What all is said is clear and the Resolution has been very carefully worded, and my only humble request will the to say that every word of it, with all the spirit behind it, be translated into action. There is no use of simply passing a resolution and allowing it to be a resolution. The Resolution must find a place cent. per cent. in action. Only then it has the value of a resolution. It is said, "Equality of status and of opportunity." I must say, Sir, that equal opportunity means, one day or other, even a Harijan should be the Premier of India. That sort of opportunity must be there. Equal opportunity must be translated into action. That must be the motive. There is ,one more thing I would like to place before this Assembly, when I support this Resolution. The masses have been looking forward to this august body when they are shaping the destiny of 400 millions and I hope, Sir, every letter, every word, that has been included in this Resolution, will be translated fully into action.

Mr. Jagat Narain Lal (Bihar: General): Mr. President, Sir, I consider it a great privilege to be called upon to accord my support to this Resolution. It is in the fitness of things that this memorable Resolution should have been moved by Pandit Jawaharlal Nehru. For it was he, at whose instance the Madras Congress, in the year 1926, passed the Resolution for complete independence. It was under his Presidentship, that, in the year 1929, the Congress adopted the complete independence of India as its creed. Again speaking in 1934, Pandit Jawaharlal Nehru said 'politically and nationally if it is granted, as it must be, that the people of India are to be the sole arbiters of India's fate and must therefore have full freedom to draw up their constitution, it follows that this can only be done by means of a constituent assembly elected on the widest franchise. Those who believe in independence have no other choice.' Therefore, Sir this Resolution moved by Pandit Jawaharlal Nehru on this memorable occasion in the Constituent Assembly on behalf of this country has a particular value. I consider, Sir, this Resolution as a pledge and a solemn resolve oil the part of each one of us sitting in this Assembly and on the part of the country as a whole. Now since this Constituent Assembly has started its sittings and even before it started its sittings, we have noticed a certain amount of change in the mentality of the British Government. Well, we would like to say there have been several constitutions, evolved by Constituent Assemblies of different. varieties in this century and in the previous centuries. It is for the British Government itself to choose what variety of Constituent Assembly it would like this Assembly to be and what variety of constitution it would like this Assembly to adopt. There is, for example the instance of the United States of America, framing its constitution after the War of Independence, which was
waged in the year 1774-75. That was a violent revolution, as we would like to call it. The
Constitution that was framed after the War of Independence was one of those-constitutions.
Later on we find in the 19th century a number of constitutions being evolved by negotiation.
In 1867 the Dominion of Canada became a Federation. It was through a peaceful negotiation
that the Constitution of this Dominion was framed and evolved and accepted by the British
Government. Again in 1900, the Australian Commonwealth was brought into being and that
also by a constitution which was negotiated peacefully. We have another instance of the
Union of South Africa. It became a Commonwealth in 1909 and that also through a
constitution framed and accepted peacefully. The latest instance thereafter, is that of Ireland.
In 1921 Ireland was asked to enter into a treaty with the British Government. That was after a
guerilla war-fare and after the Sinn Fein agitation, a prolonged agitation, and after the British
Government had done all it could do, to bring about Ulster into being. The case of Ireland Is
the latest instance and is one which ought to be borne in mind by the British Government and
by the present British Cabinet. The sores that are rankling in the minds of the Irishmen will
remain fresh as ever and the vault has been an alienation which has not yet ceased to exist. If
India is to sit in this Constituent Assembly, and if India is to frame a constitution I again
repeat, it is for the British Government to decide whether that Constitution will be of the Irish
model, whether that Constitution Will be of the U.S.A. model or whether that Constitution
will be evolved peacefully. Signs are that the British Government have not ceased to try the
Ulster methods which they tried in Ireland and so many other counties. If they insist on
pursuing those methods, the results will be of the Irish model. I will therefore repeat, -I will
therefore warn the British Government, that it will be better if it brought about all its methods
of persuasion and diplomacy. into making this Constituent Assembly a success, by its own
efforts combined with that of ours.

Well, Sir, I do not like to say much more at this late stage. I want again to repeat that I treat
this Resolution as a pledge and as a solemn resolve to bring an independent India into being
and that resolve is backed by sanction, The sanction is our own will and our own
determination and the will and determination of the entire country which has sent us here. I
hope Sir, when the time comes, as it will, we shall see this Constituent Assembly. evolving a
constitution for a free and independent India which will come into being peacefully or if not
peacefully, by any other method Which the British Government choose or we find it
necessary to adopt. I have not much more to say, Sir; I support this Resolution and I hope that
at the end, the amendment which was moved by Dr. Jayakar, which has, no more purpose in
being left to stand now, will be withdrawn when the time comes for it.
Shri Algurai Shastri (United Provinces: General): *[Mr. President, I am here to support the Resolution moved by Pandit Jawaharlal Nehru, the beloved leader of our country. No Indian is more fortunate than those who have assembled in this House to frame the Constitution for a free and independent India. What more proud privilege can there be for an Indian than to fashion the Constitution for his country in this House? Every Indian is eager to support the sentiments and words contained in the Resolution. The noble ideas and sentiments embodied in the Resolution have been the cherished desires of Indians for centuries. There was a day when our country was great, glorious and independent. For centuries India has been in bondage and the young men and women of this country and its told people have been struggling hard, with a burning desire to break the chains of slavery. At last the moment has come when we have assembled here today to declare our land free and independent as stated in the first para of this Resolution. Nothing can be more desirable today than the declaration of independence of our country. Here, we are not declaring India actually independent, but from a practical point of view, we announce that we are going to declare the land independent. It is our firm determination to declare it free and independent. It has been stated in the Resolution that the country, which we declare here independent, shall include all the territories unfortunately termed today as British India. British India is not India but India as a whole is India. I wish, not only the parts of India having at present British governance, but the territories -outside British India termed as Indian states, constituting separate units under paramountly, should also be included in this great and free country and the Resolution declares so. The territories such as Pondicherry, God, Daman, and Diu, at present under foreign domination, also form parts of India. I wish these all together with Nepal, Bhutan and Sikkim, which constitute our frontier, should also be included in this free land. Such is the conception of this Resolution. All the human ideals of ages-equality, fraternity and brotherhood-are embodied in this Resolution. In the eighth 'Mandal' of the 'Rig Veda' is a hymn which says:

"All human beings are equal. The King should have the same regard for his subject that a mother has for her sons."

I am glad that all such higher ideals, we have been taught for ages, are enunciated in the Resolution and therefore I am here to support it.*

[*][* English translation of Hindustani speech.}
The Resolution visualises a State where there is no dearth of food and cloth and distribution is equitable. It embodies scientific socialistic ideals when it says "to each according to his needs and from each according to his capacity". All the ideals of a State conceived in the 'Bhagwat' are embodied in the Resolution. It is the sacred duty of a State to provide its people with all their necessities, says the 'Bhagwat':

Annadeh Samuibhagah Prajanam Yathahitah.

The Resolution affirms the equality of men. We wish to eliminate all class distinction existing at present. The behaviour of men with one another should be on the basis of equality. The Resolution affirms this equality and hence I support it. The Resolution does not visualise the creation of a State which will remain isolated from the world and indifferent to its good and bad. But it says that this great land, independent according to its ancient principles, will fulfil its aspirations for advancement and prosperity. Our country and all its resources shall be used for the good of the world and we will have our relations with the world on the basis of the fundamental principal of human welfare and equality. We shall try to live up to the high human ideals enunciated in the 'Rig Veda'-Devahitam Yadayuh.

Our powerful, advanced and flourishing State shall not exist for its own welfare; rather it shall use all its resources for the welfare of the world. The Resolution places before us a very noble ideal. The most important feature of the Resolution is that it declares that the State we are going to create will have its complete independence of which it has been deprived.

To preserve the independence thus regained, we shall protect the State well. The determination embodied in the Resolution is consistent with the ancient high ideals enunciated in the 'Rigveda'-Indrastwa Bhiraksatu.

No State, even having gained its independence, can survive and protect itself if it is weak in military power. This truth is accepted in the Resolution and hence I support it. Only the State which has the backing of the people can enjoy a sure existence. When the Resolution promises social and economic equality to all, it visualises a purely democratic State with the people's Government. In the Resolution we picture a State with power of legislation vested in the people and with no discrimination between the ruler and the ruled. According to the famous poet

Kalidas, an ideal State, like a father, provides its people with protection, education and maintenance.
Only such a State can claim to be an ideal one where the present deplorable discrimination between the ruler and the ruled does not exist, where the people are not oppressed and exploited by the rulers. The people will imagine and desire a State which is based upon these high ideals of the 'Rigveda'. The Resolution before the House visualises such a State and hence I support it. This Resolution enables us to show to the world that the independence we conceive is not to serve selfish ends and to rule the people against their will. We find all the Vedic ideals embodied in the Resolution. The noble ideals of state-protection and maintenance of subjects, held high during the Muslim regime, beginning from the reign of Hazrat Umar to Bahadur Shah, are embodied in this Resolution. When Muhammad Bin Qasim had conquered and occupied Sind he sent a letter to the then Caliph asking for his directions as to how he should rule the conquered people. The letter from the Caliph in reply is an important document and a treasure in History. The Caliph's directives, based on the ideals held by Hazrat Umar, said that he (Muhammad Bin/ Qasim) should treat the subjects with paternal feelings and protect their life, and property and places of worship. Humayun too, following these very ideals, taught his son Akbar to rule the people. In the Ain-e-Akbari by Akbar, where the relations between the ruler and the ruled are defined, we find nowhere that the people should be oppressed and deprived of their freedom. The former rulers acted on these ideals and we are here to revive them and the Resolution leads us to this noble task.

The Members from Madras follow us easily when we express ourselves in English, and the proceedings of the House also receive convenient publicity. But I thought I should here speak in Hindi. I hear the voices of the sons of Bahadur Shah, now lying in their graves, saying "In what language are you expressing yourself? You are here to fulfil our desire cherished for centuries. Please express yourself in such a manner that we also may follow." The spirits of Jayasi, Prithviraj and Sanyukta are eager to hear what we say in this House, they are eager to know that we are here far; they want to know your aspirations and ideals. We are here not to address the people of England but that of India. Numerous dynasties and empires are lying in the old tombs on all sides of Delhi. These tombs and the ashes therein ask us to tell them what we are here for. I want to tell them that we are here to go ahead in spite of all obstacles, with the ideals in defence of which the sons of Bahadur Shah laid down their lives, the Mutiny of 1857 was enacted and for which many old and young men and women, of India have been sacrificing their lives for centuries. We are, firm in our pious determination; nothing can daunt us; no power can bend us. The spirits of our ancestors resting in their graves are calling upon us to address them in their own language. This is their wish and this is why I have attempted to address you in Hindi.
The Resolution before you is acceptable from all points of view. Dr. Jayakar had pleaded for its postponement and so far as the question of reconciliation is concerned we did so. Dr. Ambedkar had also advised its postponement and agreeing to his pleas, we did postpone. But if anyone wants to stop us his policy of obstructions, certainly we will not stop. The fight for freedom once begun, though baffled often, is ever won. We will march on and for the sake of reconciliation we will not give up the task we have undertaken. The waves of our ambitions and determination have risen and subsided; today they are immovable like a mountain and cannot be cowed down by the attacks of the British Imperialism.

Mr. Shyama's amendment to this Resolution is a patch of hession on this Kashmiri pashmina. His amendment and that of Dr. Jayakar too, should be rejected and the Resolution, in its original form, should be passed.]*

Mr.

President: The meeting now adjourns till 11 a.m. to-morrow.

The Assembly then adjourned till Eleven of the Clock, on Tuesday, the 21st January, 1947.

*[* English translation of Hindustani speech.
Tuesday, the 21st January, 1947

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

ELECTION OF THE STEERING COMMITTEE

Mr. President: I have to inform the Hon’ble Members that the names of the following thirteen members have been validly proposed for election to the Steering Committee:

1. The Hon’ble Maulana Abul Kalam Azad.

2. The, Hon’ble Sardar Vallabhbhai J. Patel.


4. Shrimati G. Durgabai.

5. Mr. S. H. Prater.

6. Mr.Kiran Sankar Roy.

7. Shri Satyanarayan Sinha.

8. Sri M. Ananthasayanam Ayyangar.

9. Mr. S. N. Mane.

10. Mr. K. M. Munshi.

11. Diwan Chaman Lall.

12. Mr. Somnath Lahiri.

13. Sri Lakshminarayan Sahu.

Only eleven members are to be elected, and if there are no withdrawals, an election will be held in accordance with the principle of proportional representation by means of the single
transferable vote in the Under Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 p.m. today.

The next item is the Resolution to be moved by Pandit Jawaharlal Nehru I do not find him here. We shall therefore proceed with the discussion and wait for this to be taken up at a later stage.

Mr. Rajkumar Chakravarty (Bengal: General): May I enquire what is the time for withdrawal of candidature for the Steering Committee?

Mr. President: Any time before the actual voting commences at 3 p.m. today.

Then we shall proceed with the discussion of the Resolution. Mr. Madhava Menon.

Sri K. Madhava Menon (Madras: General): Mr. President, Sir I stand here to support the Resolution moved by Pandit Jawaharlal Nehru, I know, it does not require much more support from anybody, as very little opposition has been made to the proposition. It is absolutely necessary that we pass this Resolution without any further delay. As Sir Alladi pointed out in his speech, you may search the proceedings of any constituent assembly in vain to find that no such Resolution had been moved or passed before the other business of the Assembly began. We have already waited too long in this matter and I think we shall be failing in our duty if we delay it any further. We must realise that the whole country is looking towards us with hope, as to what we are going to do for them. The only objection, if I can call it an objection, is the amendment moved by Dr. Jayakar. In principle, Dr. Jayakar's amendment does not differ much from the Resolution moved, except that Dr. Jayakar wants us to wait, or if I may say so, give an opportunity for those who are absent here, to partake in the Resolution. Dr. Jayakar says that two of the partners are absent, one for reasons not known to us, the other being impossible for it to come here. It is fair that we should wait for them. He mentioned why not we wait till the 20th January, when we are meeting again. We have waited, Sir, as he wanted and we hope that he will have no reason to complain that his request has been disregarded by us. The objection raised by Dr. Jayakar that under the terms of May 16 Statement of the Cabinet Mission, we are precluded from passing a resolution like this at the preliminary meeting, is contradictory to his own resolution which says what the objects and aims of this Assembly should be. Dr. Jayakar said that the fundamentals of the Constitution need not be mentioned here, and I do not think we have mentioned fundamentals of the Constitution here, but have only mentioned our objects and aims. He said—and I was rather surprised when he said it—that if the Muslim League will not come in, the States also will not come in, and Dr. Jayakar mentioned or rather visualised, that if we passed this Resolution
here before the Muslim League comes in, there will be a Hindustan, a Pakistan and a Rajasthan in this country. I felt that his imagination was running riot when he visualised the coming in of three 'sthans-Hindustan, Pakistan and Rajasthan. I am sure that no such contingency is going to come and no such contingency should frighten us from passing this Resolution. If we delay further on the ground that others are absent here, I am afraid we are only putting a premium on intransigence. I wish we will not do so but proceed with the Resolution and pass it without further delay.

Mr. B. Das (Orissa: General): Mr. President, some of us were hesitating during the last session that this Resolution may be adjourned-to a later date so that the absent ones can come; not that I was not wholeheartedly for the Resolution. As a Congressman and as an Indian, I concur wholeheartedly with the principles enunciated in the Resolution of Pandit Jawaharlal Nehru. Not that it was not enunciated before, but at the beginning of our constitution-framing career we wanted that an enunciation of our goal and objectives should be made in this House, in which all the Members of this House should take part. It is my sorrow, however, that the Muslim League, some of whom have been our co-workers in public life, are absent. At that time, foolishly some of us thought that they will come now and participate in the declaration of our national objectives and rights and at the same time take a willing share of the joys of the coming dawn of freedom. But that is not to be. One cannot understand how the members of the Muslim League, who are our friends intimate friends, intimate associates and intimate co-operators in our life-time for the last twenty-thirty years, how they can abstain from coming in at this stage. I cannot understand what they want. It is said that they want two nations; they want Pakistan. Mahatma Gandhi, the other day has said, let them have the Pakistan provinces or a Pakistan country whereby we will know what is the greatest ideal of the Muslim nation, whereby they can show that a Pakistan country is a better governed country than the Hindustan or the Panthistan that the Sikhs want. What are our Muslim friends afraid of, and why is it that they are not here? Sir, there are three parties concerned, the British, the Muslim League and the Congress. The British Government are the stumbling block in our way. Even the Declaration of His Majesty's Government's further clarification of the Statement of May 16, by their Statement of December 6th, shown that the British are not helping India to achieve independence. What is it that is obstructing our Muslim friends? Sir, the Qaid-e-Azam has been my political guru at the beginning of my career in the Indian Legislative Assembly. I still admire him as a friend. But I cannot understand him as a leader of the party. I do not understand what he wants. There are members in the Working Committee of the Muslim League who are my personal friends, and friends of many of the people who are here. I cannot understand how Abdul Matin Chaudhury or Nawab Ismail
Khan or Raja Ghazanfar Ali Khan or Hussain Imam and others, cannot live with Hindus in Hindustan or in the Union of India as brothers. Unfortunately, I am sorry I find that most of the leaders of the Muslim League live in the so-called Hindustan. I have not yet found any Muslim Leaguer of the Pakistan Provinces of Bengal or Punjab who has got great political principles for the guidance of this country or the world, or ha’s enunciated his principles. I am not here to point cut the differences between the Congress and the Muslim League. I am here to appeal to the Muslim League from this forum that it is high time that they, who are our friends outside, should be friends in this House. If they differ from us on the point of Pakistan,' let them give us their views. Let them tell us whether they want an independent Republic Pakistan or whether they want a Dominion Pakistan? What do they want? I want to appeal to my friends in the Muslim League to think of their old, old associations, the old neighbourly feelings and to come early to this House so that we can all take part in securing independence for India which is so dear to our hearts.

I have said nothing on the main Resolution because I agree with everything that is enunciated there. That has been our dream for these years. I conclude my speech again with an appeal to Mr. Jinnah and my Muslim League friends to come and tell us where we are making a mistake, to tell the Hindus also where the Hindus are making a mistake and are not allowing Mr. Jinnah to build up an independent nation. With that I conclude my remarks.

Mr. Devendranath Samanta (Bihar: General): Mr. President, I thank you for kindly giving me an opportunity of expressing my views regarding the memorable Resolution moved by our revered leader, Pandit Jawaharlal Nehru.

Sir, I feel happy to rise to give my whole-hearted support to the Resolution. The Resolution has already received support from a large number of speakers who have preceded me, and they have discussed the necessity, the utility and propriety of moving and passing the same. They have discussed the Resolution from various points of view, and I do not want to take the precious time of the House by repeating the same arguments; I would simply like to make a few observations with your permission while supporting the Resolution.

It has been admitted in all quarters, that the Constituent Assembly which is to frame a constitution for a free India, is the outcome of untold suffering and immense sacrifice of the masses of this country. Therefore the Constitution to be framed should be such as to promote the interests of the masses and to benefit the country as a whole.
The framers of the Constitution, who are the elected representatives of the people, are highly responsible persons and they would, in the due discharge of their responsible duties, frame the Constitution cautiously and wisely for the best interests of all concerned. We should have full confidence in the sincerity, honesty and integrity of the members who have undertaken this responsibility of producing a Constitution which will fulfil the aspirations of our countrymen and will promote peace and prosperity of the country. The principles to be followed in framing the Constitution and the provisions to be made herein have been enunciated by the Resolution.

It has been fortunately and appropriately laid down in the Resolution that in the Constitution shall be guaranteed and secured to all the people of India Justice social, economic and political, equality of status, of opportunity, etc, which indicate that all people will be afforded suitable facilities for development. It has also been laid down that in the Constitution adequate safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and other Backward Classes, and this should be quite sufficient to allay the suspicions entertained, if any, of the minorities and others whose safeguards are so assured.

I should like to point out that in certain quarters apprehension arises from alleged inadequate representation in the Constituent Assembly, but in connection with this, my respectful submission is, that the framing of a constitution suitable or unsuitable to a particular minority, does not depend upon the extent of representation only but upon the goodwill of the masses who ultimately guide and control the framing of the Constitution. So, in my humble opinion, it is the goodwill of the masses that counts much and not the strength of representation of a particular community in the Constitution-framing body.

So any minority community making a grievance of the fact that the community is, inadequately represented is not right in making a grievance of this fact on this ground alone that they cannot get effective representation. Because representation, a little more or less, will be of no use if the community alienates the sympathy of the other communities upon whom the decision of a particular matters will depend to a great extent.

Having faith in the integrity and honesty of the framers of the Constitution, the minor communities, namely the Scheduled Classes, the Adibasis, Sikhs, Indian Christians Anglo-Indians and Parsis have rightly cooperated in framing the Constitution in spite of their small and inadequate representation in the Assembly. Now the aspirations of the people and their strength will be the guiding factors in framing the Constitution.
One section, namely, the Muslim League, could also have joined the Constituent Assembly in framing the Constitution, had they not been under the impression that vivisection of India and formation of Pakistan would promote their interests best. I would like to point out that, barring the Muslim League, no one in the country favours the idea of vivisection of the country. It is hoped that in future the necessity of United India will be appreciated by every section of the people.

Sir, there is no necessity now for or pressing the amendment moved by the Right Hon'ble Dr. Jayakar, and it is to be expected that the mover of the amendment will find his way to withdraw the amendment,

Sir, our great country, which has unfortunately been subjected to foreign domination and which has been exploited, in every possible way by the British Imperialists, may soon have the chance of being independent and free from all sorts of exploitation.

The Adibasis, Sir, who along with other have been exploited to the greatest extent by the Britishers and their agents, are happy to think that in future they will be free from such exploitation and will get a chance of developing socially, economically and culturally.

Now, Sir, as the Resolution has already got support from a large number of Hon'ble Members, I should not like to take much of the precious time of the House. With these few observations, Sir, I support the Resolution, and, I hope that it will be unanimously accepted and passed.

ELECTION OF THE STEERING COMMITTEE

Mr. President: Before calling on the next speaker to address the House, I have to announce that Srijut Somnath Lahiri and Sri Lakshminarayan Sahu have withdrawn their candidature. (Applause). So, the following Members are declared elected to the Steering Committee:

1. The Hon'ble Maulana Abul Kalam Azad.

2. The Hon'ble Sardar Vallabhbhai J. Patel.


4. Shrimati G. Durgabai.

5. Mr. S. H. Prater.

6. Mr. Kiran Sankar Roy.
7. Mr. Satyanarayan Sinha.

8. Sri M. Ananthasayanam Ayyangar.

9. Mr. S. N. Mane.

10. Mr. K. M Munshi.

11. Diwan Chaman Lall.

They are declared elected. There is no voting in the afternoon.

I wish to pay a warm and sincere tribute to the spirit which has animated this momentous Resolution of the Hon'ble Pandit Jawaharlal Nehru. Sir, it is the custom among all sections of our people to accept in an unquestioned manner the democratic creed as universally applicable to us. But I do not know, Sir, if people who make this verbal profession realise all the implications of it and are prepared to carry it out in every way in practical life to the extent to which such profession really does imply.

Sir, whatever may be the objections that may have been raised against this or that part of the Resolution, I take it as an adequate, as a careful, and as an entirely acceptable profession of the democratic creed, of the Government of the people, for the people, and by the people' I think, Sir, that if the spirit that animates it, continues, to be applied to the details of the Constitution that this great Assembly will draw up, if it is applied in the daily administration of the Provinces and of the Centre, there will be no section of our people that will have reason to complain, and contentment is bound to follow.

Dr. Ambedkar remarked in the course of his speech, that the ideological, or the theoretical part of it contained an expression of opinion which is accepted by all, almost implying that it was something of a common-place in political and journalistic thought. I am not sure, Sir, if that is quite true for any part of the world, and even if it were broadly true, there are occasions when these ordinarily accepted things need to be repeated and asserted solemnly and forcefully. It is said of a great European statesman, Talleyrand, that, when a certain sentiment was declared to be unnecessarily repeated, that "it went without slaying." he remarked that "it would go all the better for being repeated, once again". I take it, Sir, that on this solemn, occasion, this profession of our democratic belief is made in a solemn, public, and irrevocable manner. In this sense I believe that every section of our people will welcome the very carefully-weighed and poised manner in which these convictions have been
expressed. No doubt, Sir, all this will require amplification, elucidation. Permit me, Sir, to draw the attention of this House to a double danger which, I think, it is necessary to be prepared against. On the one hand, in applying those principles of individual liberty, for which ample provision has been made in this preambulatory declaration, it will be difficult to resist, I say it will be difficult to resist from the very motive of love of country and the desire for rapid improvement and progress in our land, the desire to do things more by force and regimentation, more by the authority and power of the Central State, than by agreement, than by persuasion. It is a temptation to which many great men and lovers of their country have succumbed. But in the manner in which provision will be made to prevent such suppression of individual liberties, I hope and trust, that our great country may give an example of a consistent adhesion to those principles of agreement and consensus of opinion, and not overweight the power of the State in a manner, as one of the previous speakers said, that will reduce the individual to a mere robot. That is one danger, Sir.

The other danger, undoubtedly present, is one which affects us as members of a minority community. The danger would be not that the minorities would have any of their special rights or necessary safeguards overridden by any mistaken some of jealousy or opposition or lack of fairness; I do not think that the great majority communities of India or any of their most honoured representatives would be guilty of all that unfair overriding of privileges and safeguards; but by a genuine, though mistaken love of country and desire for unanimity and homogeneity, which it is not possible to have and which perhaps is not even necessary, they may try to pass measures which will seriously wound and grieve the minorities or special groups.

In the last session of this Assembly one speaker said, among things -which were acceptable to every part of the House, -used an expression in regard to minorities which I respectfully submit we could not possibly accept. It was said that no nation, no great people could prosper and survive with permanent minorities within, that, somehow or other, they have got to be "absorbed", and he quoted the example of the United States as a country in which this process of absorption is taking place. I do understand, Sir, the sense in which this was said, viz., that there should be a certain degree of homogeneity and that there should be a common recognition of common interests and rights and that the State and the nation should be organised on the recognition of these common Tights and interests. - This is essential. But, Sir, "absorption" in the sense of cultural or religious or any other absorption is something against which it is necessary for us to guard, and it is, I am sure, not the wish of the majority communities nor the sober reflecting opinion of this great House, that they should impose any thing on any minority, which would lead to such absorption. Sir, I wish the example of a
country like Switzerland is borne in Mind. Even in the United States, in spite of their common language and a universally accepted Constitution, linguistic minorities are permitted to develop the culture of their motherland, whether it be Germany or Italy or France. There remain still, in the great Commonwealth of Canada, two sections of people, Scottish and English on the one hand, and the ancient French community on the other, living in complete amity' following the customs and the spirit of their own motherlands and developing their own literature. One section of the Commonwealth of Canada finds it easy to cooperate and collaborate with the other sections and world for the glory and success of a country which is recognised to be a single nation. In Switzerland, three groups 'With three languages and with a difference of religion, sometimes sharply pronounced, are maintained in a confederation which has known how to defend itself against the onslaught of envious people and has defended itself in no uncertain manner through centuries. I am sure, Sir, that the strength of this land will be based upon the strength of individual members of the different communities. And they will not achieve their full strength unless they base themselves upon convictions and ideals which are their very own. Cultural autonomy for which I am pleading and which has been promised as far as it is not inconsistent with national strength, even though it may appear in some sense as opposed to national unity, is still consistent with if Undoubtedly there is a way of exaggerating these cultural peculiarities. I am sure that quite apart from subscribing to different beliefs, it is possible for members of all communities, Hindu, Muslim, Christian and Parsi, to accept the common heritage of this great land and secure that degree of uniformity, that degree of common agreement, on the basis of which national unity can be built up. I know, Sir, speaking for my own community, the Christian community, that there have been times when our countrymen looked upon this community and religion as being unduly associated with a culture that was not Indian, unduly indentified with what has been called Europeanising ways, but I should like to assure great Assembly that it is not necessary, that it has not always been the case, that again and again people of my persuasion, whether they came from another land or whether they were from this land, have acted in complete conformity with the finest traditions of this country. On the opening day, Sir, the esteemed Vice-Chancellor of the Benares University, Dr. Sir S Radhakrishnan, referred to the first Englishman who had come to this land, the Jesuit Thomas Stevens, and said that after him there came merchants and conquerors and that now we see that end of that "invasion" I should like to assure this House, Sir,-what I am sure, Sir S. Radhakrishnan knows-that the merchants, the traders and the conquerors had nothing to do with the Jesuit who preceded them. On the contrary, Sir, he came to India at a moment when there was no hospitality for him in his own land, from where he was banished under the threat of persecution. This great country offered him hospitality and he made this land his own, learnt
its language and has written a book which Marathi scholars tell me is a classic, the "Purana" of Thomas Stevens. It is in that spirit, Sir, that the adherents of that faith wish to come here and it is in that spirit that we wish to collaborate in the task of national reconstruction for the Prosperity and the greatness of this land. I should not like to take the time of the House much longer but, I cannot avoid saying something upon another point about which much, has been said, but I hope to be able to say something about it, which may perhaps be a new point of view. Much has been said about the sovereignty of the people, about the possibility of that principle being inconsistent with the principle of monarchy, and about the dangers and difficulties which might arise therefrom. Sir, this doctrine of the sovereignty of the people is not a new doctrine. It is not a 19th century doctrine. The history of political thought in Europe shows that the was a struggle round about that doctrine in the 16th century when certain kings claimed the Divine Right of Government; and against them, it may interest this House to know, even conservative thinkers, thinkers who were monarchists, asserted the sovereignty of the people. St. Robert Billarmine and Suarez asserted this against James I of England, though they interpreted it in a different way from Rousseau, who in later times conceived that the power of the State came from the people by the pooling and the coalescing of all the rights: of the people which they are immagined to surrender. But the State, Sir, is not a sort of undesirable excrescence resulting from the surrender of individual liberty. The State is a natural outcome of the nature of man who has to perfect himself in social and community life, with a necessary central authority. That authority comes as Sir S. Radhakrishnan stated, from the moral law and that is the the basis upon which the rights of individuals and of the State have to be maintained. That ultimate authority, Sir, some would prefer to express it as coming from Almighty God as the author of nature and of all moral law. I cannot help expressing a regret, Sir, that the name of Almighty God finds no place in this momentous declaration. I understand, Sir, the reasons which moved the hon’ble framer and mover of this Resolution in not bringing in anything which may look like a religious profession, but you will permit me, Sir, to Say before concluding my remarks, that if by some way in this momentous preambulary declaration the name of Almighty God had been brought in, it would have been in conformity with the persuasion, with the convictions, with the spirit of this vast land of ours and its ancient civilisation. Sir, although it has not been brought up here, I do believe that the State ultimately receives from Him that sanction and approbation which gives it a certain sacredness. I am not pleading here for a doctrine by which the State is made divine. But I do mean that the subjects of the State, when they accept that State and are citizens of it, must obey it conscientiously, must feel that it is their duty to accept the authority of the Government of their land. Sir, we believe in Providence; we believe that the unfolding of History with all its vicissitudes still reveals a
Providential design. Even though His sacred name is not here, I sincerely believe that we have met here under the covert of His protection and His Grace which alone moves the hearts of men. We hope and pray that the deliberations that we have begun this solemn and preambulary declaration will be taken to their legitimate conclusion by the same grace and that the land for which we are labouring will rise Again with new strength, with new prosperity, with new happiness.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I am here to support the Resolution moved by the Hon'ble pandit Jawaharlal Nehru. We are going to frame the Constitution for India today. The people of India and we sought for such an opportunity to frame it ourselves and I am glad the occasion has come now. When the Constitution for India is going to be framed by us, it should be drafted in our national language. It is our duty and in pursuance of this I am delivering my speech in Hindustani. I belong to a community which has been backward and depressed in India for many thousands of years. I am a Harijan and I shall place before you the voice of 90 millions of Harijans in India. The Harijan Community is accepting this Resolution with great pleasure for the sole reason that the Resolution, embodies safeguards for all the minorities in India. Speaking against this Resolution and for Dr. Jayakar's amendment, my friend. Dr. Ambedkar said that India should remain united and have a strong central government. He was not happy and satisfied with his recent visit to England I am very pleased by the Speech he has delivered on his return to India and I hope he will stick to it. I hope, God grants him -a little more good sense, he will give up the demand for separate-electorates and also stop saying henceforth "I am not a Hindu" which he has been telling up till now. I pray to God to give him good sense and I have hopes that He will.

If I describe to you the condition of Harijans, you will be moved. They have been and are still being subjected to endless oppressions and cruelties.. We endured these cruelties with patience and never thought of abandoning our faith. We are Hindus, will remain Hindus and will secure

our rights as Hindus. We will never say we are not Hindus. Undoubtedly we are Hindus and we will, as Hindus, fight the Hindus and secure our rights. We know that 90 per cent. of the victims of the atrocities committed in Noakhali and East Bengal were Harijans. Their houses were burnt, their children were killed and women were molested. Above all, many thousands

*[English translation of Hindustani speech begins.]*

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a Harijans had to submit to forcible conversion. If any community is given weightage more than in proportion to its numerical strength, certainly Harijans will also fight for weightage according to their numerical strength. What was done to the community which is backward and down-trodden today? I remind you of the Poona Pact. I place before you the example of my own province. In Central Provinces where we constitute 25 per cent. of the population and we are entitled to twenty-eight seats, we are given only twenty seats in pursuance of the Poona Pact. Where have our eight seats gone? In my province our Muslim brethren form four per cent. of the population. On the basis of their numerical strength in the Province, they are entitled to get six seats only. But I am sorry the eight seats of Harijans were taken away from them and given to Muslim brethren and thus they got fourteen seats instead of six. Harijans cannot tolerate such injustice. They should be given representation according to this numerical strength. May be, your census records shows the number of Harijans in India as 40 or 50 millions but I can emphatically say that our population is never less than that of Muslims. We are ninety millions and we should get representation according to our numerical strength.

One thing is wanting in the Resolution, and, if the mover agrees, it can be modified. The Resolution promises safeguards and rights to all the minorities. But unfortunately there are 10 million people in India who, without any fault on their part, are described as criminal tribes from their very birth. Hundreds of thousands of men and women in India were declared as criminal tribes according to the current law. To deprive them of their rights they are declared so. No matter whether they are criminals or not, from their very birth they are made criminals. Some provision to abolish this law must be embodied in this Resolution. I hope the mover will realise it and provide some safeguards for this Class. in the Resolution.

The Congress has passed a resolution accepting the grouping clause in the Cabinet Mission Plan. Though a Congressman, I feel apprehension as to what would-happen to the Depressed Classes in "B" and "C" groups. I have been thinking over it since the Congress accepted it. Though directly there is no Pakistan in Bengal today, still Harijans were subjected to great atrocities there. The members here, who have witnessed the happenings there, are greatly surprised. From the newspapers it appears that to the extent of ninety per cent it was the Harijans who were subjected to cruelties there. I am afraid no untouchable will remain alive in regions where Pakistan is established after the acceptance of the grouping clause. The Harijans of those regions, where the establishment of Pakistan is dreamt of, will have to accept either forced conversion or death. They are weak and are likely to be subjected to various atrocities and even at present people Commit atrocities on them. Every community is increasing its strength to achieve its political demand. A day will come when because of the
grouping provision our numerical strength will be weakened and that of other communities will be strengthened. And with the growth of their strength, no Harijan will exist in their provinces. Therefore, when considering this Resolution we must provide special safeguards for the Harijans of those Provinces, where they are in such plight. It is in view of this fact that Dr. Ambedkar has pleaded for a strong central government. If

in Provincial Legislatures' the Harijans are not given representation according to their numerical strength, the fears which we feel in the case of Bengal, and to which I have been an eye witness, will continue to remain. If we are given full representation in the Central Legislature, all such fears will vanish. I support the Resolution wholeheartedly and hope that all the members in the House will do their best to restore the rights, of which our backward community has been deprived for thousands of years. Wherever the question of allotting seats arose, we were given one or two seats. This is happening in the case of local bodies in many provinces. Many times we demanded representation according to our numerical strength. But laws have been enacted merely to the effect, that if no Harijan is elected, one should be selected and if this is not possible, a nomination should be made.

Even where the Harijans form more than fifty per cent. of the population, there also only one member from them is selected or nominated. It shows that the attention of the people has not yet been drawn towards us. Therefore whenever occasion arises attempts should be made to secure us representation according to our numerical strength. And then alone we can feel that you are doing something for us. If you want to satisfy us, by giving one or two seats, that will not do. The Harijan Community is awakened now; it is politically conscious of its rights, to secure which, it will throw in its full strength. With these words I conclude my speech and hope you will pay due consideration to our rights and will not let us remain in the position in which we have been so long. With this hope I support the Resolution.]

Shri R. V. Dhulekar (United Provinces: General): [Mr. President, the Resolution moved by the Hon'ble Pandit Jawaharlal Nehru has been seconded; many speeches have been delivered on it and many objections have been raised to the clauses of the Resolution. Dealing with the speeches made and objections raised, I shall express my views in support of the Resolution.

Mahatma Gandhi has summarised the philosophy of human life in two words-truth and non-violence. Truth is justice, right action and that which is obligatory; truth and non-violence is not to injure others, not to deprive others of their liberty and possessions and is to protect live; and the social rights of others.
These two, truth and non-violence, are the essence of the teachings of the Vedas and Upanishads, the two form the creed of the Congress and the Resolution before the House is based on them. The Resolution is the true expression of the sentiments, ambitions, good intentions and objects of the people of India. The Resolution is a picture of what the country, which is at present under the British domination, wants to do. and how it wants to exist in the world after it has attained independence.

The important clauses of the Resolution are :-]

"This, Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution

"WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as outside British India and the States as well as such other territories, as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and

* English translation of Hindustani speech ends.+

functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

"WHEREIN all power and authority of the Sovereign India, its constituent parts and organs of government, are derived from the people, and

WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

This ancient land attain its rightful and honoured place in the world and makes its full and willing contribution to the promotion, of world peace ad the welfare of mankind."

Mr. Deshbandhu Gupta (Delhi) : On a point of order, Sir, is it open to an Hon'ble member to read from manuscript?

Mr. President: I do not think he is reading. He has got copious notes. (Laughter).

Mr. R. V. Dhulekar: *[I can always speak as if I am reading. Mr. President, no right thinking man can entertain any objection to any of the clauses of the Resolution. The Resolution guarantees the rights of the people of the whole of India; it provides safeguards for, the minorities and promises to remedy injustice done to the Backward and Depressed Classes; it promises them full opportunity for their advancement.

As for Indian States, the Resolution gives them complete freedom in regard to their internal administration and assures that all their just and legitimate rights will be safeguarded. Of course, their present unjust and despotic rule will no more be allowed to continue. Despotism and Democracy are, at variance and the two cannot go together. I believe that no longer will any ruler venture to suppress the fundamental rights of his people. Neither the people of the States will allow such irresponsible government to function, nor this Assembly can render any assistance to the ruler in their unjust cause. An objection has been raised as to the necessity of such a resolution and it is suggested that if the Resolution is at all necessary, it should not be moved till the States' representatives participate. It is said that the States, representatives, have not had enough time to consider the Resolution. The objection raised about the absence to the States' representatives has no foundation -at all. According to clause 19(2) of the Statement of the British Cabinet Mission, the representatives of the States cannot participate in the Assembly at the preliminary stage. To deal with all the matters relating to the States, the Assembly will negotiate with the Negotiating Committee formed by the States. It is unwise not declare our aims and objects to the rulers of the States, to the people of India and to the people of the world at large. If we do not so now; many false fears and vicious thoughts may arise The Resolution conveys our basic principles to the world. Every one should consider and weigh them well and then give us his co-operation.

An objection to this effect has also been raised that the Muslim League members are absent and, therefore, the Resolution should not be moved for the present. Firstly, this objection is
groundless. When the League has 'taken part in the election of the Constituent Assembly and has already elected its members to this body in pursuance of the Cabinet Missions Plan, it is improper on the part of the League members not to participate in the Assembly. The League's demand of representation on the basis of numerical strength and separate electorates having been accepted, the responsibility for their absence rests with them. The House has no power of force its members to be present here. If one does not participate, he

*English translation of Hindustani speech begins.

[Mr. R. V. Dhulekar] the Constitution to be framed should be such as to promote the interests deprives himself of his

rights. The members that are present cannot be blamed for it. Apart from this, their absence causes harm to their own electorates.

Secondly, after the H. M. G.'s Statement of the 6th December, 1946, there can be no objection whatsoever to the Resolution. The Congress accepted the said Statement by passing a resolution and gave the Muslim League a chance to direct its representatives to join the Constituent Assembly. The preliminary session of the Constituent Assembly, along with this Resolution, was postponed for month. I am sorry the Muslim League did not accept the hand of goodwill and friendliness extended by the Indian National Congress. May be, the Muslim League has though' of extending its co-operation but has not yet had enough time to come to a final decision. I still hope., the League representatives will soon take their right place in the House and help to make India an Independent Sovereign Republic.

Enough opportunity has been provided by us to our adversaries to cast on us the undeserved blot that we are divided and can never be united Still, there is time to remove this blot and, with all humility, I would request my brethren in the Muslim League to be earnest about it.

Some selfish Englishmen including the notable statesmen, Lord Simon and Mr. Churchill, throw unjustified aspersions on this Assembly. They say that this Assembly is a truncated body in the absence of the Muslim League representative, that its decision carries no weight and that the British Government should neither accept the Constitution framed by the Assembly nor work it. What a baseless and mean charge it is It is much below culture and civilization and against all canons of wisdom and statesmanship. Such "Wise" fools of politics lost and destroyed big empires that had been acquired by dint of wisdom and power. We have
Seen with our own eyes the downfall of Tsarism and the dictatorships of Hitler, Mussolini and the Mikado. The mighty armada of British Imperialism is gradually going down under the onslaughts of the mass upsurge. The British Empire cannot escape the doom. It will be fortunate if Mr. Attlee, the political pilot of England, could save his land and the people by taking a lesson from the recent history of Germany, Italy and Japan. It is my duty to offer this reasonable advice but it is up to them to pay heed to it or not.

Human history is itself a book. Endlessly it writes and writes the hard facts alone. It makes no discrimination between the strong and the weak. Yudhisthir the embodiment of truth, only once in his life told a half truth "Narova Kunjaro va"; and for this minor untruth, the cruel pen of Vyasa, the celebrated author of the famous epic, the Mahabharat, lined him with the bars and made him undergo the sufferings of hell.

There is now the occasion before Great Britain to do justice to the four hundred million people of India. It is with British either to loge or use the chance of acquiring the friendship. It will be useless to repent when the game is over.
CONSTITUENT ASSEMBLY OF INDIA - VOLUME II

Wednesday, the 22nd January, 1947

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

RESOLUTION RE: AIMS AND OBJECTS-contd.

Mr. President: There are three items in the Agenda to-day-

1. Discussion of the Resolution that has been going on for some days.

2. Another Resolution about Bhutan and Sikkim to be moved by Pandit Jawaharlal Nehru, and


I think we had better complete the discussion on the Objectives Resolution which has been moved by Pandit Jawaharlal Nehru. I noticed yesterday that Members wanted closure on that and if that is the feeling of the House, then I would ask Pandit Jawaharlal Nehru to straight-away say what he has to say in reply and complete the discussion.

Mr. H. J. Khandekar (C. P. and Berar: General): *[I want to express my views on the Resolution before the House later on. The Independence Day falls on the 26th of January. This Resolution seeks to make India free and therefore the decision on it should also be taken on -26th January. Though 26th January is a holiday, I would propose, that a resolution of so great importance should be passed on the Independence Day. Therefore, I request that the Assembly should meet on that day, may be, for a few minutes only.]*

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I beg the leave of the House to withdraw the two amendments which stand in my name. (Hear, hear.).

Mr. President: Rai Bahadur Syamanandan Sahaya had moved two amendments to the Resolution. He wants leave of the-House now to withdraw them. Do I take it that the House agrees?
Hon'ble Members: Yes.

Mr. President: Those two amendments are withdrawn. We have now got only the main Resolution. There is no other amendment. -

A suggestion has just been put forward by Mr. Khandekar that we should pass this Resolution on the 26th, but unfortunately that happens to be a Sunday.

Mr. H. J. Khandekar: There should be a session of the Assembly for a few minutes because this Resolution is an important resolution and should be passed on the Independence Day. 26th is a Sunday and I therefore request the Chair to have the session for a few minutes to consider this Resolution and pass it.

Mr. President: We shall see about it after Pandit Jawaharlal Nehru has spoken. I shall take the vote of the House whether it should be passed today or not.

Hon'ble Members: Today.

Mr. President: Then 22nd has to become 26th. Pandit Jawaharlal Nehru.

*[* English translation of Hindustani speech.*

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): *[*Mr. President, six weeks have passed since I moved this Resolution. I had thought then that the Resolution would be discussed and passed within two or three days, but later the House decided to postpone it in order to give time to others to think over it. The decision to postpone an important Resolution like this was probably not to the linking of others like me, but I did not doubt that the decision was sound and proper. The anxiety and impatience in our hearts was not for the passage of the Resolution, which was simply a symbol, but to attain the high aims which were enshrined in it. It is also our intense desire to march on with all others and reach our goal with millions of Indians. Therefore, it was advisable to postpone the Resolution and to afford ample opportunity not only to this House but also to the country in general to think over it. The sense of all amendments and specially the amendment moved by Dr. Jayakar was generally for postponement. I am grateful to Dr. Jayakar for the withdrawal of his amendment and I thank the others also who have withdrawn their amendments. Many Members have spoken on the Resolution. Their number may be thirty of forty or more. Almost all of them have supported it without any criticism. Some, of course, have drawn our attention to some
particular matters. I am of opinion, that if a plebiscite of the crores of people of India is taken, all of them will be found to stand for the Resolution; though there might be some who would lay more or less emphasis on some particular aspect of the Resolution. The Resolution was meant to clothe in words the desire of crores of Indians and it was very carefully worded so as to avoid any strongly controversial issue. There is no need to say a great deal about this but with your permission, I would like to draw your attention to some points. One of the reasons for the postponement of the Resolution was that we wished that our brothers who bad not come here, should be in a position to decide to come in. They have had a full month to consider the matter but I regret that they have not yet decided to come. However as I have already said at the outset, we will keep the door open for them and they will be welcomed up to the last moment, and we will give them and others, who have a right to come in, every opportunity for coming in. But it is clear that while the door remains open, our work cannot be held up. It has, therefore, become indispensable- for us to proceed further and carry the Resolution to its logical conclusion. I have hopes that even at this stage those, who are absent, would decide to come in.

Some of us, even thought they are in agreement with thin Resolution, were in favour of postponing some other business, too so that the absentees might not find any obstacle in their way to come in. I am in sympathy with this suggestion but in spite of this I am at a loss to understand how this suggestion could be put forward. That is a question of waiting, not that of postponing the Resolution. We have waited for six long Weeks. This is no matter of weeks; ages have slipped by while we have been waiting.. How long are we to wait now? Many of us who waited have since passed away and many are nearing the end of theft- lives. We have - waited enough and now we cannot wait any longer. We are to further the work of the Assembly, speed up the pace and finish our work soon. You should bear in mind that this Assembly is not only to pass Resolutions, I may point out, that the Constitution, which we frame, is not an end by itself, but it would be only the basis for further work.

The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses and to give every Indian fullest opportunity to develop himself according to his capacity. This is certainly a great task Look at India today. We, are sitting

*[*][English translation of Hindustani speech begins.]
here and there in despair in many places, and unrest in many cities. The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Keeping this aspect in view, who could suggest to us to postpone and wait?

A point has been raised from one side that some ideas contained in the Resolution do not commend themselves to the Rulers of the States, because they conflict with the powers of the Princes. A suggestion has also been made to postpone the decision about the States in the absence of their representatives. It is a fact they are not present here but if we wait for them it is not possible for us to finish the work even at the end of the Constituent Assembly according to the plan. This is impossible. Our scheme was not that they should come in at the end. We invited them to come in at the beginning. If they come, they are welcome. Nobody is going to place any obstacles. If there is any hesitation, it is on their part only. A month ago you formed a Committee to get into:

touch with 'their representatives. We were always anxious to discuss with them although we did not get any opportunity for it. That is no fault of ours. We did not ask for time. We want to finish our work as early as possible. I am informed they complain of the following words contained in the Resolution.

"Sovereignty belong to the people and rests with the people That is to say, the final decision should rest with the people of the States They object to this. It is certainly a surprising objection. It many not be very surprising if those people who have lived in an -atmosphere of mediaevalism do not give up their cherished illusions, but in the modern age how can a man believe for a moment in the divine and despotic rights of I a human being? I fail to understand how any Indian, whether- he belongs to a State or to any other part of the country, could dare utter, such things. It is scandalous now to put forward an idea which originated in the world hundreds of years ago and was buried deep in the earth long before our present age. However, I would respectfully tell them to desist from saying such things. They are putting wrong thing before the world and by doing so they are-lowering their own status and weakening their own position. At least this Assembly is not prepared to damage Its, very foundation and, if it does so, it will shake the very basis of our whole constitution. We claim in this Resolution to frame a free and democratic Indian Republic. A question may be asked what relation will -that Republic-bear to other countries of the world? What would be its relations with England, the
British Commonwealth and other countries? This Resolution me that we are completely free
and are not included in any group except the Union of Nations which is now being formed in
the world. The truth is that the world has totally changed. The meanings of words too are
changing. Today any man who can think a little, will come to the conclusion that the only
way to remove the doubts and dangers from the world, is to unite all the nations and ask them
to work together and help each other. The organisation of the United Nations is not free from
big gap's and fissures. Thousands of difficulties lie ahead and a great deal of suspicion exists
between countries. I have already said that we are not thinking in terms of isolating ourselves
from the world. We will work in complete cooperation with other countries. It is not an easy
thing to work in cooperation with England or the British Commonwealth, and yet we
areprepared to do so. We will forget our old quarrels, strive to achieve our complete
independence and stretch our hands of friend-ship to other countries, but that friendship shall
in no case mar or weaken our freedom.

This is not a resolution of war; it is simply to put our legitimate rights before the world; and in
doing so if we are challenged, we will not hesitate in accepting that challenge. But after all,
this is resolution of goodwill and compromise, among the people of India, whatever their
community or religion and with the different countries of the world including England and the
British Commonwealth of Nations. The Resolution claims to be on friendly terms with all and
it has been put before you with that motive and intention. I hope you will accept it.

A friend has suggested that it would be advisable to move the Resolution just on the eve of
the Independence Day which is due to come after four days only. But I will ask him if it is
proper to delay. a proper thing even for a moment? Not a moment's postponement is advisable
and we should finish our work as soon as possible.

This Resolution which has, been put before you is in a new form and in a new shape, bat I
would like to tell you that it has a long trail of resolutions pledges and declarations including
the world-famed resolutions of 'Independence" and "Quit India' behind. It is high time to fulfil
our pledges which we made from time to time. How are these pledges to be fulfilled? The
right answer lies with you-and I hope you will not only accept the

Resolution but also fulfil it as you fulfil a -solemn pledge.

One thing more I would like to tell you. We have been confronted and will again be
confronted with various questions. Persons of various groups, Communities, and interests
would look at it from different points of view, and diverse questions and problems would be
raised by them, but we should all bear in mind that we should not, on the eve of
Independence, allow ourselves to be carried away by petty matters. If India goes down, all will go down; if India thrives, all Will thrive and if India lives, all will live including the parties, communities and groups.

With your permission I would like to say something in English also.]*

Mr. President, It was my proud privilege, Sir, six weeks ago, to move this Resolution before this Hon'ble House. I felt the weight and solemnity of that occasion. It was not a mere form of words that I placed before the House, carefully chosen as those words were. But those words and the Resolution represented something far more; they represented the depth of our being; they represented the agony and hopes of the nation coming at last to fruition. As I stood here on that occasion I felt the past crowding round me, and I felt also the future taking shape. We stood on the razor's edge of the present, and as I was speaking, I was addressing not only this Hon'ble House, but the millions of India, who were vastly interested in our work. And because I felt that we were coming to the end of an age, I had a sense of our forbears watching this undertaking of ours and possibly blessing it, if we moved aright, and the future, of which we became trustees became almost a living thing, taking shape and moving before our eyes. It was a great responsibility to be trustees of the future, and is was some responsibility also- to be inheritors of the great past of ours. And between that great past and the great future which we envisage, we stood on the edge of the present and the weight of that occasion, I have no doubt, impressed itself upon this Hon'ble House.

[ ]* English translation of Hindustani speech ends.

So, I placed this Resolution before the House, and I had hoped that it could be passed in a day or two and we could start our other work immediately. But after a long debate this House decided to postpone further consideration of this Resolution. May I confess that I was a little disappointed because I was impatient that we should go forward? I felt that we were not true to the pledges that we had taken by lingering on the road. It was a bad beginning that we should postpone even such an important Resolution about objectives. Would that imply that our future work would go along slowly and be postponed from time to time? Nevertheless. I have no doubt, that the decision this House took in its wisdom in postponing this Resolution, was a right decision, because we have always balanced two factors, one, the urgent necessity in reaching our goal, and the other, that we should reach it in proper time and with as great a unanimity as possible. It was right, therefore, if I may say with all respect, that this House decided to adjourn consideration of this Motion and thus not only demonstrated before the
world our earnest desire to have all those people here who have not so far come in here, but also to assure the country and every one else, how anxious we were to have the cooperation of all. Since then six weeks have passed, and during these weeks there has been plenty of opportunity for those, who wanted to come, to, come. Unfortunately, they have not yet decided to come and they still hover in this state of indecision. I regret that, and all I can say is this, that we shall welcome them at any future time when they may wish to come. But it should be made clear without any possibility of misunderstanding that no work will be held up in future, whether any one comes or not. (Cheers.) There has been waiting enough. Not only waiting six weeks, but many in this country have waited for years, and years, and the country has waited for some generations now. How long are we to wait? And if we, some of us, who are more prosperous can afford to wait, what about the waiting of the hungry and the starving? This Resolution will not feed the hungry or the starving, but it brings a promise of many things—it brings the promise of freedom, it brings the promise of food and opportunity for all. Therefore, the sooner we set about it the better. So we waited for six weeks, and during these six weeks the country thought about it, pondered over it, and other countries also, and other people who are interested have thought about it. Now we have come back here to take up the further consideration of this Resolution. We have had a long debate and we stand on the verge of passing it. I am grateful to Dr. Jayakar and Mr. Sahaya for having withdrawn their amendments. Dr. Jayakar's purpose was served by the postponing of this Resolution, and it appears now that there is no one in this House who does not accept fully this Resolution as it is. It may be, some would like it to be slightly differently worded or the emphasis placed more on this part or on that part. But taking it as a whole, it is a resolution which has already received the full assent of this House, and there is little doubt that it has received the full assent of the country. (Cheers.)

There have been some criticisms of it, notably, from some of the Princes. Their first criticism has been that such a Resolution should not be passed in the absence of the representatives of the States. In part I agree with that criticism, that is to say, I should have liked all the States being properly represented here, the whole of India—every part of India being properly represented here—when we pass this Resolution. But if they are not here it is not our fault. It is largely the fault of the Scheme under which we are functioning, and we have this choice before us. Are we to postpone our functioning because some people cannot be here?

That would be a dreadful thing if we stopped not only this Resolution, but possibly so much else, because representatives of the States are not here. So far as we are concerned, they can come in as early as possible moment, we will welcome them if they send proper
representatives of the States. So far as we are concerned, even during the last six weeks or a month, we have made some effort to get into touch with the Committee representing the States Rulers to find a way for their proper representation here. It is not our fault that there has been any delay. We are anxious to get every one in, whether it is the representatives of the Muslim League or the States or any one else. We shall continue to persevere in this endeavour so that this House may be as fully representative of the country as it is possible to be. So, we cannot postpone this Resolution or anything else because some people are not here.

Another point has been raised: the idea of the sovereignty of the people, which is enshrined in this Resolution, does not commend itself to certain rulers of Indian States. That is a surprising objection and, if I may say so, if that objection is raised in all seriousness by anybody, be he a Ruler or a Minister, it is enough to condemn the Indian States system of every Ruler or Minister that exists in India. It is a scandalous thing for any man to say, however highly placed he may be, that he is here by special divine dispensation to rule over human beings today. That is a thing which is an intolerable presumption on any man's part, and it is a thing which this House will never allow and will repudiate if it is put before it. We have heard a lot about this Divine Right of Kings we had read a lot about of it in past histories and we had thought that we had heard the last of it and that it had been put an end to and buried deep down into the earth long ages ago. If any individual in India or elsewhere raises it today, he would be doing so without any relation to the present in India. So, I would suggest to such persons in all seriousness, that, if they want to be respected or considered with any measure of friendliness, no such idea should be even hinted at, much less said. On this there is going to be no compromise. (Hear, hear).

But, as I made plain on the previous occasion when I spoke, this Resolution makes it clear that we are not interfering in the internal affairs of the States. I even said that we are not interfering with the system of monarchy in the States, if the people of the States so want it. I gave the example of the Irish Republic in the British Commonwealth and it is conceivable to me that within the Indian Republic, there might be monarchies if the people so desire. That is entirely for them to determine. This Resolution and, presumably, the Constitution that we make, will not interfere with that matter. Inevitably it will be necessary to bring about uniformity in the freedom of the various parts of India, because it is inconceivable to me that certain parts of India should have democratic freedom and certain others should be denied it. That cannot be. That will give rise to trouble, just as in the wide world today there is trouble because some countries are free and some are not. Much more trouble will there be if there is freedom in parts of India and lack of freedom in other parts of India.
But we are not laying down in this Resolution any strict system in regard to the governance of the Indian States. All that we say is this that they, or such of them, as are big enough to form unions or group themselves into small unions, will be autonomous units with a very large measure of freedom to do as, they choose, subject no doubt to 'certain central functions in which they will co-operate with the Centre, in which they will be represented in the Centre and in which the Centre will have control. So that, in a sense, this Resolution does not interfere with the inner working of those Units. They will be autonomous and, as I have said, if those Units choose to have some kind of constitutional monarchy at their head, they would be welcome to do so. For my part, I am for a Republic in India as anywhere else. But whatever my views may be on that subject, it is not my desire to impose my will on others; whatever the views of this House may be on this subject, I imagine that it is not the desire of this House to impose its will in these matters.

So, the objection of the Ruler of an Indian State to this Resolution becomes an objection, in theory, to the theoretical implications and the practical implications of - the doctrine of sovereignty of the people. To nothing else does any one object. That is an objection which cannot stand for an instant. We claim in this Resolution to frame a constitution for a Sovereign, Independent, Indian Republic-necessarily Republic- What else can we have in India? Whatever the States may have or may not have, it is impossible and inconceivable and undesirable to think in any other terms- but in terms of the Republic in India.

Now, what relation will that Republic bear to the other countries of the world, to England and, to the British Commonwealth and the rest? For a long time past we have taken a pledge on Independence Day that India must sever her connection with Great Britain, because that connection had become an emblem of British domination. At no time have we thought in terms of isolating ourselves in this part of the world -from other countries or of being hostile to countries which have dominated over us. On the eve of this great occasion, when we stand-on the threshold of freedom we do not wish to carry a trial of hostility with us against any other country. We want to be friendly to all. We want to, be friendly with the British people and the, British Commonwealth of Nations.

But what I would like this House to consider is this: When these words and these labels are fast changing their meaning and in the world today there is no isolation, you cannot live apart from the others. You must co-operate or you must fight. There is no middle way. We wish for peace. We do not want to fight anynation if we can help it. The only possible real objective that we, in common with other nations, can have is the objective of co-operating in building up some kind of world structure, call it 'One World', call it what you like. The
Beginnings of this world structure have been laid down in the United Nations Organisation. It is feeble yet; it has many defects; nevertheless, it is the beginning of the world structure. And India has pledged herself to cooperate in that work.

Now, if we think of that structure and our co-operation with other countries in achieving it, where does the question come of our being tied up with this Group of Nations or that Group? Indeed, the more groups and blocks are formed, the weaker will that great structure become. Therefore, in order to strengthen that big structure, it is desirable for all countries not to insist, not to, lay stress on separate groups and separate blocks. I know that there are such separate groups and blocks today and because they exist today, there is hostility between them, and there is even talk of war among them. I do not know what the future will bring to us, whether peace or war. We stand on the edge of a precipice and there are various forces which pull us on one side in favour of co-operation and peace, and on the other, push us towards the precipice of war and disintegration. I am not prophet enough to know what will happen, but I do know that those who desire peace must deplore separate blocks which necessarily become hostile to other blocks. Therefore India, in so far as it has a foreign policy, has declared that it wants to remain independent and free of all these blocks and that it wants to cooperate on equal terms with all countries. It is a difficult position because, when people are full of fear of each other, any person who tries to be neutral is suspected of sympathy with the other party. We can see that in India and we can see that in the wider sphere of world politics. Recently an American statesman criticised India in words which show how lacking in knowledge and understanding even the statesmen of America are. Because we follow our own policy, this group of nations thinks that we are siding with the other and that group of nations thinks that we are siding with this. That is bound to happen. If we seek to be a free, independent, democratic republic, it is not to dissociate ourselves from other countries, but rather as a free nation to co-operate in the fullest measure with other countries for peace and freedom, to cooperate with Britain, with the British Commonwealth of Nations, with the United States of America, with the Soviet Union, and with all other countries, big and small. But real co-operation would only come between us and these other nations when we know that we are free to cooperate and are not imposed upon and forced to co-operate. So long as there is the slightest trace of compulsion, there can be no co-operation.

Therefore, I commend this Resolution to the House and I commend this Resolution, if I may say so, not only to this House but to the world at large so that it can be perfectly clear that it is a gesture of friend to all, and, that behind it there lies no hostility. We have suffered enough in the past. We have struggled sufficiently, we may have to struggle again, but under the
leadership of a very great personality we sought always to think in terms of friendship and goodwill towards others, even those who opposed us. How far we have succeeded, we do not know, because we are weak human beings. Nevertheless, the impress of that message has found a place in the hearts of millions of people of this country, and even when we err and go astray, we cannot forget it. Some of us may be little men, some may be big, but whether we are small men or big, for the moment we represent a great cause and therefore something of the shadow of greatness falls upon us. Today in this Assembly we represent a mighty cause and this Resolution that I have placed before you gives some semblance of that cause. We shall pass this Resolution,

and I hope that this Resolution will lead us to a constitution on the lines suggested by this Resolution. I trust that the Constitution itself will lead us to the real freedom that we have clamoured for and that real freedom in turn will bring food to our starving peoples, clothing for them, housing for them and all manner of opportunities of progress, that it will lead also to the freedom of the other countries of Asia, because in a sense, however unworthy we have become—let us recognise it—the leaders of the freedom movement of Asia, and whatever we do, we should think of ourselves in these larger terms. When some petty matter divides us and we have difficulties and conflicts amongst ourselves over these small matters, let us remember not only this Resolution, but this great responsibility that we shoulder, the responsibility of the freedom of 400 million people of India, the responsibility of the leadership of a large part of Asia, the responsibility of being some land of guide to vast numbers of people all over the world. It is a tremendous responsibility. If we remember it, perhaps we may not bicker so much over this seat or that post, over some small gain for this group or that. The one thing that should be obvious to all of us is this that there is no group in India, no party, no religious community, which can prosper if India does not prosper. If India goes down, we go down, all of us, whether we have a few seats more or less, whether we get a slight advantage or we do not. But if it is well with India if India lives as a vital free country, then it is well with all of us to whatever community or religion we might belong.

We shall frame the Constitution, and I hope it will be a good constitution, but does anyone in this House imagine that, when a free India emerges, it will be bound down by anything that even this House might lay down for it? A free India will see the bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, that it will not consent to be bound down by anything. Some people imagine, that what we do now, may not be touched for 10 years or 20 years, if we do not do it today, we will not be able to do it later. That seems to me a complete misapprehension. I am not placing before the House what I want done and what I do not want done, but I should like the House to consider that we are on the
eve of revolutionary changes, revolutionary in every sense of, the ward, because when the spirit of a nation breaks its bonds, it functions in peculiar ways and it should function in strange ways. It may be that the Constitution, this House may frame, may not satisfy that free India. This House cannot bind down the next generation, or the people who will dully succeed us in this task. Therefore, let us not trouble ourselves too much about the petty details of what we do, those details will not survive for long, if they are achieved in conflict. What we achieve in unanimity, what we achieve by co-operation is likely to survive. What we gain here and”, there by conflict and by overbearing manners and by threats will not survive long. It Will only leave a trail of bad blood. And so now I, commend this Resolution to the House and may I read the last para of this Resolution? But one word more, Sir, before I read it. India is a great country, great in her resources, great in her man-power, great in her potential, in every way. I have little doubt that a Free India on every plane will play, a big part on the world stage, even on the narrowest plane of material power, and I should like India to play that great part in that plane. Nevertheless today there is a conflict in the world between forces, In different planes. We hear a lot about the atom bomb and the various kinds of energy that it represents and in essence today there is a conflict in the world between two things, that atom bomb and what it represents Find the spirit of humanity. I hope that while India will no doubt play a great part in all the material spheres, she will always lay stress on that spirit of humanity, and I have no doubt in my mind, that ultimately in this conflict, that is confronting the world, the human spirit will prevail over the atom bomb. May this Resolution bear fruit and may the time come when in the words of this Resolution, this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

Mr. president: The time has now arrived when YOU should give your solemn votes on this Resolution. Remembering the solemnity of the occasion and the greatness of the pledge and the promise which this Resolution contain, I hope every Member will stand up in his place when giving his vote in favour of it-

I will read the Resolution:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a Constitution:

(2)WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and
(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom,- and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) WHEREIN shall be guaranteed and secured ;to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law;

freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) WHEREBY shall be'-maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and

(8) this ancient land attain its rightful and honoured place in the world -and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

(The Hon'ble the President then read a Hindi translation of the Resolution.)

I have got the Urdu translation also. Unfortunately I am not able to read it. I shall be glad if some other Member could, read it for me.

(Shri Mohanlal Saksena then read the Urdu translation of the Resolution.)

Mr. President: I will request Members now to stand in their places and vote in favour of this Resolution. The Resolution was adopted, all members standing.

RESOLUTION TO INCLUDE BHUTAN AND SIKKIM WITHIN THE SCOPE OF THE NEGOTIATING COMMITTEE
Mr. President: We have got the next resolution relating to Sikkim and Bhutan. Pandit Jawaharlal Nehru will move this.

The Hon'ble Pandit Jawaharlal Nehru: Mr. President, Sir, I beg to move the following Resolution:

"This Assembly resolve that the Committee constituted by its Resolution of December 21, 1946 (to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for certain specified purposes), shall in addition have power to confer with such persons as the Committee thinks fit for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly the result of such examination."

May I point out, Sir, that the COPY of this Resolution that has been circulated should be varied slightly in the penultimate line, to read, for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly..........

The House will remember that we passed a resolution in December last appointing a Committee consisting of Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Dr. Pattabhi Sitaramayya, Mr. Shankarrao Deo, Sir N. Gopalaswami Ayyangar and myself to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of:

(a)fixing the distribution of the seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and
(b)fixing the method by which the representatives of the States should be returned to this Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations. Further it was resolved that not more than three other Members may be added to this Committee later. This Committee was to consider two matters, fixing and distribution of seats for States and fixing the method by which the representatives of the States should be returned to the Assembly. The question has arisen as to how we have to deal with certain areas which are not Indian States. In this Resolution before us, Bhutan and Sikkim are mentioned. Bhutan is in a sense an Independent State under the protection of India. Sikkim is in a sense an Indian State but different from the other. It is not proper to think of Bhutan
therefore in the same category as an Indian State. I do not know what the future position of Bhutan might be in relation to India. That is a matter to be determined in consultation and in co-operation with the representatives of Bhutan. There is no question of compulsion in the matter. Now the terms of reference of the Committee you have appointed on the last occasion will not entitle it to tackle any such problem. Those terms are limited to the method of representation in this Assembly and the distribution of seats. I would like to say that there is some objection raised on the part of the Indian Princes to Negotiating Committee as to why the terms of reference have been so limited by us. They have been limited for obvious reasons—that all the later problems of the Indian States are going to be dealt with by those representatives of Indian States when they come and it would be absurd for us to come to final decisions with regard to the main problems before the representatives are here. Therefore deliberately we limited the functions of our Negotiating Committee. But in limiting them we prevented them from dealing with other problems which may arise in regard to territories which are not Indian States, specially Bhutan and Sikkim, and this Resolution gives them authority to meet representatives of Bhutan and Sikkim and discuss any special problems that may arise. I want to make it clear, on the one hand, that this Constituent Assembly has every right to discuss problems with even Independent States, if necessary. There is nothing to limit our right to discuss our future relations with the Independent States but for the moment I am not dealing with that problem. Whatever the position of Bhutan might be, there is no question that we have the power and authority to deal with their representatives. This is in no way trying to lessen the status of Bhutan's present position. Whatever this may be it will be recognized to be something entirely different, to that of Indian States. We are simply empowering our Committee to deal with the representatives and then to report to this Constituent Assembly the result of those negotiations.

I beg to move this Resolution. Sir.

The Hon'ble Pandit Govind Ballabh Panth (United Provinces: General): I second the Resolution.

Mr. President: The Resolution has been moved and seconded. If anyone wants to speak, he can do so (After a pause) May I take it that no one wishes to speak about this Resolution? I will put the Resolution to vote.....

The Resolution was adopted

Mr. President: There are two motions regarding the Budget of the Assembly.
Mr. H. V. Kamath (C. P. & Berar: General): May I invite your attention, Sir, To the request made by a large section of this House that as a mark of tribute to Netaji Subash Chandra Bose, whose golden jubilee falls tomorrow, this House shall not meet to-morrow for the transaction of any business?

Mr. President: Mr. Kamath, as I understand, we have not got anything ready for tomorrow; so, in any case we are going to have a holiday tomorrow. (Cheers) Mr. Gadgil.

BUDGET ESTIMATES OF THE CONSTITUENT ASSEMBLY

Mr. N. V. Gadgil (Bombay: General): I beg to move—

"Resolved that the Assembly do accord sanction to the estimated expenditure of the Assembly for the years 1946-47 and 1947-48 as shown in the attached statements prepared by the Staff and Finance Committee in pursuance of rule 50 (1) of the Constituent Assembly Rules."

Sir, as laid down in the Rules........

Sri K. Santhanam. (Madras: General): I move that this thing may be taken up in Committee. It is not desirable that we should discuss the Budget in the presence of visitors. So I move that we go into Committee.

Prof. N. G. Ranga (Madras: General): I second it.

Sri Biswanath Das (Orissa: General): I also support it.

Mr. Somnath Lahiri (Bengal: General): It deals with public money. I do not see any reason why we should be afraid of discussing in public.

Mr. President: Let the motion be moved and then we shall consider whether the consideration will be in Committee.

Sri K. Santhanam: The Motion has been moved. He is going to make a speech. Therefore we want it in camera. There is nothing to be hidden or to be afraid of but we want to have the freedom to speak freely.

Mr. President: I had better then take the sense of the House. Those who want it in Committee form later on will please say 'Aye'.
The Hon'ble Mr. B. G. Kher (Bombay: General): The whole House may be turned into Committee.

Mr. president: Those who are in favour of Committee may say Aye .........

The motion was adopted.

Mr. President: We shall then go into Committee and as the Committee meetings are private, I would request the visitors to withdraw. (The galleries were then cleared)

(The proceedings were then conducted In camera).
Friday, the 24th January, 1947

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

Mr. President: We shall commence the proceedings now. When, we rose day before yesterday, we were sitting in Committee to discuss the Budget. There are certain Resolutions which have to be placed before the House. I would suggest that we first take those Resolutions and dispose of them and then, later on, if we have time, shall go into Committee again and discuss the Budget.

I hope Members approve of this.

Mr. Satyanarayan Sinha (Bihar: General): Mr. President, Sir, When we adjourned last time, we had gone into Committee. it is therefore necessary formally to move that the House do now come into open plenary session of the Assembly.

Mr. President: I hope the House accepts the suggestion. The motion was adopted. Mr. President: As the House has accepted the suggestion, we will go into open session and take up the Resolutions.

I now call upon Mr. Satyanarayan Sinha to move the motion standing in his name.

ELECTION OF VICE-PRESIDENT

Mr. Satyanarayan Sinha: Mr. President, Sir, I beg to move the following motion which stands in my name:-

Resolved that this Assembly do proceed to elect a Vice-President in accordance with sub-rule (1) of Rule 12 of the Constituent Assembly Rules.

Sir, with your permission, I would read to the House the Rules of Procedure regarding the Vice-Presidents which we passed in the last session.
"The Assembly shall have five Vice-Presidents. Out of the five Vice-Presidents, two shall be elected by the Assembly as a whole, from among its members in such manner as the President may prescribe.

Chairmen elected by the Sections shall be ex-officio, Vice-Presidents of the Assembly."

Now, Sir, according to Rule 16, if there is no Vice-President to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman. So, even if you are absent for a short time, on such occasions the Assembly will have to elect one of its members to preside over the deliberations. It is therefore expedient that we should have at least one Vice-President elected during this session. Therefore I move this motion and hope that the House will accept it.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): I second the motion.-

Mr. President: The motion has been moved, and seconded. I do not think any debate is required. The motion was adopted.

Mr. President: Nominations will be received by the Secretary up to 5 p.m. today. If an election becomes necessary, it will be held between 11 am. and 12 noon tomorrow morning in the Under Secretary's room, Room No. 24, on the Ground Floor.

ELECTION OF THE ADVISORY COMMITTEE

The Hon'ble Pandit Govind Ballabh Pant: Sir, I beg leave to make the motion standing in my name which runs thus:

"This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's Statement of May 16, 1946, an Advisory Committee be constituted as hereinafter set out

1. (a) The Advisory Committee shall consist of not more than 68 members who may include persons who are not members of the Assembly.

(b) (i) It shall consist initially of 52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.

(ii) The Assembly may elect in such manner as the President may deem appropriate up to 7 members."
(c) The President may at any one time or at different times nominate members to the Committee not exceeding 9.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the Administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. Each of such Sub-Committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the dine being, to against it in its work in relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem necessary.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months and may submit interim reports from time to time.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur in the manner in which the seat in respect of which the vacancy had arisen was originally filled.

6. The President may make standing orders for the conduct of the proceedings of the Committee. "Sir, this Resolution not only follows the scheme outlined in the Statement of May 16th but it also adopts the phraseology of that Scheme. The Scheme provides for one single Committee to deal with the rights of minorities, with the rights of citizens and with questions relating to the administration of the Tribal and Excluded and Partially Excluded Areas. Left to ourselves, we would have preferred a Committee for each of these subjects and perhaps two Committees for dealing with the problems relating to the North-West Frontier and the North-Eastern Frontier, but as the Scheme envisaged one Committee, we thought it better not to depart from that direction or proposal. The Committee has consequently become bigger than it would have been, had there been a separate Committee to deal with each of the subjects. This Committee, Advisory Committee as it is called, is being appointed under paragraph 19, clause (iv). It runs thus:-

"A preliminary meeting will be held at which the general order of business will be decided, a chairman and other officers, elected and an. Advisory Committee on rights of citizens, minorities and tribal and excluded areas set up." Thus according to the procedure prescribed here, in the Ordinary course, we were expected to take up this item immediately after the
election of the President. We refrained from doing so out of regard for the members. We wanted to facilitate the entry of the members of the Muslim League and to secure their cooperation in the deliberations of this Assembly. It is a matter for regret that our efforts in that direction have not succeeded so far. Not only did we postpone the consideration of this item which was necessary in order to proceed further with the course chalked out for us by this Statement, but the Congress went further and accepted the interpretation put by His Majesty's Government and the Muslim League on some of the contentious clauses of that Statement, and also accepted a large part of the declaration made by the British Cabinet on the 6th December. The Congress on the 5th of January unequivocally declared its acceptance of the interpretation put on the grouping clauses by the League. This Assembly met on the 20th. There were fifteen days in between. We had postponed the consideration of this item. Not only has the Muslim League not passed any formal resolution in favour of their entry into this House, but the statements made by persons who claim to be in a position to know the mind of the League, still point the other way. No suggestion has been made to the office bearers of this Assembly, to the Secretary or anybody else, by any responsible representative of the Muslim League for the postponement of this Assembly or of any item of business included in the Order Paper. Under the circumstances, we cannot but proceed with the business that has been already prescribed, determined and formulated for us. The responsibility for the course that is being adopted, if it embarrasses or inconveniences anybody, rests on those who have chosen to keep aloof. I think every responsible and dispassionate person will accept that the Congress and the Hon'ble Members of this House have done more than what could be expected of them in order to facilitate the participation of the Muslim League in the deliberations of this Assembly. But they have all the same stuck to their original attitude of negation and have not cared to join this Assembly in the great and sacred task that lies ahead.

I consider it necessary to make these remarks, especially in view of some articles that have appeared in the press and in one of the local papers. It is unreasonable on the part of any person-I am using a mild expression-to suggest further postponement of this item, which ought to have been taken up at the very outset. The tender solicitude shown by the Hon'ble Members of this House for the absentee Members has not only not been appreciated, but it has been misunderstood. There is another aspect of this question. The people of this country, millions are scanning the proceedings of this Assembly in order to see what Progress we are making and how near we are to the goal which we have before us. Every day's delay is causing them disappointment; and on the other side, there is vigorous propaganda, suggesting that this Assembly will end in smoke, that all its efforts, deliberations and endeavours will prove futile, and nothing will come out of them. In the circumstances, any one interested in the success of this Assembly must realize the responsibility that rests on the shoulders of the
Hon'ble Members of this House. They cannot afford to put off indefinitely the business of this House, and they cannot allow that hope be deferred till hope is stilled altogether. So, I trust Hon'ble Members will unanimously accept the Motion that I have placed before them.

As they know, provision has to be made for the determination of fundamental rights, the rights of minorities and for the administration of Tribal and Backward Areas. The number of representatives has been fixed with due regard to the tasks that lie in front of this Committee. Ours is a vast country and the numbers living here now exceed 400 millions. In the circumstances, howsoever one may try to reduce the strength of a Committee of this character, one cannot go below a certain minimum, and we have tried to do justice to all interests and to all elements and at the same time ` to limit the figure to a reasonable and workable limit. There is provision for 72 members, but originally it was 68. Hon'ble Members know that there is provision to be made for citizens' rights. For that purpose, we want representatives of the General Body. Fundamental rights are the concern of all, and no question of minority or majority can arise in connection with those rights. In fact the Secretary of State in his speech in the House of Lords last month definitely stated that such members, to look after the question of the citizens' rights, would be there. Then you have to elect members for looking after the minority rights. Hon'ble Members are aware we have got a number of minorities. Ours is a rich variety of cultures and luckily we have got a number of groups who supplement and complement each other in order to build the complete whole known as the Indian nation. So we have provided in this Resolution for an initial Committee of 52 members, but according to the amendment which Will be moved by Mr. Munshi, the number is to be 50 and not 52. Out of these 50 only 12 will be representatives of the general sections. Others will represent the minorities and the Tribal and Excluded Areas. The minorities will be represented in the following manner:

The Hindus of Bengal, Punjab, N.W.F.P., Baluchistan and Sind will have 7 representatives

The Muslims of the 7 Provinces of U.P.,

Bihar, C.P., Madras, Bombay, Assam and Orissa will have similarly 7 representatives

The Depressed Classes or the Schedule Castes will have 7 representative

The Sikhs will have 6

The Indians Christians will have 4

Paris will have 3
Anglo-Indians will have 3

and the Tribal areas and Excluded Areas 13

In addition there will be 10 nominations by the President. In the Resolution the number is higher. Out of the persons now to be nominated according to the amendment, that will be moved by Mr. Munshi, 5 will be set apart for the Tribal Areas, 7 for the Muslim minority Provinces and the rest 10 in number will be at the disposal of President, so that he may nominate such persons as may conduce to the

successful working of this Committee, and whose contribution may be helpful in reaching sound and satisfactory decisions. In this way this Committee will be formed. In any case, whatever be the number, the voice of the minorities and the representatives of the Excluded and Tribal Areas will preponderate in this Committee. They will be in a position to record their decisions and no section will be in a majority. So this Committee will fully reflect the opinion of the minorities and the Backward Tracts and will I hope be able to reach decisions which will fully secure their position and ensure the protection of their rights. Paragraph 2 of this resolution proposes that Sub-Committees should be appointed for the administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. It will be necessary to appoint small Sub-Committees for this purpose as they call for close study on the spot, and unless the questions are examined very closely by qualified persons and local opinion is fully consulted, it will not be easy to reach conclusions that may suit the requirements of the particular areas. Besides the appointment of some Sub-Committees, the Resolution also empowers these SubCommittees to co-opt two members from the specific territory whose questions may be under consideration for the time and to the extent such co-option, is considered necessary for the consideration of the problems relating to such territory.

Clause 4 prescribes the time-limit within which the final report should be submitted by this Advisory Committee. This should be done within three months. If Hon'ble Members will refer to paragraph 20 of the Statement, they will find there these words:

The, Advisory Committee on the rights of citizens, minorities and Tribal and Excluded Areas will contain due representation of the interests affected and their function will be to report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities, and a scheme for the administration of Tribal and Excluded Areas, and to advise whether these right's should be incorporated in the Provincial, the Group of the Union Constitutions.
It is necessary to conduct the business of this Advisory Committee speedily so that its recommendation may reach this House with the least possible delay or loss of time. Neither any Section nor any Group nor the Central Union Assembly can frame any constitution until and unless it has before it the proposals that may emerge as a result of the deliberations of the Advisory Committee. The Central Union Assembly should consider this report so that the task of framing Provincial and Group Constitutions, if any, and the Central Constitution may start in right earnest. So it is desirable that the report of this Committee should reach at an early date and that is why this provision has been made.

I have tried to give a factual narrative and analysis and a certain degree of elucidation of the Resolution that is tinder consideration. With the permission of Hon'ble Members and the President, I should like to make a few remarks of a general character. The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free State of India that will come into existence as a result of our discussions here. The question of minorities cannot possibly be overrated. It has been used so far for creating strife, distrust and cleavage between the different sections of the Indian nation. Imperialism thrives on such strife. It is interested in fomenting such tendencies. So far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make any progress; we cannot even maintain peace in an undisturbed manner. So, all that can possibly be done should be done. We should have, in fact, proposed a Committee of this type, even if there had been no mention of it in the Statement of May 16th. If Hon'ble Members will refer to the Objectives Resolution which was passed unanimously by this House, they will find these words in clauses (5) and (6):

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and wherein adequate safeguards shall be provided for minorities Backward and Tribal Areas, and Depressed and other Backward Classes;"

So, the House has already accepted the fundamentals of this Resolution and it has done so unanimously. It is a matter which should hearten the minorities. The essence of these rights has already been conceded and conceded voluntarily and unanimously by all the Members of
this House. I hope every effort will be made in this Advisory Committee to reach decisions that will fully satisfy the minorities. Hon'ble Members may be aware, and if they are not, I believe I will not be disclosing a secret when I tell them, that the entire strength of this Committee has been fixed in accordance with the wishes of one and each of every one of all the minorities in this House. It represents their complete agreement. We have subordinated every other consideration in order to secure contentment and satisfaction. The task of constitution making is a practical one and we should not be lost in the doctrinaire maze; we should look at problems from a realistic point of view and see that the decisions that we take are not only just, but are also regarded as just by those affected thereby. We trust that in this Committee every regard will be paid to the wishes of the different minorities and the decisions taken will be fully satisfactory to them.

In this connection, I should also like to remind the minorities of some of the historical developments of recent years. As Hon'ble Members may be aware, after the termination of the first World War, a number of States were set up, especially in Eastern Europe and provisions for the protection of minorities were incorporated in the Constitutions of these States such as Czechoslovakia, Austria, Bulgaria, Poland and others. Not only were such provisions incorporated in the Constitutions, but they formed part of solemn stipulations in the treaties entered into between the Associated and Allied powers, as they were called, and these new-States that were then brought into existence. Guarantees were given by the Allied and Associated Powers to the minorities in these various States. Declarations were also made at International Conferences and by the League of Nations. They were assured by outside authorities and guarantees were given by treaties entered into by them with these Associated Powers. But, what was the result. No minority had been the victim of greater and more ruthless tyranny and oppression, atrocities and brutalities than the minorities that lived in these States and some of them have perhaps completely faded away and disappeared since. Let not the minorities look to any outside power for the protection of their rights. This will never help them. Let not the lesson of history be lost. it is a lesson which should be burnt deep in the hearts and minds of all minorities that they can find their protection only from the people in whose midst they live and it is on the establishment of mutual goodwill, mutual trust, cordiality and amity that the rights and interests no, only of the majorities but also of the minorities depend. This lesson of history, I hope, will not be forgotten.

It is not for me to attempt any dissertation on the various aspects of minorities or fundamental rights. I cannot however refrain from referring to a morbid tendency which has ,,ripped this country for the last many
years. The individual citizen who is really the backbone of the State, the pivot, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism, has been lost here in that indiscriminate body known as the community. We have even forgotten that a citizen exists as such. There is the unwholesome, and to some extent a degrading habit of thinking always in terms of communities and never in terms of citizens. (Cheers.) But it is after all citizens that form communities and the individual as such is essentially the core of all mechanisms and means and devices that are adopted for securing progress, and advancement. It is the welfare and happiness of the individual citizen which is the object of every sound administrator and statesman So let us remember that it is the citizen that must count. It is the citizen that forms the base as well as the summit of the social pyramid and his importance, his dignity and his sanctity, should always be remembered. If you bear this in mind, I think we shall understand and appreciate the importance of the fundamental rights. Because, on the proper appreciation of these rights has depended the progress of humanity. The Atlantic Charter with its Four Freedoms, the Charter of rights of men from the time of Pain- and Wells to that of the Declaration made last year represent the noble advance in the history of human race. After all we must remember the goal and objective of all Human activity is a World State in which all citizens would possess the cosmopolitan outlook, would be equal in the eye of the law and would have full and ample opportunity for economic, social and political self-fulfilment. We find that in our own country we have to take particular care of the Depressed Classes, the Scheduled Castes and the -Backward classes. We have to atone for our omissions--I won't use the word commissions. We must do all we can to bring them up to the general level and it is a real necessity as much in our interest as in theirs that the gap should be bridged. The strength of the chain if, measured by the weakest link of it and so until every I link is fully revitalised, we will not have a healthy body politic. I hope this Advisory Committee will place before itself the ideals for which humanity has worked. It will try to forge such sanctions and such rights as will enable this Assembly not only to frame a constitution but to achieve the independence of India. We are here not only for a formal task but for a real one and that has to be fulfilled. Let us hope that this Advisory committee will bring concord and amity, goodwill and trust, in place of mutual strife, that occupies the political stage to-day and that as a result of the deliberations of this Committee we will have prepared the ground for Independent India for which we live, for which many have died and, for which alone life is worth living. (Loud Cheers.)

Mr. President: Sardar Harnam. Singh is going to second this.
Sardar Harnam Singh (Punjab: Sikh): Mr. President the Advisory Committee which has to be formed under the provisions of the Statement of May 16 is a very important Committee from many points of view. All of us know that it is the minorities problem, in India that has held up the progress of this country for a number of years and a satisfactory solution of this problem, I believe, will lead to the prosperity of the country. We have laid down, in the Objectives Resolution that in the future Constitution of India, an adequate provision for the protection of all minorities has to be provided for. As far as the Congress is concerned, beginning with 1922 when the demand was made for a Constituent Assembly of India, several resolutions have been passed in which it has been laid down by the Congress that provisions for the protection of minorities have to be made to the satisfaction of the minorities concerned. Therefore I am glad that the Congress Party in this House has agreed to the constitution of this body which has commended itself to all members in the Constituent Assembly of India. As to what the ultimate solution of the communal problem proposed by this Advisory Committee may be nobody can say at this stage. But we all know that the whole of the communal problem is before this Minority Committee. The clauses for the protection of minorities which have to be framed by this Advisory Committee, have some relation to existing facts. The clauses for the protection of minorities pertain to the religious, cultural, economic, administrative and political spheres. Communities in India have heretofore laid stress on certain provisions in the Government of India Act, as provisions which may be retained for the proper protection of minorities. Whether the Advisory Committee would make its report on those lines it is not for me to say at this stage. Those provisions all of us know. We know that Anglo-Indians have got section 242 of the Government of India Act. Certain other communities have laid stress on the weightage provided to them- Other communities have insisted on the retention of separate electorates. Some of these provisions may have done mischief in years past, but I do believe that this Advisory Committee will consider the question of the protection of minorities from all there various points of view and, whatever is good in the larger interests of the country and also in the interests of the minorities, that will find a place in the report of this Advisory Committee.

Sir, for a proper understanding of this Advisory Committee and its functions. we have to go into all that lengthy correspondence which passed between Maulana Abul Kalam Azad, Mr. M. A. Jinnah and Lord Pethick Lawrence, In one of the letters that Maulana Abul Kalam Azad wrote to Lord Pethick Lawrence he insisted that for A proper solution of the communal problem there must be consent of all the parties affected, and in fact, on the 12th May 1946 when the Congress formulated eight points as a basis for agreement, point No. 6 was that as far as the minority problem was concerned, the Congress stood for the consent of
communities concerned for a satisfactory solution of the problem. Therefore I hope that when this Advisory Committee sits to initiate and formulate proposals for the protection of minorities and fundamental rights, the whole field would have been covered and it would be covered in such a way that it would be fair to the larger as well as the smaller interests so that all communities-big' or small-would feel satisfied with the recommendations of this Advisory Committee. With these few words, Sir, I second the Resolution moved by Pandit Govind Ballabh Pant.

Mr. President: I find that in the Order Paper, notice has been given of several amendments. I think the most convenient course would be to ask the amendments to be moved on each particular clause. Therefore, all those members who have got any amendment on any particular clause will move the amendment when I name the particular clause. The first is clause I (a). Mr. Munshi has given notice of an amendment.

Mr. Damber Singh Gurung (Bengal: General): On a point of information, Sir, before any amendments are moved, may I know whether any time has been given for giving notice of amendments? This Resolution has been circulated only just now. Members have to be given some time.

"Mr. President_: I understand this Resolution was circulated several days ago.

Mr. Damber Singh Gurung : But this has been circulated here to the members just now. It may have been circulated several days ago in the party meeting.

Mr. President: No, no. The Resolution which has been moved by Pandit Pant was circulated to Members several days ago.

Mr. Damber Singh Gurung: My point is: now there is no Muslim League here. This thing was circulated in the party meeting.

Mr. President: No. I think you are under a misunderstanding. I am referring to the Resolution which was moved by Pandit Govind Ballabh Pant. Notice, of that Resolution was given to members several days ago. No other amendment has yet been moved.

Mr. Damber Singh Gurung: But this Resolution was just given to the members.
Mr. President: Here in the House? I am afraid you are referring to some other Resolution. This one was circulated several days ago. Yes, Mr. Munshi.

Mr. K. M. Munshi (Bombay: General): Sir, I beg to move that in subparagraph (a) of paragraph 1 of the Resolution, substitute the number "72" for the number "68". As already explained by Mr. Govind Ballabh Pant, it is necessary to increase the number in order to accommodate the seats which are duly provided for in the other part of the Resolution. I therefore move this amendment.

Mr. President: Is there any other amendment to clause 1? .... Nothing else. I put Mr. Munshi's amendment to vote. The amendment was adopted. Mr. President: Now, we go to the next one. I find Rev. Nichols-Roy, has given notice of an amendment.


Mr. President: Then we will go to (b) (i). Mr. Santhanam has given notice of a amendment.

Sri K. Santhanam (Madras: General): I do not want to move it.

Mr. President: Then Mr. Munshi:

Mr. K. M. Munshi: Mr. President. Sir, I beg to move the following amendment to clause (b) (i). My amendment reads thus:

"That in sub-paragraph (b) (i). of paragraph 1 of the motion for the words beginning with 52 members- the words are these:

'52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of a single transferable vote substitute:

"The following members"

The names are given in the amendment. The clause will read like this:

"It shall consist initially of the following members."

and then the names will follow. I will read the names. The different categories have already been placed before the House by the mover of the Resolution and I will read the names, indicating the nature of the seats.
Mr. Jairamdas Daulatram from Sind,

The Hon'ble Mr. Mehr Chand Khanna, N.W.F.P.,

Dr. Gopi Chand Bhargava from the Punjab,

Bakshi Sir Tek Chand also from the Punjab,

Dr. Profulla Chandra Ghosh from Bengal,

Mr. Surendra Mohan Ghose from Bengal,

Dr. Syam Prasad Mookherjee from Bengal.

Then comes a group representing the Scheduled castes:

Sardar Prithvi Singh Azad,.

Shri Dharam Prakash,

Mr. H. J. Khandekar,

The Hon'ble Mr. Jagjivan Ram

Mr. P. R. Thakur,

Dr. B. R. Ambedkar,

Shri V. I. Muniswami Pillai.

The next group of six names are those of Sikhs:

Sardar Jogendra Singh,

The Hon'ble Sardar Baldev Singh,

Sardar Pratap Singh,

Sardar Harnam Singh,

Sardar Ujjal Singh.
Sardar Kartar Singh.

The next four names are those of Indian Christians:

Dr. H.C. Mookherjee,

Dr. Alban D’Souza,

Shri Salve,

Shri Roche-Victoria.

The next three names are of Anglo-Indians:

Mr. S. H. Prater,

Mr. Frank Reginald Anthony,

Mr. M. V, N. Collins

The next three names are of Parsis:

Sir Homi Mody,

Mr. M.R Mazni

Mr. R.K. Sidhwa

Number 31, Shri Rup Nath Brahma represents the plains tribes of Assam.

Number 32, Khan Abdul Ghaffar Khan represents the North-Western tribal area. Two other members to represent that area have to be nominated by the President.

Khan Abdul Samad Khan represents Baluchistan.


In Number 35, the name is wrongly spelt, it should be Shri Mayang Nokcha.

I do not know how to pronounce it. He represents the North-Eastern tribal areas. Then follow three names of persons who represent the Excluded and Partially Excluded areas:
Shri Phool Bhan Shaha.

Mr. Davendra Nath Samanta,

Mr. Jaipal Singh, representing the excluded areas in Bihar, and three others have to be nominated by the President.

Then come twelve general names:

Acharya J. B. Kripalani.

The Hon'ble Maulana Abul Kalam Azad,

The Hon'ble Sardar Vallabhbhai Patel,

The Hon'ble Shri C. Rajagopalachariar,

Rajkumari Amrit Kaur,

Shrimati Hansa Mehta.

The Hon'ble Pandit Govind Ballabh Pant,

The Hon'ble Srijut Gopinath Bardoloi,

The Hon'ble

Shri Parushottamdas Tandon,

Sir Alladi Krishnaswami Ayyar.,

Shri K. T. Shah and

Mr. K. M. Munshi.I move this amend
Saturday, the 25th January, 1947

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

ELECTION OF VICE-PRESIDENT

Mr. President: Dr. H. C. Mookherjee is the only candidate who has been validly nominated for Vice-Presidentship. I accordingly declare him duly elected.

Dr. Pattabhi Sitaramayya will move the Resolution that is standing in his name.

ELECTION OF BUSINESS COMMITTEE

Dr. B. Pattabhi Sitaramayya (Madras: General): *[Mr. President, I read out the Resolution which I am going to move in English, first]*

"This Assembly resolves that a Committee consisting of-

1. The Hon'ble Sir N. Gopalaswami Ayyangar,

2. Mr. K. M. Munshi and

3. Sri Biswanath Das, be appointed to recommend the order of the further business of this Assembly in framing the Constitution for all India and to submit its report before the commencement of the next session of this preliminary meeting of this Assembly”.

*I shall explain to you the Resolution in Hindustani. The Resolution seeks to appoint a committee consisting of three elderly persons. The function of this Committee is to consider and recommend the order of business of this Assembly and to submit its report before he commencement of the next session of the Assembly.

The Resolution appears very ordinary but it is very important. We have so far traversed a part of our journey. Imagine a man who sets out on a journey; he travels the’ first stage of it easily. But when he embarks on the second stage he meets many hurdles and difficulties. Now what
is the best course for him? He postpones his journey and sends a vanguard in order to acquire an idea of the difficulties he is likely to meet on his way. What we want to do now is exactly that. We want to appoint a committee to guide us as to how we should proceed further with our business. Perhaps, you remember that an Advisory Committee was appointed yesterday. To-day we are going to appoint another committee. With the help of this Committee we are to know as to what should be the order of the further business of this Assembly. With these words, I put the Resolution before you. I need not say anything more on it.]

B. Gopal Reddi: *[I second the resolution.]

*English translation of Hindustani speech.*

Mr. President: Does anyone want to speak about this?

Dr. B. Pattabhi Sitaramayya: There is a small amendment to this, Sir.

Mr. President: Mr. Satyanarayan Sinha has given notice of an amendment.

Mr. Satyanarayan Sinha (Bihar: General): Mr. President---

Sir, I beg to move--

"That at the end of the motion add the following new paragraph -- "The Assembly further resolves that the presence of not less than two members of the Committee shall be necessary to constitute a meeting of the Committee."

Mr. President:-- Dr. Pattabhi Sitaramayya, do you accept the amendment?

Dr. B. Pattabhi Sitaramayya: I accept the amendment.

Mr. President: Then I put the amended Resolution to vote. The Resolution, as amended, was adopted.

COMMITTEE ON SUBJECTS ASSIGNED TO THE UNION CENTRE The Hon'ble Sri C. Rajakopalachariar (Madras: General): I beg to move the Resolution standing in my name, which reads as follows:
WHEREAS In paragraph 15(i) of the Cabinet Delegation's Statement of May 16, the subjects assigned to the Union Centre are generally and compendiously indicated under four broad categories,

AND WHEREAS an understanding of the scope of these subjects is necessary for the purpose of framing the Union and other Constitutions, of avoiding as far as possible overlapping and conflicts between the provisions in the Constitution relating to the Union and those in the Constitutions referred to in clause (v) of paragraph 19 of the Statement, and of bringing all the said Constitutions into line with each other.

AND WHEREAS it is necessary to draw up lists of matters included in

and interconnected with the subjects assigned to the Union before the framing of the Constitutions referred to in clause (v) of paragraph 19 of the Statement is taken up for consideration;

This Assembly resolves- 

(a) that a committee consisting initially of twelve members, elected according to the principle of promotional representation by means of the single transferable vote., be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947, and

(b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made at such time and in such manner as the President may determine.

Sir, I might take the matter a little in advance and mention that there are three amendments that are going to be proposed to this motion of mine, and those amendments deal with subsidiary matters, Mr. Munshi and Mr. Satyanarayan Sinha will move them in due course and I propose to accept them. So, in order to make the matter easier to understand I shall read the Resolution as it will stand when these amendments are accepted. The first part of the Resolution i.e., the preamble, stand as before, but the operative part would read like this

"This Assembly resolves- (a) that a committee consisting of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru...."
Mr. C. E. Gibbon (C. P. and Berar: General): On a point of order, Sir, Until such time as the amendments are officially moved and the mover of the Resolution accepts them, how could he incorporate them in the original Resolution?

Mr. President: He has not incorporated any part of the amendment. He is only reading it out.

Mr. C. E. Gibbon: He is accepting it before it is moved.

Mr. President: He said he proposes to accept it.

The Hon'ble Sri C. Rajagopalachariar: I have read the Resolution as it stands in the Paper and I have referred to the amendments circulated and I think it would save time if I explained to the members in advance that I propose to accept those amendments, and in order that the matter may be clearly understood, I am reading it. If permitted, I shall go on.

Mr. President: Yes.

The Hon'ble Sri C. Rajagopalachariar: The operative part would read like this:

"This Assembly resolves—

(a) that a committee consisting initially of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru
2. Mr. Sarat Chandra Bose
3. Dr. Pattabhi Sitaramayya
4. The Hon'ble Pandit Govind Ballabh Pant
5. Mr. Jairam Das Daulatram
6. Sri Biswanath Das
7. The Hon'ble Sir N. Gopalaswami Ayyangar
8. Bakshi Sir Tek Chand
9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar"
be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947,

(b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made as such time and in such manner as the President may determine,

(c) that the quorum for the Committee shall be one-third of the total number of members for the time being of the Committee, and

(d) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members; of the Assembly”.

Sir, the object of the Resolution is to help this Assembly in framing the Constitution so as not to leave for the future any overlapping or conflicts that might occur if various proceedings took place without correlation in different Sections of the Assembly or otherwise. I may be permitted, therefore, to explain exactly what the possibilities are which we wish to avoid.

This Assembly, Sir, has been entrusted with a very serious task, perhaps more onerous than any Constituent Assembly in the world has had to deal with. The number of differences that have to be settled are enormous; the population that has to be satisfied is enormous; and the problems that are before the Assembly are as difficult as any which any other Assembly has had before it. The British Government's Statement has put things in a fairly clear way, but not quite as clearly as we would desire it. If we examine the British Government's Statement, on which this Assembly's programme is based, we will find few matters settled clearly.

No. 1-it is decided that we are to frame a constitution for a united India.

No. 2-we have to frame a constitution where the Centre is given the powers over Defence, Communications and Foreign Affairs and also powers necessary to raise the finances required for the above subjects.
And then thirdly another principle has been laid down that the residuary powers, that is to say, all powers which have not been transferred to the Central Government, should remain in the Provinces. Then fourthly, a subsidiary point is laid down also, that such powers as the Provinces agree to transfer to any Groups they may form would go to the Groups. All subjects other than the Union subjects and all residuary powers should vest in the Provinces. The States will retain all subjects and powers other than those ceded to the Union. This is (3) and (4) of Clause 15 of the State. It is further laid down that there will be a ten-year revision of this Constitution and the initiative for that revision is vested in the Provinces. These are the broad principles laid down in Clause 15:

But let us examine this a little more closely. We find in sub-clause (1) that:

"The Union should have all the powers necessary to raise the finances required for the above subject.

Now, what are powers, unless we mean the power actually to enforce the law as prescribed for raising the finances and that would include, Sir, the power of collection and probably also the power of securing the services of a proper judiciary wherever required. No provision has been put down for this purpose. Again, if we examine clause 19 which gives the procedure for carrying out the principles set out in clause 15, we find, strangely enough, a lacuna. In sub-clause (v) of clause 19 it is stated that the Sections shall proceed to settle Provincial Constitutions and then they shall also decide whether any Group Constitution shall be set up, and if so with what provincial subjects the group shall deal. Then the representatives of the Sections and the Indian States shall re-assemble for the purpose of setting the Union Constitution. Now, there is no provision as to how and when the Group Constitution shall be settled. Beyond stating that whether any Group Constitution shall be set up may be decided in the Sections and also that the Sections shall set out the provincial subjects with which the groups should deal, there is no provision for settling the, Group Constitution itself.

Then, again, if we examine the provisions as to the Advisory Committee on Minorities, we find this. The Advisory Committee shall report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities and a scheme for the administration of Tribal and Excluded Areas, and it should advise whether these rights should be incorporated in the Provincial, the Group or the Union Constitutions. Now, it follows logically that when the Advisory Committee has reported to the Union. Assembly, the Union Assembly should have the power to see whether it should be incorporated in the Provincial or in the Group or in the Union Constitutions. If the Provincial and Group constitutions should be settled beforehand, and at a later sitting of the Union Assembly, they decide that it should
be incorporated in the Provincial or Group Constitutions, what is the procedure to be followed? Therefore, there is a great deal of correlation to be done before we can carry out the intentions of the Cabinet Mission's Statements, or the Resolutions of this Assembly. If we interpret the programme laid down in clause 19 literally and assume that what is asked to be done at the various sittings should be the only things done at this stage and nothing else,

we will be landed in a great deal of difficulty at the end in carrying out the explicit intentions of the Cabinet Mission's Statement. Considering all these matters, it has been found necessary, we have found it necessary, Sir, to make this motion for the appointment of a committee which shall do the required thinking on these matters and report to this House before we end the preliminary session so that we may frame our programme of future work.

This Assembly has to consider, as I said before, very serious matters, and we will have to do a great deal of thinking. We cannot do our work on the assumption that we are here only to register previously arrived at decisions, opinions and programmes. We have to do a lot of substantial thinking in this Constituent Assembly; and in the nature of things, therefore, we require the assistance of a select Committee to consider and advise us on the difficulties that may arise in the course of our work. It is with that object that this Committee has been proposed. It is not with the object of undermining the essential intentions of the Cabinet Mission's 'Statement or anything of that kind. It is to help us to think out our difficulties and to find solutions for those difficulties.

Sir, If I may venture to put it that way, it is not only a matter of culture or good-breeding, but it is statesmanship to think of those who are absent, to think of other people than ourselves, when we deal with any matter. That is why in proposing every motion, Hon'ble Members have dealt with the intentions and purposes of those who are not yet present in this Assembly. We find a great many possibilities of misunderstanding and we try to anticipate those difficulties and remove possibilities of misunderstanding as far as we can. In this connection I would mention, therefore, that those who are absent should not misunderstand the purpose of this Committee that I am proposing. The Muslim League policy has been to secure a separate, sovereign State of their own. Now, this Constituent Assembly has taken up its task on the basis of the Cabinet Mission's Statement and if one thing is more clearly decided in His Majesty's Government's Statement than anything else, It is this, that there shall be only one sovereign state in India. It has been decided clearly beyond all possibility of doubt that a division of India into two sovereign states is not to be thought of in this connection. That explains many of the things that we are doing and will remove many of the misunderstandings that are likely to arise. If I may put it that way, the League has gone the wrong way for
securing their objective. If they had only restricted their claims to what legitimately should be
asked in pursuance of their policy, possibly they might have achieved their object and they
would not have been in the present difficulty. Let me put it frankly. The greatest difficulty for
the Muslim League now is that they have to join this Assembly and thereby, once for all and
beyond doubt, accept the single sovereign State of India. That is why they find it difficult to
come in, and that is why these postponements. That is why the League fixes its date always
after the meetings that the other major parties have programmed for their consultations. That
is why we find to-day, even after the last adjournment, the League has been unable to make
up its mind and join us. Let us understand the difficulties of the other side. If the League
comes in, they come in on the express understanding that India shall be only one sovereign
State, abandoning their separatist policy. This is difficult for them to do at once. Let use
realise these difficulties and not misunderstand even the delays. We desire to proceed with the
work as fast as possible, understanding very well the difficulties of the Muslim League
members in the way of their coming and joining us at this stage. Let them think it over. Let us
give them ample time to come. But that does not mean that we stop our work that we stop
thinking, that we stop doing anything whatsoever, until they, make up

their minds. That would lead to indefinite postponement. Hence, Sir, I have no hesitation in
recommending this Resolution that we should appoint this Committee of twelve members as
proposed, so that they may think out all the difficulties and advise us so that we may frame a
constitution for India which will create no difficulties for those who have to work it, and
which will be a stable, strong constitution for the Centre with stable and strong constitutions
for the provinces, to work under the Centre and in the single State that is being contemplated.
Therefore, air, I move that this Resolution be accepted by the House. As I said before, there
are two amendments. One is to replace the election by proportional representation, by twelve
members definitely named to the House; and the other is to provide for quorum and another is
to provide for casual vacancies. I commend the Resolution with these amendments.

Mr. President: Mr. Munshi can move his amendment.

Mr. Satyanarayan Sinha: May I be permitted to move it? Mr. President: Yes.

Mr. Satyanarayan Sinha: Sir, I beg to move the amendments which stand in the name of Mr.
Munshi, as permitted by you:

"That in clause (a) of the motion, for the words beginning with 'twelve members' and ending
with 'the single transferable vote, the following be substituted

..."
the following members:

1. The Hon’ble Pandit Jawaharlal Nehru.

2. Mr. Sarat Chandra Bose,

3. Dr. Pattabhi Sitaramayya

4. The Hon’ble Pandit Govind Ballabh Pant,

5. Mr. Jairam Das Daulatram,

6. Sri Biswanath Das,

7. The Hon’ble Sir N. Gopalaswami Ayyangar,

8. Bakhshi Sir Tek Chand,

9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar,

10. Mr. D. P. Khaitan,

11. Mr. M. R. Masani, and

12. Mr. K. M. Munshi."

If you will permit me, Sir, I will move the other amendment also.

Mr. C. E. Gibbon: Sir, on another point of order. When Mr. Munshi, who has given notice of these amendments is not present in the House, can anybody else move them in his absence?

Mr. President: I suppose any one else can move them if permitted by the Chair.

Mr. Satyanarayan Sinha: The second amendment which is in the name of Mr. Munshi and which I move is as follows:

"That the word 'and' at the end of clause

(a) be deleted and at the end of clause

(b) the full stop be changed into a comma and the following be added :-
(c) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members of the Assembly'."

"That the word 'and' at the end of clause

(a) be deleted and at the end of clause

(b) the full stop be changed into a comma and the following be added as a new paragraph:

(c)that the quorum for the committee shall be one-third of the total number of members for the time being of the committee.'."  

Mr. P. R. Thakur (Bengal: General): This is an important Resolution and this Committee which is going to be appointed will consider the subjects that will be reserved to the Centre. My Hon'ble friend, Mr. Rajagopalachariar, did not say anything about the maintenance of peace throughout the country and the prevention of famines. These two things are essential and I say so, because we, Bengalis, are the worst sufferers; we had recently communal rioting in Bengal and there was also famine We asked for help from the Local Government but the Government was not able to give it, and we could not make any appeal to the Centre. Another thing is that when the Interim Government was formed, His Excellency the Viceroy said that this Government would not interfere with Provincial Governments. If the Centre cannot interfere in cases where there is communal disturbance or there is famine, then we will have to consider what will happen to the people of those Provinces. I hope the Committee will take this into serious consideration so that steps may be taken to maintain peace throughout the country and also to prevent famines. Another thing that I want to bring to the notice of the Congress High Command through this

Assembly, is this Somehow or other there is a feeling that this High Command is not sympathetic towards the people of Bengal: they want to have independence at the cost of Bengal. I hope this Committee will consider this aspect seriously so that Bengal may not be affected in future either by famine or by communal disturbances.

Mr. Jaipal Singh (Bihar: General): Mr. President, this is a very imposing list and I personally have no quarrel. I know the names are of eminent men that have been proposed by Mr. Satyanarayan Sinha, but I do feel some concern, now that explanation has been given by Mr. Rajagopalachariar that under (b) the President may add ten more persons to the Committee. That implies that he is leaving room for our absent friends. Had he pointed out that the President would have discretion to nominate members from parties or groups that has been
left out in the twelve names that had already been proposed, I would not have anything to say. Looking at the list, it seems to me that the plan is not for unity but for uniformity. I would have liked to see, for instance, the names of persons like Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh in the list.

The Hon'ble Sri C. Rajagopalachariar: Will you, Mr. President, request the speaker to come closer to the microphone and speak? I am unable to hear him.

Mr. Jaipal Singh: When I shouted yesterday, Pandit Govind Ballabh Pant thought I was being too vehement, and I said to myself I would be a little mellow this morning. But, for the benefit of Mr. Rajagopalachariar. I shall shout despite what Pandit Govind Ballabh Pant may feel. I will raise my voice for Mr. Rajagopalachariar's benefit.

Mr. President: It is not so much shouting that is required as speaking in front of the microphone.

Mr. Jaipal Singh: If there were microphones all around, then I need not come near the microphone, but look at members on all sides, I submit that, when Mr. Rajagopalachariar said that the ten members that the President would nominate subsequently were reserved for our absentee friends, I was concerned that no room had been left to accommodate sections, groups and parties who were not among the twelve people named herein. I know that as far as the fate of my own people is concerned, the temper of this House seems to be, as it has been in the past, that they should be permanently excluded from all the good things of life. This is a very important thing. That is the impression I get; although that may not be true. Less important committees may give us a fair deal-I do not know, but I see no reason why here also some tribal representation could not have been given. I am not moving an amendment, I am only expressing my opinion when I say that I would like to have seen persons of the eminence of Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh on this Committee. I do think that they can render a good service as the twelve members who are named here. I am not moving an amendment, but I am bound to say that I am surprised that Tribal Areas are completely left out of the picture; so are our eminent men whose names I have already mentioned.

Sardar Harnam Singh (Punjab, Sikh): I do not propose to make a speech on this Resolution. But I do want to say that this is not a committee on which communal representation or tribal representation is very, very necessary. This Committee, as the Resolution states, is simply formed for the purpose of understanding the scope of the Union subjects. It is not a committee even for defining the scope of the Union subjects. Therefore, I put before the House that no member of this House should insist on communal or tribal representation. The best men of
this House must come on this Committee to make a report to the House as to the compass and
scope of the Union subjects, and when that report will be before the House, we will be in a
position to make any suggestions that we may like.

Prof. N. G. Ranga (Madras: General): Mr. President I wish to suggest that Dr. Ambedkar's
name should be included in this list, and I appeal to one of the members whose names are
suggested to offer to withdraw in his favour.

The Hon'ble Sri C. Rajagopalachariar: Sir, I would beg of the House to look at it rather from
the point of view which Shri Harnam Singh put before the House than from any other point of
view. After all, if you once more read these names, you will find among them men who are
absolutely non-party men, who have given their time to considerations of issues and drafting
difficulties and people who may more or less be described as experts in the art of bringing
laws into existence. Clause (b) provides that the President may add ten more persons to the
Committee. Now, the President is not invested with this authority for nothing. He is invested
with this power to make up for defects. The President will consider the position when the
Muslim League members, who are now absent, come in. We will know then how the posit-
ion stands. It is not intended really that the President should exercise this nomination power in
an arbitrary manner. He is going to get the opinion of the Muslim League members when they
join and get them to elect their representatives and they will come in.

There is another absent element, the States. The President will consider who will best
represent the States in this particular task and take them in and, if there is room,, I have no
doubt the President will add other eminent constitutionalists who are in the House, some of
whose names have been mentioned and then the Committee will be a strong Committee.
Relying upon this, I ask the House to accept the Resolution as it stands, with the amendments
proposed.

Mr. President: I have now to put this Resolution to the vote of the House. Is it necessary to
read out the Resolution once again? (Hon'ble members: No, no.)

An Hon'ble Member: What about Mr. Ranga's amendment?

Mr. President: Mr. Ranga did not move any amendment, He only made a suggestion. I will
now put the Resolution, as amended, to vote,

The Resolution, as amended, was adopted.
Mr. President: I find on the Order Paper a motion in the names of Shrimati G. Durgabai and Shri M. Ananthasayanam Ayyangar. I understand that they do not propose to move it.

Mr. Satyanarayan Sinha (Bihar: General): I beg to Move the following motion which stands in my name:

"This preliminary meeting of the Assembly do stand adjourned to such day in April as the President may fix."

I may mention, Sir, that at the next meeting of the preliminary Session we will consider the general order of business and also the report of the Union Committee and other matters that may come up before the Assembly.

Sri K. Santhanam (Madras: General): On a point of order, Sir. I do not think it can be left vague like that, because Rule 21 says in the first proviso that the President shall not adjourn the session....

Mr. President: Please come to the microphone.

Shri Mohanlal Saksena (United Provinces: General): I second the motion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I want to point out that there is no necessity for such a resolution. It is the President who is to decide as to when the sitting of the Constituent Assembly should be next held. When the previous session of the Assembly was adjourned, was any resolution passed for this? No. Therefore. I think there is no necessity for this Resolution. The current session of the Assembly is going to be adjourned. You have the right to summon it whenever you find it necessary.]*

Mr. President: According to Rule 21, the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly: Provided further that the Chairman may adjourn the session to the next working day. So, under this Rule the consent of the House is required for adjourning it for more than three days.

Sri K. Santhanam: My point is that the adjournment with the consent of the Assembly should be to a particular date. It cannot be to an indefinite date; otherwise the President gets the
discretion of thirty days, while his discretion is limited to three days. I am not objecting to the motion on merits. Seeing that the Rules Committee have made the Rules somewhat rigid, I do not think it would be right if we do not interpret them correctly.

Mr. President: Rule 21 says that the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly. It is not indicated in the Rule that the adjournment should be to a particular date. All that it says is that if the House is to be adjourned for more than three days, the consent of the House has to be taken.

An Hon’ble Member: Rule 68 gives you ample power.

Mr. President: I think Rule 21 is quite enough.

Mr. H. V. Kamath (C. P. and Berar: General): While I do not object to the Resolution in principle, I desire that it should be more explicit and clear. When we met in December we hoped that the preliminary meeting would be over in that month.... (Hon'ble Members: 'No, no'). We adjourned to January. Now again we are adjourning to April. It means that the preliminary meeting will be going on for over six months. It must be made clear to Hon’ble Members who happen to be absent today that this Assembly resolves that no further adjournment of the Assembly shall be

*English translation of Hindustani speech.*

made. We were eager to get the co-operation of members at the preliminary meeting. We are desirous of getting the co-operation of those who are absent today and we wish that they co-operate with us in the task of constitution-making. But all the same, just because some are absent we cannot go on adjourning the preliminary meeting. I wish that the idea that the meeting shall not be adjourned beyond April and that there will be no further adjournment of this preliminary meeting may be incorporated in the motion.

Mr. President: Do you move any amendment?

Mr. H. V. Kamath: I shall move an amendment if you desire it.

Mr. President: I have no desire in the matter.
Mr. H. V. Kamath: I shall move it.

The Hon’ble Sri N. Gopalaswami Ayyangar (Madras: General): Sir, I beg of you to reconsider the views to which you have given expression already on this matter. I think Mr. Santhanam’s point is quite sound. The operative portion of Rule 21 is:

"The Assembly shall sit on such dates as the President, having regard to the state of business of the Assembly, may from time to time direct........

The next sentence is merely a proviso to that part of the Rule, viz.-

Provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly."

This proviso, I am afraid, Sir, does not give the President the discretion not to fix a date. It only means that the date that he may fix, if it is beyond three days from the date on which we adjourn, requires the consent of the Assembly. But the fixing of the date, I am afraid, is obligatory. In order to avoid possible legal or other difficulties, I suggest that we may fix a date in April for this proviso.

Mr. President: A point of order has been raised on it and I have given my ruling. I do not think it is necessary that at the time we adjourn, I should fix the date. I may fix the date even later. That is what has just now been suggested.

The Hon’ble Sri C. Rajagopalachariar: The leave of the House being taken for adjourning beyond three days, the President shall have the power from time to time to fix any date beyond three days.

Mr. H. V. Kamath: By your leave, Sir, I move that after the word 'fix', a comma be inserted and then the following words added, "and no further adjournment of the preliminary meeting of this Assembly shall be made."

Seth Govind Das: *[Mr. President, I oppose the amendment put in by Mr. Kamath. Conditions constantly change. Today we think that we should not adjourn this preliminary session of the Assembly beyond April. But if at that time we feel that the session should be adjourned further we will not be able to do so because of the binding of such a resolution. The amendment is unwise, and, therefore, I think we should accept the Resolution moved by Mr. ]
Satyanarayan Sinha. We should not fix any date for the next sitting of this Assembly in April nor should we undertake that it will not be adjourned in future. Therefore, I oppose the amendment moved by Mr. Kamath.*

Mr. President: Does anyone else wish to speak?

Hon'ble Members: No.

Mr. President: Mr. Satyanarayan Sinha, do you wish to reply?

Mr. Satyanarayan Sinha: When the Resolution was drafted, we took an aspects of the question into consideration and decided not to make

* [ ] * English translation of Hindustani speech.

any mention about whether or not there will be any occasion to summon any further meeting of this Preliminary Session. I appeal to Mr. Kamath to withdraw his amendment. I do not think any purpose will be served by his insisting on this amendment.

Mr. H. V. Kamath: The position as it stands......

Hon'ble Members: Order, Order.

Mr. H. V. Kamath: I am going to withdraw the amendment.

Mr. President: I now put the Resolution to vote.

The motion was adopted.

CONGRATULATIONS TO VICE-PRESIDENT

Mr. President: This brings us to the close of our business. There is a suggestion made by some friends that we should give an opportunity to members to congratulate Dr. Mookherjee on his election as Vice-President. I desire to offer him my congratulations in the first place before anybody else does. Does anyone wish to speak?

Rev. Jerome D'Souza (Madras: General): Mr. President, I have very great Pleasure in offering-I am sure in offering them I am also voicing the sentiments of this Hon'ble House-our sincere congratulations to Dr. H. C. Mookherjee on his election to the Vice-Presidentship
of this august Assembly. Dr. Mookherjee is one who has gained the esteem of all the sections
and communities of our land. He has been associated very closely with meritorious work as
an educationist in Bengal. He belongs to a Christian body which has worked in close
 collaboration with other Christian bodies. His judgment, his patriotism, his amiable and
attractive manners are known to all, and I am sure, Sir, that, if the occasion should come for
him to direct the proceedings of this House, he will do it in a manner, I will not say brilliant,
but in a way which will be in keeping with the manner which you, Sir, have set up as a
tradition. I do not wish to take the time of the House more on this matter. Once again, with
our hearty congratulations to Dr. Mookherjee, I offer him our good wishes for his success in
this work.

Sri Biswanath Das (Orissa: General): Sir, I offer my hearty congratulations to Dr. H. C.
Mookherjee on his election to the Vice-Presidency of the Constituent Assembly. Dr.
Mookherjee richly deserves this place. His election goes to prove that the minorities need not
have any apprehensions in their mind about the majority communities. His election is an
honour done to the minorities as also to Bengal. As President of the All-India Christian
Association, I know several attempts were made to drag him into the field of communalism.
He has all along resisted those attempts and resisted them successfully, I have no hesitation in
saying that he will carry out this tradition and make his office a success. We on our part will
give him full co-operation. I wish him goodspeed.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I congratulate Dr.
Mookherjee. I represent the community known today as Harijan. They are approximately
ninety millions in India. On behalf of this community I offer my congratulations to Dr.
Mookherjee. I hope he will render much help in the deliberations of the Assembly and tackle
all problems that may arise. With these words, I conclude my speech.]*

Dr. Joseph Alban D'Souza (Bombay : General): Mr. President, I
endorse every word that has fallen from my Hon'ble friend Reverend Jerome D'Souza, in
what he has expressed in connection with the appointment of

*English translation of Hindustani speech. *

Dr. H. C. Mookherjee as Vice-President, the first Vice-President amongst the five Presidents
that would be appointed in the near future to this great Assembly. Sir, I may be pardoned if I
connect Dr. H. C. Mookherjee particularly with the community to which I belong at present, the Indian Christian Community of this great nation. I think and I feel, Sir, that the appointment of Dr. H. C. Mookherjee is really an honour conferred upon the Indian Christian Community of India.

Sir, may I refer on this occasion to the Advisory Committee representation of the Indian Christians? We have adequate representation in that Committee and I am looking forward to Dr. H. C. Mookherjee to grant to that section of the Advisory Committee every assistance and aid in order to put through the affairs of the Indian Christian Community section to the best of his ability and to the satisfaction of the entire Indian Christian Community of this great nation. As Father Jerome has already informed you, his acquirements have been very great indeed. In the Province of Bengal, he has shown that in matters of statesmanship and in every other direction he is a luminary in that section of India.

Sir, it is quite possible that he might have one day to preside over the deliberations of this House and as Father Jerome has said it, I am sure, if it comes to that, he will do his duty as well, Sir, as you have had the honour of doing it during the time this Assembly has been in action. I congratulate Dr. H. C. Mookherjee, and in congratulating him, I say once again, that I congratulate the Indian Christian Community for the honour that has been conferred upon it. Thank you very much.

Mr. H. C. Mookherjee (Bengal: General): Mr. President, Ladies and Gentlemen. I trust that you will accept in advance an apology because I am going to place before you a history of the way in which from a Christian Communalist I became a Christian Indian Nationalist. It was merely an accident that brought me into politics. It was a case of zid and nothing else. Some people had egged me to seek election, but at the last moment deserted me and I was determined to show that though I have been a school-master all through my life, it was possible for a schoolmaster to be a better man than the black-mailing voter. It so happened that the gentleman against whom I was fighting was a more experienced man with a longer record of service to the community than myself. It was a case of zid and nothing else. Some people had egged me to seek election, but at the last moment deserted me and I was determined to show that though I have been a school-master all through my life, it was possible for a schoolmaster to be a better man than the black-mailing voter. It so happened that the gentleman against whom I was fighting was a more experienced man with a longer record of service to the community than myself. It also happened that in those days it was more profitable to appeal to communal than to national feelings. I admit with a sense of the deepest shame that I dabbled with the matter. He appealed to communalism. I appealed even more strongly to communalism and that is how I got into politics. But when as President of the All-India Council of Indian Christians the members requested me that I should go and visit poor Christians it was then and then only that I found out that the cause of the 'poor Christian Indian was no better than the cause of the equally poor Hindu Indian and the equally poor Mussalman Indian. It was then that from a Communalist I became a nationalist and if
today you have done me the honour of putting me into the position of the Vice-President. be sure that while I am there. I shall not act as a communalist, but I shall remember the duty which I owe to the poor masses of my country. I am not a lawyer. I am not even a politician, Forty-two years of my life have been Passed as a teacher or as a student. I do not know whether I am qualified to discharge the duties with which you have entrusted me but I do know one Win. that I shall try to do it honestly and thereby I hope to add to the dignity of the House and add to the reputation of my community, which has hitherto had at least one thing in its favour. and that is, that It has never stood directly or indirectly against the political progress of my country. (Loud cheers).

MR. S. LAHIRI'S LETTER TO THE PRESIDENT

Mr. H. V. Kamath: Mr. President, Sir, before we bring our business to a close, permit me to invite your attention to the fact that several of us have received copies of a letter addressed to you by my Hon’ble friend, Mr. Somnath Lahiri. I submit, Sir, that we are not here concerned with the politics of the Indian Communist Party, with which most of us are at variance.

Sardar Harnam Singh: On a point or order, Sir, the Resolution proposed by Mr. Satyanarayan Sinha that the House stands adjourned to -some day in April has been passed. Therefore, no work can be done now.

Mr. President. I have permitted Mr. Kamath to place before the House one fact which needs to be brought to the notice of the House. Some days ago, I received a letter from Mr. Somnath Lahiri, in which he Complained that his house had been searched and papers relating to the proceedings -of this Constituent Assembly and the notes which he had prepared for his speeches here have been seized by the Police and he raised the question of privilege whether that kind of, action was justified or whether I could do anything to protect him. That. is the matter which he is now mentioning. Therefore I permitted him to mention the matter. The fact is that after receiving the letter, I referred it to the Constitutional Adviser because it involves a question of law and I received his note only this morning, which I have not yet been able to study So I have not been able to make up my mind as to what steps can be taken or need be taken in this matter. I shall consider this matter when I have studied that and if any steps are called for, I will take those steps and if I find that I have no power, I will leave the matter there.
Mr. Somnath Lahiri (Bengal: General): May I remind you, Sir, that you are not only the President of this Assembly, but also a Member of the Interim Government? Mr. President: In this House, I am nothing else.

The House will now stand adjourned to such date in the month of April as I may fix later on.

The Assembly then adjourned to such day in the month of April as the Hon’ble the President might fix.
Monday, the 28th April 1947

The Third Session of the Preliminary Meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THEREGISTER

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

1. Sir Brojendra Lal Mitter (Baroda).
2. Mr. Gopaldas Ambaidas Desai (Baroda).
3. Mr. P. Govinda Menon (Cochin).
5. Sir V. T. Krishnamachari (Jaipur).
6. Pandit Hiralal Shastri (Jaipur).
7. Mr. C. S. Venkatachar (Jodhpur).
8. Mr. Jainarayan Vyas (Jodhpur).
9. Sardar K. M. Panikkar (Bikaner).
11. Mr. Lal Yadhendra Singh (Rewa).

14. The Hon'ble Dr. Kailash Nath Katju (U.P.: General).

15. Professor K. T. Shah (Bihar: General).

16. Mr. Mahavir Tyagi (U.P.: General):

17. Mr. Upendra Nath Burman (Bengal: General).

18. Mr. P. M. Velayudapani (Madras: General).

PRESIDENT'S ADDRESS Mr. President: We are meeting just three months after the last session of the Assembly. In the meantime some important events have happened to which I consider it necessary to make a short reference. Before doing that I have to give to the House the sad news of the death of three of our Members:

1. Raja Maheshwar Dayal Seth from U.P.

2. Sir Azizul Haque from Bengal, and


The death of the last named gentleman has come as a shock because of the tragic circumstances in which it took place. I understand that he was on his way to attend this Session of the Assembly and the railway compartment in which he was travelling caught fire as a result of which he lost his life. I seek the permission of the House to convey to the members of the bereaved families our sympathy with them in their bereavements.

I may on behalf of the House be permitted to extend a cordial welcome to the representatives of the States who are Attending this Session and I hope representatives of other States will also be coming soon to assist in the great work which this Assembly has undertaken. I need hardly point out that the tremendous task in which we are engaged requires and expects assistance from all sons and daughters of this country whether they are living in States or in British India and whether they belong to one community or another. The future of the country very largely will depend upon the Constitution which we are able to frame and not only the people of this country but people all over the world are watching our efforts with interest not unmixed with anxiety and it is up to us, to whatever class or community and whatever part of India we belong, to make our contribution towards the accomplishment of this task.
News has come from our neighbour and erstwhile partner Burma that a Constituent Assembly has been elected there with objects similar to our own. May I on behalf of the House convey to that august body our greetings and good wishes and our great interest in the accomplishment of the task and the attainment of the object of a free Burma that the people of that country have before them?

Since we met last the British Government have declared their intention to transfer power to Indians by June, 1948. This has naturally added urgency to our work and we must proceed in a business-like way to draw up our Constitution in, as short a time as we can. The British Government is pledged to take preparatory measures for transfer of power in advance and while this is being done on one hand, we must be ready with our Constitution well in advance of the date-line to assume responsibility in accordance with the Constitution framed by us. I am, therefore, hoping that the Assembly will proceed with all expedition. There are undoubtedly difficulties which the Assembly will have to face but if we proceed with determination we shall be able to conquer them.

It will be recalled that the Assembly appointed several Sub-Committees. The Reports of four of these Committees will, I understand, be placed before the House in due course. I suggest that the Assembly should proceed to appoint Committees to formulate the principles on which the Constitution to be framed will be based and when those principles have been approved the work of drafting the Constitution could be undertaken by a suitable agency and finally the Constitution so drafted could be considered in detail by this Assembly. My suggestion to the Assembly will be that the Sub-Committee for framing the principles should be asked to submit its report in time for consideration by the Assembly some time in June or July and after the report has been considered by the Assembly, the drafting could be done and the Assembly itself could meet in September and finalise the Constitution by the end of October. This is roughly the time-table as the Order of the Business Committee and I envisage it. It is necessary that the Constitution should be finalised as early as possible so that there may be time thereafter for the process of transfer to be completed within the time fixed by the British Government. What I have suggested is tentative as developments are taking place and no one can say for certain what steps the Constituent Assembly may have to take to fulfil its functions. We have already defined our objective and the Constitution that has to be framed will naturally have to conform to it.

Whatever the nature of the Constitution that may have to be drafted whether for one undivided India or only for parts of it, we shall see to it that it gives satisfaction to all coming under its jurisdiction. While we have accepted the Cabinet Mission is Statement of 16th May
which contemplated a Union of the different Provinces and States within the country, it may be that the Union may not comprise all the Provinces. If that unfortunately comes to pass, we shall have to be content with a constitution, for a part of it. In that case we can and should insist that one principle will apply to all parts of the country and no constitution will be forced upon any unwilling part of it. This may mean not only a division of India but a division of some Provinces. For this we must be prepared and the Assembly may have to draw up a constitution based on such division. Let us not be daunted by the immensity of the task or diverted from our purpose by developments which may take place but go ahead with faith in ourselves and the country which has sent us here. I understand some members would like to say a few words. I request Sir B. L. Mitter to begin.

Sir Brojendra Lal Mitter (Baroda) : Sir, I thank you for the cordial terms in which you have welcomed us, the representatives of the States who are here today. I wish-more had come in. I have every hope, however, that at the next Session, few of the States' seats will remain unoccupied. Sir, the Baroda Delegation has suffered a serious loss by the tragic death of one of its members who was on his way to the Constituent Assembly.

Sir, this-Assembly is framing the Constitution of Free India. We, the States, are an integral part of India and we shall share the freedom with British India. We, therefore, want to share the responsibility of framing the Constitution. (Hear, hear).

We are hereby right of being Indians and not by sufference. We claim that we are in a position to make substantial contribution to the common task. A hundred and fifty years of unitary British rule has resulted in a measure of uniformity in British India, but in the States there is still a great variety. Some States are as advanced as British India, where the people are associated with the administration. Some are absolute monarchies. Some are feudal and some are primitive. All these have to be fitted into the Indian Constitution, because our

93 millions of population are included in the Indian total of 400 millions. We do not want to disturb the main design, as indicated in the first Resolution of this Assembly; but we want to introduce a variety in the pattern so that we may fit into it according to our capacity.

We want unity in diversity. I appeal to our British Indian colleagues to exercise a little patience with us. We want to march along with them but the pace has to be regulated without impeding the forward move. We are at one with you in that the Indian Union should be strong in the Centre so that India may hold her head high in the comity of nations. We do not believe in isolated independent existence, which can only weaken the Union. We shall join you wholeheartedly in a spirit of co-operation and not in any spirit or securing special privileges at
the cost of the Union. We shall endeavour to make the Constitution develop according to the genius and capacity of the different units, so that the development may be natural and healthy.

Sir, I thank you again.

Sardar K. M. Panikkar (Bikaner) : Mr. President, Sir, following what Sir Brojendra Mitter has so very eloquently said, I also, on behalf of the representatives of States who have joined and taken seats today, wish to express our thanks to you, Sir, for the welcome you have extended to us. This was indeed the day to which we have been looking forward. It is a dream which has come true, for at no time in India’s history has a representative gathering of people who can speak on behalf of the whole of India met and taken counsel. There have been occasions in the past when sections of India have met. We in the States have also been meeting frequently; but never in the history of India, so far as I can remember has there been an occasion when representatives from all parts of India have met together in order to decide their future. Therefore, I consider that the taking of seats of certain representatives of Indian States today has a symbolic value which far outweighs the actual number of representatives who have joined, or the insignificance of members who have themselves joined. This is indeed a symbol of the unity to come and from the work that begins today, in co-operation between the representatives of the States and those of the Indian Provinces, we can really hope to look forward to the emergence of a Union of India.

Before I proceed to any other matter, I must say a few words of thanks to the work of the Negotiating Committee which made it possible for us to come and sit here. No doubt a Report of that Committee’s work will be made to you in a few minutes and it is not for me to say anything about it, but this much I think I might say that, but for the wisdom, courage and vision with which your representatives approached the question of Indian States, it would not have been possible for those of us who desired from the beginning to actively associate themselves with this work to take our place here. Therefore, on behalf of those of us who are here, I must thank the Negotiating Committee for having made this possible. It is true that we represent only a certain number of States. All of us who represent 93 millions in Indian States have not come here today. But one thing I should like to say, that we are by no means an insignificant minority. We, who have come here, represent no less than 20 million people out of 93 million people of Indian States and those who have formally and publicly announced their intention of joining the Constituent Assembly, form more than another 10 to 15 million people, so that actually when we come to think of it, a very substantial portion of the people of Indian States are represented in the Constituent Assembly today.
I should like to say one thing here and now, that we are not here by any means as a result of coercion or of any pressure that has been placed upon us. There has been no occasion for any pressure or any force to be used in regard to the States. This is a voluntary association that has been made clear from the very beginning. Any person, however highly placed who declares that our presence here is due to coercion or undue influence, I think, speaks without knowledge of facts. To such precious gentlemen, as would advise us to pause on account of alleged coercion, I have to say clearly and unequivocally that their insinuation is an insult to our intelligence. Are we less patriotic in matters connected with India ? Are we less concerned with the future of India that we have to be coerced to take part in a cause in which it is our right and duty to take part ? Therefore, I want to say firmly here and now, that there has been no -coercion and it will not be in the wisdom of things or in the interest of things to talk about coercion of one part by the other.

One other point I desire to say. It is not by way of controversy or anything of the, kind. We are not here as a matter of favour. We have a right to be here for the purpose of co-operating in the great task of organising India's freedom. We consider that we have as much right in that matter as any one else. We are indeed asked by some people to wait and see. This is indeed a, strange doctrine, because we can only wait and see what happens to others.. Are we to wait and see as indifferent observers what happens to ourselves ? That being so, we consider that organising India's freedom as much our duty as it is of others. Looked at from that point of view, where can be no question of our waiting and seeing. We want no favour nor do we want to confer obligations. All that we want is that our problems should be viewed sympathetically by this august body in a sense of friendliness as affecting a -large part of India. We, on our part, promise in all humility, to work for the betterment of India and for the Union which we all desire to see established. Sir, I thank you.

Mr. P. Govinda Menon (Cochin) : Mr. President, I am happy in that I have been invited to take 'part in the deliberations of this historic Assembly. During the last. few months, discussions, controversies and negotiations were going on as to whether Indian States should send their representatives to this Assembly; if so, when and how ought they to be selected ? Much of this could have been avoided and the question 'would have been a most simple one if the question was tackled from the correct perspective, namely, from the perspective of the people of the Indian .States.

They had never any doubts in the matter. The hundred millions of people of the Indian States never felt nor do they feel now, that they form an entity or group different from their 300 million brothers and sisters living in what is known as British India. For the last 27 years
under the leadership of Mahatma Gandhi and other great leaders, India had been fighting for her independence. In that fight the people of the Indian States have always taken their due share. The people of the States did not feel nor did they take up the attitude that their lot lies elsewhere.

Now, after 25 years of war, when the nation sits down to frame the future Constitution we feel that it is our duty and our right to participate in the deliberations therefore. The people of the States, Sir, are one in their desire to participate in the Constituent Assembly.

Objections, doubts, questions come not from the people. They come when they do from Dewans, Ministers, Rulers, who by no means, except under the theory of Divine Right, can represent the people. Let me hope, Sir, that before the next Session of the Assembly, all the States would have taken the firm decision to collaborate with all of us and would send their representatives to this House.

In the matter of joining this Assembly as in many other matters, the attitude of my State, Cochin, has been unequivocal from the very beginning. The people of Cochin, like the people of all other States, wanted from the very beginning to join this Constituent Assembly and desired that their representative or representatives shall be elected. Cochin has been fortunate in that her Ruler has been of the same view. Long before questions of States' representation in this Assembly began to be actively considered, on the 29th July, 1946, the Maharaja of Cochin in a message to the Legislative Council said as follows:

"The Only other point remaining to be considered is about the Constituent Assembly and the representation of Cochin in it. It has not been settled yet how many representatives Cochin could send to this Assembly However, to set at rest all doubts about the method of representation, I am glad to announce that, after mature consideration, I have decided to allow the people to elect their representative or representatives. This election will be by the Council."

The above statement was made at a time when the question of States representation had not begun to be actively considered. No State had then said that it would stand independent and would have nothing to do with the Indian Constituent Assembly. Recently some such statements have been made. Cochin's position remains unchanged even after such attractive doctrines have been dangled before her. Her reaction cannot better be expressed than in the
words of the Maharaja himself who, while opening the Aikya Kerala Convention at Trichur the day before yesterday, said as follows: -

"Now let me come to the question of Cochin's relation to the rest of India. This Convention has met here for considering ways and means of establishing United Kerala. The Travancore Government has said that it does not favour this idea and has declared its intention of assuming independence after June, 1948. Its relations with the Central Government are going to be governed by Treaties. You would like to know in these circumstances what Cochin's attitude is in this respect. I have no hesitation to declare that Cochin would continue to remain part of the mother country. It is joining the Constituent Assembly at one. No word or act of mine shall usher in a day when a Cochinit finds, he has lost the right to call himself an Indian."

Because we are Indians, Sir, and because we want to share in the destinies of this great country, we have with pleasure and gratefulness accepted your kind invitation to take part in the deliberations of this historic Assembly. Sir, I thank you.

Sir T. Vijayaraghavachariar (Udaipur): Sir, I am glad to find myself in Delhi today. The old saying was that Delhi is at a great distance. I never felt the truth of it until this occasion. Previously I found Delhi so very near but on this occasion I find it has been very far and I am glad I am able to find myself here today, and I am glad that I am here today on a historic occasion. Cold as the winds that blow in December in Simla, and hard as flint like the rocks over which aeroplanes fly over the Baluchistan hills towards the west, must be the heart of the Indian who is not thrilled today at this sight of this Assembly, the Assembly which I feel certain will go down in history down the corridors of time. My feeling is that though we may come from different provinces and different States we are not here on behalf of any particular part of India; we are members of all India and that is quite clear. It is in that spirit that I feel certain that we shall all do our work here, not on behalf of any parochial interests, not on behalf of any narrow sectarian interests but on behalf of the broad interests of the one nation of India. I do not propose to refer to any local problems here; our local problems ought to be solved locally. This place is for all-India problems, and I do hope that all of us will so put our heads together and so do our work that our children and our grand-children and generations yet unborn, will. say, "Our fathers and our grand-fathers sat in the year 1947 at Delhi and framed a constitution which has stood the test of time", and on which history will say, "Blessed are these men; they did their work and they laid the foundations rightly, and on those foundations will the future history of India evolve". It is not for us here to take any narrow views; we will take large views, and
let us so conduct ourselves that in the future history of India they will say that we did our work properly and that we acquitted ourselves like men, like true sons of India and not true sons of any particular part of India.

I thank you, Mr. President, for the very kind words of welcome you have uttered.

Mr. Jainarayan Vyas (Jodhpur) [Mr. President, on behalf of the people of the States and in their own language, I thank you for the welcome you have accorded to the representatives of the States.

We, the subjects of the States, had some status up to 1933, for in that year the Government of India Bill did refer to us in the expression 'The Princes and their subjects. Unfortunately, after that our existence was ignored. No mention of the States subject was made in the Government of India Act of 1935. When Sir Stafford Cripps came to India we were again forgotten. Nor were we referred to in the Cabinet Mission Proposals. We were placed under such circumstances as would have prevented us from sitting and working in this Assembly with you unless the Princes and their Governments decided to associate us with themselves. It is a pleasure that we are today making history. We are sitting together with (the representatives of) the British Provinces and the representatives of the Rulers (of the Indian States). Had not our Rulers come forward to include us among the States Representatives or had not the Negotiating Committees insisted on our being represented (in the Assembly) it was very likely under the conditions in which we were placed at the time that we would not have been here (in the Constituent Assembly). But it is a pleasure to find that we are here in sufficient numbers with you; and we assure you that we will co-operate with you in all possible ways in making the future Constitution, not merely in our self-interest but in that of the whole of India. We consider ourselves as parts of India, although some outsiders had raised walls between us. But these unnatural walls are crumbling today, and we hope that within a short time India would be absolutely one single unit. Once again, I thank you.]

Raja Lal Shiva- Bahadur (Rewa) : Sir, I join my friends in thanking you for the very cordial welcome you have extended to us. I represent one of the very big States in Central India, and if the Rewa State had not taken the lead, Central India would have gone unrepresented. I hope, Sir, in a very short period my friends in other States and our neighbouring States will -
definitely decide to join this historic House. The Rewa State will not lag behind in rendering all possible service to the mother country.

I thank you Sir

MESSAGE OF GOOD WISHES FROM COORG

Mr. President: The Coorg Legislative Council have passed a Resolution which has been communicated to me by the Chief Commissioner, Coorg, for being communicated to this House. I will read it:

"That this Council resolves to offer its prayerful wishes to the President and Members of the Constituent Assembly of India for the speedy and successful termination of their efforts to prepare an agreed constitution for India and recommends to the Chief Commissioner that these wishes be conveyed to the President of the Constituent Assembly, New Delhi."

REPORT OF THE STATES COMMITTEE

Mr. President: The next item is the Resolution which will be moved by Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move

"The Constituent Assembly, having taken the report of its States Committee into consideration, resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

I understand that copies of the Report have been circulated to all the Members; I shall not therefore take up the time of the House in reading that Report. That Report is a brief summary of the activities of the Negotiating Committee appointed by this House. We have tried to make it as precise a summary as possible and it shows what took place and what we did, so that the House may be acquainted with the procedure we adopted and all that was said on those occasions. I might add, however,
that if it is the wish of the House and if Members desire to see a fuller report of our proceedings, there is a verbatim Report in existence and this Report can be consulted in the Library of the House. I say this because sometimes all manner of rumours get about and people are misled and sometimes people imagine that we are not trying to put all the facts before the public. We have nothing to hide in this matter; indeed we could not possibly do so from this House; and therefore the verbatim Report of everything that was said on the occasions that we met with the Negotiating Committee, of the Princes is available for reference to any Member of the House in the Library. It is too long a report for us to have it printed and circulated, nor is it normally desirable to have such reports published in the public press. But there can be no secret as between the Committee of this House and the Members of this House, and therefore, while that document is not meant for publication, I should like to remind the Members, that it is there to be consulted by any Members of this House in the Library.

The House will remember that this Committee was appointed for a specific purpose-for fixing the distribution of seats of the Assembly not exceeding 93, and for fixing the method by which the representatives of the States should be returned to the Assembly. These were the definite directions given to us and we proceeded accordingly, but when we met the negotiating Committee appointed by the Chamber of Princes, other questions were raised. We were confronted by various Resolutions passed by organizations of the Princes. We informed them that we had no authority to deal with any other matter Our authority was limited to dealing with these two specific matters. Indeed we went a little further. We said we rather doubted the authority even of the Constituent Assembly to deal with all manner of other matters, that is to say, the Constituent Assembly as it is constituted at present. But in any event we were so anxious to get going, so anxious to remove any misapprehensions that might exist, that some of us had further conversations with them and some doubts that they raised were removed in the course of those conversations; some questions that were asked were answered informally, personally if you likes on our behalf because it was not open to us to go beyond the terms of the mandate that you gave us. You will see a reference to that in the Report that is presented to you, in particular because-I am bound to make this point perfectly clear-a few important points were raised by them in the course of those discussions. As it happened, what I said in reply to those questions had more or less been said by me in this House before or by other Members of this House, and therefore, I had no difficulty in saying it to them because otherwise I would have had this great difficulty of saying anything which the House might not approve, or might disapprove as wrong. All of us have certain views in
this matter and on one of the occasions when I addressed this House in connection with the Objectives Resolution, I referred also to the States and to the Princes and made it clear that while I, in my individual capacity, held certain views, those views did not come in the way of my stating what the Constituent Assembly stood for, and what its range of activities was going to be. I said then that, while we were deciding in favour of a Republic for the whole of India, that did not bar any State from continuing the

monarchical form of Government so far as that State was concerned, provided, of course, that they fitted in the larger picture of freedom and provided, as I hope, that there was the same measure of freedom and responsible government in the State. So when these questions were raised. I had no particular difficulty in answering them because in effect they had been mentioned in this House previously.

What were those questions? First, of course, was it wag an unnecessary question as to the scope of our work, that is to say, how far we accepted the Cabinet Mission's Statement of May 16, 1946. We have accepted it, and we are functioning in accordance with that Statement. There the matter ends. I do not know what future changes may take place and how these changes might affect our work. Anyhow, we have accepted that Statement in its fullness and we are functioning accordingly.

That leads inevitably to another conclusion, viz., that such subjects, as did not come within the scope of the Union, were subjects to be dealt with by the Units—by the States and the Provinces—and that has been clearly laid down in the Cabinet Mission's Statement. So we said there and we made that clear. What the Union subjects might or might not be is a matter for careful consideration by this House now. But any subjects which did not come within the scope of the Union subjects necessarily are subjects left over to the Units.

Further it was stated that the business of joining the Constituent Assembly or accepting the Scheme or not accepting it was entirely their own. As Mr. Panikkar has pointed out, there was no coercion, there can be no coercion either to a State, a Province or to any other part of India, which is participating in this Assembly. There can be no coercion, except, of course, the coercion or compulsion of events and that is certainly a compelling factor and a very big factor which none of us can ignore. So there is no question of compulsion; but at the same time it is true that if certain units or parts of India decide to come in, accepting their responsibilities, they get certain privileges in return, and those who do not come in do not get those privileges as they do not shoulder those responsibilities. That is inevitable. And once that decision has been taken by a Unit, State or other, other consequences inevitably follow, possibly widening the gulf between the two: that is the compulsion of events. Otherwise it is
open to any State to do as it chooses in regard to this matter of coming in or not coming in. So that matter has been made clear.

The only other important matter that was raised in this connection was the monarchical form of Government in the States. As I stated in this House previously, in the world today this system of rule by monarchy, whatever good it may have done in the past, is not a system that might be considered to be popular. It is a passing institution: how long it will last I do not know. But in this matter my opinion is of little account. What counts in what this Assembly desires in this matter: what it is going to do: and we have made it clear on a previous occasion that we do not wish to interfere in the internal arrangement of the States. It is for the people of the States to decide what they want and what they do not want. The question, in fact, does not arise in this Assembly. Here we are dealing with Union matters, subjects of fundamental rights and the like. Therefore this question of the monarchical form of Government in the States did not arise here and I told them that so far as we were concerned we were not going to raise that particular subject here.

Lastly, there was the question or rather the misapprehension due to certain words in the Objectives Resolution of this Assembly, where some reference has been made to territorial boundaries being changed. The House will remember that that had no connection with the States as such. That was a provision for future adjustments as they are bound to be Involved. Further it was a provision for suitable units to come into existence, which can be units of this Indian Union. obviously one cannot have very small units or small fractions of India to form part of the Union. Some arrangement has to be made for the formation of sizable units. Questions arise today and will arise tomorrow even about the division of Provinces. There is very, strong feeling about it. We are discussing today, though for other reasons, about the division of certain Provinces like the Punjab and Bengal. All these have to be considered but this has nothing to do with the provision in the Objectives Resolution. The point has been settled in the Negotiating Committee that any changes in territorial boundaries should be by consent.

Those were the statements I made on behalf of our Negotiating Committee to the other Committee and those statements removed a number of misapprehensions and we proceeded ahead with the consideration of other matters.

Among the other matters was, firstly, the question of the distribution of seats. We decided to refer this matter to the two Secretariats-the Secretariat of the Constituent Assembly and that of the Chamber of Princes. We referred this matter, I think, at 1-30 P.m. one day. Those two
Secretriats met, I think, at 3 Pm. the same day and 5 P.m. they arrived at an agreed procedure. That was rather a remarkable thing which is worth remembering. It is true that the rules governing the distribution were to some extent laid down in the Cabinet Mission's Scheme—one seat per million, that is, 93 seats in all. Unfortunately these matters of distribution are difficult and often arouse great controversies and arguments. Nevertheless these two Committees met together and I am very glad that the Secretariat of the Constituent Assembly was helped by the representatives of the States to come to an agreed solution within two hours. That showed that if we approach any of these apparently difficult problems with good will, we find solutions and we find rapid solutions too. I do not mean to say that that solution in regard to the distribution of these seats was a perfect one. Since the agreement was reached certain objections have been raised and criticisms have been made in regard to the grouping of the States here and there. Ultimately we left it to a sub-Committee—a joint Committee of our Negotiating Committee and the States Negotiating Committee—to consider this matter and to make such minor alterations as they thought fit and proper. Now because of these grouping difficulties, a number of States, which might be represented here, are not here. That is to say, the States concerned want to come in and they are quite prepared to do so but the group has not begun to function. Therefore individually they are prevented from coming in. Only yesterday I was informed that one important State, the State of Cutch, was eager and anxious to come in but they formed part of a group of Kathiawar and other States, rightly or wrongly, and till the whole group gets into motion, they do not know how to come in separately. This is a matter to be considered by the subCommittee. But the point I want to put before the House is this that in this matter as soon as we came to grips with the subject and gave up talking in vague generalities and principles or rights of this group and that group, we came to a decision soon enough and that is a good augury for our work in future, whether it relates to the people of the States or to the rest of India or to any group in India.

We, who meet here, meet under a heavy sense of responsibility—responsibility not only because the task which we have undertaken is a difficult one or because we presume to represent vast numbers of people, but because we are building for the future and we want to make sure that that building has strong foundations, and because, above all, we are meeting at a time when a number of disruptive forces are working in India pulling us this way and that way, and because, inevitably and unfortunately, when such forces are at work, there is a great deal of passion and prejudice in the air and our whole minds may be affected by it. We should not be deflected from that vision of the future which we ought to have, inthinking of the present difficulties. That is a dangerous thing which we have to avoid, because we are not building for; today or tomorrow, we are making or trying to
make a much more enduring structure. It is a warning which the House will forgive me, if I repeat--that we must not allow the passion and prejudice of the moment to make us forget what the real and ultimate problems are which we have to solve. We cannot forget the difficulties of the present because that come in our way all the time. We have to deal with the problems of the present, and in dealing with them, it may be, unfortunately that the troubles we have passed through all these years may affect us, but, nevertheless, we have to get on. We have to take quick decisions and final decisions in -the sense that We have to act on them. We have to be realists and it is in this spirit of realism, as also in a spirit of idealism, that I say that our Negotiating Committee approached this task.

The House knows that some of the members of the Committee have been intimately associated with the struggle of the peoples of the States for their freedom. The more I have been associated with that struggle, the more I have seen that it cannot be separated from the all-India problem; it cannot be isolated. It is an essential and integral part of the all-India problem, all-India structure, just as the States are an integral part of India. You cannot separate them. And with all my anxiety to further the progress of the peoples -of the States with such strength as is in me in my individual or other capacities, when I met the Negotiating Committee I had to subordinate my individual opinions because I had to remember all the time that I was representing this Constituent Assembly. I also had to remember that, above all, we had gone there not to bargain with each other, not to have heated argument with each other, but to achieve results, and to bring those people, even though they might have doubts, into this Assembly, so that they might come here and they might also be influenced by the atmosphere that prevails here. For me it was the solemnity of the task which we had undertaken, and not to talk in terms of results, or individuals or groupings, or assurances. What assurance do we seek from each other ? What assurance is even this House going to give to anybody in India, except the assurance of freedom ? Even that assurance will ultimately depend on the strength and wisdom of the Indian people afterwards. If the people are not strong enough and wise enough to hold together and proceed along the right path, the structure that you have built may be shattered. We can give no assurance to anybody.

With what assurance have we sought freedom for India all these years ? We have looked forward to the time when some of the dreams that we were indulging in. might become true. Perhaps, they are coming true, perhaps not exactly in the shape that we want, but, nevertheless, they will come true. It is in that conviction that we have proceeded all these years. We had no guarantees. We had no assurances about ourselves or about our future. Indeed, in the normal course of events the only partial guarantee that most of us had was the guarantee of tears and troubles, and we had plenty of that. It may be that we shall have plenty
of that in the future too; we shall face them. This House will face it and the people of India will face it. So, who are we to give guarantees to anybody? But we do want to remove misapprehensions as far as possible. We do want every Indian to feel that we are going to treat him as an equal and brother. But we also wish him to know that in the future what will count is not so much the crown of gold or of silver or something else, but the crown of freedom, as a citizen of a free country. It may be that a time may come soon when it will be the highest honour and privilege for anybody, whether he is a Ruler or anybody else, to be a free citizen of a

free India and to be called by no other appellation or title. We do not guarantee because we guarantee nothing to anybody, but that is the thing which we certainly hope to achieve and we are certain to achieve. We invite them to participate in that. We welcome those Who have come, and we shall welcome those others when they come. And those who will not come—we shall say nothing about them. But, as I said before, inevitably, as things are, the gulf will widen between those who come and those who do not come. They will march along different paths and that will be unfortunate I am convinced that, even so, those paths will meet again, and meet sooner rather than later. But, in any event, there is going to be no compulsion. Those who want to come, will come, and those who do not want to come, do not come. But there is this much to be said. When we talk about people coming in and people who do not come in, let it be remembered, as Mr. Govinda Menon said, that the people of the States—I say with some assurance and with some authority in the matter—want to come into this Assembly, and if others prevent them from coming, it is not the fault of the people, but breaks and barriers are put in their way. However, I hope that these questions will not arise in the future and that in the coming month or two nearly all the States will be represented here, and, jointly we shall participate in the final stages of drawing up the Constitution.

I am placing this Resolution before the House to record the Report. There has been some argument about this matter too and people attach a great deal of importance to words and phrases and assurances and things like that. Is it not good enough that I have put it to the House? If it is not good enough, I may repeat what has been stated. Even if that is not good enough, what we have stated is there in the verbatim Report of the meetings; we have nothing to add to it, we shall stand by that. We do not go back. But the procedure to be adopted must be a correct procedure. When this Committee was appointed you asked us to report and we have reported. We had got to do something, and we tried to do that and did it. Now, if this matter was to come up for ratification before this House before it could be acted upon, obviously, representatives of the States who are here now would not have been here. They would have been sitting at the doorstep or somewhere outside waiting for ratification, waiting
for something to happen till they came in. That was not the way in which we understood our directions. We understood that we had to come to some honourable agreement and act up to it so that representatives of the States might come in as early as possible. We were eager in fact that they should join the Committees of this Assembly the Advisory Committee, the Fundamental Rights Committee, the Union Powers Committee and the other Committees which we have formed. It is not our fault that there was delay. At the very first joint meeting of the Negotiating Committees we requested the States Committee to join quickly, indeed to send their representatives to these Committees of the Constituent Assembly as soon as possible. We were asked for assurance at every stage and there were delays. But the way we have understood your mandate was that we had to go ahead and not wait for ratification of every step that we had taken. We acted accordingly, and I am happy that some of the States' representatives are here today and I hope more will come. So the question of ratification does not arise so far as this Committee's work is concerned. The Report is before you. If you disapprove of any single step that we have taken, express your disapproval of whatever might have happened, or otherwise give your directions.

The resolution I have moved is for your adoption. I shall not go into the details in regard to the distribution of the seats and the manner of selection of the delegates from the States. It was a sort of compromise. Naturally it was my desire, as it was the desire of my colleagues that the representative of the States should be elected by the people of the States, partly because it was the right way, and partly because it was the way in which they could be fitted with the other elected elements of this House. On the other hand, I considered it right and desirable that the States governments should also be represented here to bring reality to the picture. The correct way and the right way ultimately will be for the State government itself to be representative of the people and then come in to represent them here. But we have to take things as they are. The States governments, generally speaking, do not represent the people in the democratic sense. In some places they partially represent them. Anyhow, we did consider it desirable that the State governments as such, should also be represented though we would have liked the largest number of representatives to come from the people. Ultimately after a great deal of discussion it was decided that not less than 50 per cent. of the representatives should be elected by the elected members of the assemblies where they exist, or by some other method of election which may be devised. We came to a compromise on this proportion, thought we would have liked the proportion to be higher. Some of the States have actually acted as if the proportion were higher. I submit that this comprise that we came to was an honourable compromise for
Mr. President: The motion is:

'The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.”

Members who wish to say anything about this motion may now speak.

(At this stage Dr. Kailas Nath Katju approached the rostrum.)

Mr. Somnath Lahiri (Bengal: General) : On a point of information Sir. of the representatives of the States who have come to participate in this House, how many have been elected and how many nominated by the States, ?

Mr. President: The Secretary will give you this information. In the meantime, Dr. Kailas Nath Katju will please proceed with his speech.

The Hon'ble Dr. Kailas Nath Katju MR: General): Mr. President, I ventured to come here for a few minutes and address you on this Resolution because I am connected with one of the States in Central India and also with some in Rajputana; and I have made my home in the United Provinces by adoption. I am, therefore, intensely interested in the endeavour which you are making and I venture to congratulate the Negotiating Committee on the great results that have been achieved.

There are a great variety of States, and there are hundreds of them. Some of the States go back and are rooted in the history of our race. Others are of very, recent origin, going back only a century or so and with little of tradition and little of moral authority behind them. I do not wish to pursue this topic at any great length; but I have no doubt in my mind that it is for the good of the States and it is for the good of the people of the States that they should join this great Indian Union of which Pandit Jawaharlal has spoken so eloquently. I have no doubt in my mind that the course of Indian history teaches us that a union of this great country is an inevitability. When I hear of some Provinces or some States or territorial units claiming to be sovereign States or claiming authority for themselves, I wonder whether they have ever
considered the drift of Indian history. There is no shadow of doubt in my mind that within the course of the next fifty years, whatever we may do today, or whatever we may say today, the course of events will compel the people to bring about one united Government, one united Centre in India. It is good therefore for the people of the States, it is good for the people of all States, it is good for the Rulers of these States that they should come in and join in this great endeavour. Instead of the Rulers relying upon their so-called strength, I think their safety, their integrity and their very existence lies in relying upon the affection, and upon the trust of their own people. If they rely upon that, they may continue, otherwise most of these States will disappear without much regret on the part of their people or on the part of the rest of India. With these words, I commend this Resolution to the care of the House and I should join in the appeal which has been made to every section of the House that in a short time, we will see almost all the States come in and join this Assembly.

Mr. President: Mr. Lahiri desires to know when notice of amendments should be given. He complains that notice of this Resolution was received by him last night. I am afraid it is now too late now for him to give notice of amendment.

I shall now put the Resolution to the House:

The question is:

"The Constituent Assembly having taken the report of its States Committee into consideration resolve that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

The motion was adopted.

Mr. President. I desire to give the information wanted by Mr. Lahiri. Out of sixteen members representing the States who are attending today, five are nominated and eleven are elected.

ELECTION OF ADDITIONAL MEMBERS TO STEERING COMMITTEE

Shrimati G. Durgabai (Madras: General): Sir, I consider it my proud privilege to be able to stand here today and move the motion which stands in my name. Before I do so, I may be
permitted to express my great joy at the presence of the representatives of some of the Indian States who are here today in our midst on this occasion. My heart-felt and sincere thanks are due to those States which have extended their co-operation and joined us in our work.

With your leave, Sir, I move:

"Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation 'by means of the single transferable vote."

Sir, sub-rule (2) of Rule 40 of the Constituent Assembly Rules lays down the procedure for election of members to the Steering Committee. It says:

"The Assembly may from time to time elect, in such manner as it may deem appropriate, 8 additional members of whom four shall be reserved for election from among the representatives of the Indian States."

Sub-rule (1) of Rule 40 lays down:

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

Sir, I may be permitted to state in this connection that in accordance with these Rules, eleven members were initially elected to this Committee on 20th January and the Committee has been functioning with these members. According to sub-rule (2), eight additional members are to be elected from time to time out of whom four are reserved for election from among the representatives of Indian States. It is considered desirable at present that only two out of four will be elected now and that the election of the two other members shall be postponed to a future date. We would have been happy had all the four members been elected on this occasion. But we thought it desirable to elect only two members at present and postpone the election of two other members to a subsequent date, when we will be fortunate enough to have a much larger representation of Indian States on this Assembly and an present here. We fondly-hoped that some of the leading States like Hyderabad, Travancore, Mysore and some other States would have made up their minds to join us here in our work and co-operate with us. But I am sadly disappointed to find that they are not able to come and see eye to eye with us and that they are still pursuing a policy of 'wait and see'. I
hope that it will not be before long, that they will follow the noble example set up by States like Baroda, Bikaner, Rewa, Gwalior, Cochin, Udaipur, Jodhpur and some other States, whose representatives we have here in our midst and send their representatives also to help us in this great task of forging a constitution for this great country. I extend a hearty welcome to those representatives who will be elected to this Committee, to function on this Committee to help us with their advice and guidance in our work. With these words, I commend this motion for the acceptance of this House.

Mr. President: Motion moved:

"Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote."

Mr. H. V. Kamath (C. P. & Berar: General) : Sir, under sub-rule (2) of Rule 40, four seats have been reserved for election from among the representatives of the Indian States. You have just now been good enough to tell us that today only sixteen representatives are present and seventy-seven are absent. In fairness to the members who are absent, I would suggest that only one seat may be filled today and the other three seats may be filled up later on.

Mr. President: The amendment of Mr. Kamath is that in place of two seats, one seat should be filled by election today.

The Hon'ble Pandit Jawaharlal Nehru: Sir, the Steering Committee has to work from day to day, and if you keep seats vacant for those people who are not here, it is neither good for them nor for the House nor for the Steering Committee. The work of the Steering Committee does not really involve matters of high principle, but it is very important work and it does affect the business of the House. I think it is not fair that the places of those who do not come here should be kept vacant and we should go on waiting. Of course I do not want anything to be done which might be injurious to their interests, and therefore any important matter can be raised again. Now that we have a chance to take them in, we should do so. It is open to the House to reconsider any matter of vital importance later. At the present moment it is desirable to give full opportunities to those who will come to take part in the business.

Mr. H. V. Kamath: Sir, in view of the assurance given by the Hon'ble Pandit Nehru that the number of seats will be increased at a later date I beg to withdraw the amendment.
Mr. President: I now put the resolution to vote. The motion was adopted. Mr. President: Nominations will be received up to 2 P.m. tomorrow and elections, if any, will be held from 4 to 5 P.m. in Room No. 24.

REPORT OF THE COMMITTEE ON UNION SUBJECTS

Mr. President: Presentation of the Report of the Committee appointed by the Resolution of the Constituent Assembly of the 25th January, 1947, to examine the scope of Union subjects.

Mr. B. V. Kamath: Sir, is it only the presentation of the Report or is a motion being moved? There is no notice of a motion.

Mr. President: If the Hon'ble Member will wait and hear, he will know what it is.

The Hon'ble Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I come forward to perform a merely routine and prosaic duty of presenting the Report of the Committee on Union subjects. It is not intended that any motion on this Report should be placed before this House today. This Committee was appointed on the 25th January for the purpose of examining the scope and content of the subjects assigned to the Centre in the Statement of the Cabinet Mission of May 16th and to draw up lists of matters included in and interconnected with the subjects so assigned. The Committee started with a strength of twelve and power was reserved to you, Sir, to nominate ten more, the intention being that some seats should be filled by nomination of representatives of the Muslim League if they came in, and others should be assigned to representatives of the Indian States. As it is, the Muslim League has not so far come in, and as Pandit Jawaharlal explained to you a little while ago, strenuous attempts were made to get the full quota of nominations for representatives of the Indian States being filled in, if possible. But it was not possible to do so. In the later stages of our deliberations, however, we have had the assistance of two distinguished representatives from Indian States.

Now, Sir, I said I was only performing this prosaic duty; I was not going to perform the function which my Hon'ble friend, Mr. Kamath, would have liked me to perform today. Copies of this Report, I believe, have been circulated to Members. It is not, therefore, necessary that I should read the Report; and in connection with mere presentation of reports in a deliberative assembly of this kind it is not usual to make a speech on the contents of such a report except on an occasion such as the one mentioned by Mr. Kamath, for instance, on a motion for taking the Report into consideration. That motion is not to be made today, nor is it
intended by those to whom has been entrusted the task of steering the business of this Assembly. It is not their intention that such a motion should be placed before the House during the current Session. There are several reasons why this decision has been taken. In the first place, Sir, the subject is a very important one; it is a vital matter connected with the framing of the Constitution, and it is only desirable that this Report on so important a subject should be read through and studied carefully by Members of this House before it is taken into consideration. And then we have got to remember that the Committee had to work on the Cabinet Mission's Plan. That Plan contains some very unusual features, the unusualness really resulting from the desire, to satisfy the wishes of the Muslim League if it ever decided to come in. The coming in of the Muslim League is not yet officially ruled But; there is still a possibility of their coming in, though the probability is perhaps very small. Should this possibility materialise it would be only just and reasonable that the debate on so important a subject, as the subjects and powers to be assigned to the Union centre, should be held in a House which contains a full representation of the Muslim League. Whether they will come in or not will by definitely known before the June-July Session of this Assembly. And that is one main reason why we are not taking up the discussion of this matter in this current Session.

Then, Sir, there are the Indian States—a number of representatives of Indian States have joined us today but there is a very large number still to come in. Those have not come in because they require time for going through the procedure prescribed for the purpose of choosing them and sending them to this Assembly. The Indian States have got a very vital interest in the matter which is covered by the Report of this Committee, and it is desirable that as full a representation of the Indian States as possible should be in the Assembly before we begin to discuss so important a matter. Thirdly, Sir, there is the question of the present political conversations. The decisions on those conversations are not available yet: they will be available in all probability before we meet again in the June-July Session. The decisions will be of the most important character, and I think the House will agree with me in thinking that those decisions will have very important repercussions on the plan of work which this Constituent Assembly will have to adopt in framing the Constitution for the country if that decision should, as it is feared, take the shape of anything like the division of India into two or more independent States it may become necessary for this Assembly to deviate from rigid conformity to the Cabinet Mission's Plan. It is unnecessary for me to say now in what directions this deviation might become necessary. The nature of those deviations must necessarily depend upon the political decisions that are taken but apart from such deviations the number of subjects that have to be assigned to the Centre, their scope and content, the definition of a field of concurrent jurisdiction between the Union and the Units,
and the relations between the Union and the Units as regards the exercise of legislative and administrative powers, will all be matters which would require a fresh and thorough examination. This examination will so far as I can visualize have to be done in close collaboration between the Committee on Union Subjects and the two Committees which are proposed to be set up in the course of the current Session---one for the purpose of determining the principles of the Union Constitution, and the other for determining the principles of a model provincial constitution. These three Committees will have to work in close collaboration, and it is necessary that before they enter into such collaboration, they must have before them the political decisions that will have been reached before them.

Now, Sir, taking all these facts into consideration, it is, I think, very necessary that the debate on the Report of the Committee on Union Subjects should be postponed beyond this Session, to the next Session, and therefore it is that I am not placing before you any motion for taking this Report into consideration today.

There is one matter about which I think I must ask the permission of the House to approve of what this Committee has done. In the original Resolution appointing this Committee, it was asked to submit its Report before the 15th of April. As a matter of fact, the Committee signed its Report on the 17th of April. I do hope, Sir, that the House will excuse this delay of two days.

There is another matter which I might mention. This Report should not be taken as the final Report of the Committee on Union Subjects. I have already placed before you considerations which will necessitate the matter being reviewed and overhauled by the same Committee in collaboration with other Committees. There are matters, for instance, connected with Indian States, which require perhaps more consideration than it was possible to give them during the time that this Committee met between its appointment and today. The representatives of the States who wish to give us the benefit of their views feel that there are some matters which require further investigation before they could finally commit themselves, and there are also other matters and certain questions connected with the subjects which have been listed in this Report about which greater consideration, it is considered by certain members of the Committee, would be necessary. And apart from that there is looming before us the political decision which will necessitate our overhauling the entire Report if it comes to that, Therefore, Sir, I request the permission of the House to let this Committee submit a further Report if it becomes necessary. With these words, I merely present the Report of the Committee to the House.
Mr. President: The Report has been presented. I think the House will condone two days delay in signing it, and will also give permission to the Committee to submit another Report if it finds it necessary to do so. This was unanimously agreed to. Mr. R. K. Sidhwa (C.P. & Berar: General) : When the subsequent Report is presented, may I know whether this Report will also be open to discussion. We have not read even a single sentence of this Report which has been presented to the House.

Mr. President: We are not entering into any discussion on this Report. Me Hon'ble Member will read this Report, and we can then discuss it during the next Session.

We will meet at 8:30 tomorrow morning and we will go on until 12:30 when we will adjourn. Any Member who has any amendments to suggest to the Report of the Fundamental Rights Committee should do, so before 5 o'clock this evening. The Report will be taken into consideration tomorrow. The House now stands adjourned until 8:30 A.M. tomorrow.

The Assembly then adjourned till half past Eight of the Clock, on Tuesday, the 29th April, 1947.

APPENDIX A CONSTITUENT ASSEMBLY OF INDIA

Report of the Committee appointed to negotiate with the States Negotiating Committee

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, viz.

(1) The Hon'ble Pt. Jawaharlal Nehru

(2) The Hon'ble Maulana Abul Kalam Azad

(3) The Hon'ble Sardar Vallabhbhai J. Patel

(4) Dr. B. Pattabhi Sitaramayya

(5) Mr. Shankarrao Deo

(6) The Hon'ble Sir N. Gopalaswami Ayyangar
were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

(a) fixing the distribution of the seats, in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,

(b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January, 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference, of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows:-

"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout......
"Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

"Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's, Statement specifically says. The Cabinet Mission's Statement said, "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.
3. A general understanding having been, arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to, negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda, had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest cooperation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.’s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats, (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.
7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, viz., that not less than 50 per cent. of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50 per cent. of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution, passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, viz., Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Golpalaswami Ayyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.

JAWAHARLAL NEHRU.

A. K. AZAD.

VALLABHBHAI PATEL. N. GOPALASWAMI.

SHANKARRAO DEO. B. PATTABHI SITARAMAYYA.

NEW DELHI ;24th April, 1947.
TEXT OF RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1-47.

This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:-

(a) that the following fundamental proposition inter alia form the basis for the States' acceptance of the Cabinet Mission's plan-

(i) The entry -of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

(ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy' will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.

(iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.
(v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government. . .... in British India, or failing this, entering into particular political arrangements with it."

(b) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's- plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to It.

(c) that while the distribution inter se of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British- India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting-

(a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and

(b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which inter alia associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee, of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the
Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourth or more counting as one and lesser fractions being ignored. In the case of groups, fractions of more than half have been counted as one, lower fractions being ignored.

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided:

(a) that the total representation of the States and/or the groups affected is not disturbed, and

(b) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.

ANNEXURE A

SINGLE STATES

<table>
<thead>
<tr>
<th>Division as shown in the Table of seats appended to Part II of the First Schedule to the Govt. of India Act, 1935</th>
<th>Names of State</th>
<th>Population in millions</th>
<th>Number of seats in the Constituent Assembly</th>
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<tr>
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<td>Mysore</td>
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<td>Gwalior</td>
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<tr>
<td>Baroda</td>
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<td>Travancore</td>
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<td>Jaipur</td>
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<td>Bikaner</td>
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<tr>
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<td>Kotah</td>
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<td>Indore</td>
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<td>Kolhapur</td>
<td>1.091</td>
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<td>Patiala</td>
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<td>Bahawalpur</td>
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<tr>
<td>Mayurbhanj</td>
<td>0.991</td>
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ONTIER GROUPS

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<tr>
<th>Division</th>
<th>Names of States in the Group</th>
<th>Population in millions</th>
<th>Number of seats</th>
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<td>Frontier</td>
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seats in the Constituent Assembly

Bela 0.071 Kharan 0.03 IVKhairpur 0.31 VIII Sikkim 0.121 VX Cooch Behar 0.64 VX

Tripura 0.511 XV Manipur 0.51 XVII

Khasi States 0.21 XVII Amb 0.25 XVII Chitral 0.10 XVII Dir 0.35 XVII Swat 0.26 XVII Phulra 0.013.324

INTERIOR GROUP Division Names of States in the Group Population in millions Number of seats in the Constituent Assembly VIII Rampur Benares 0.931 Pudukottai Included in residuary Banganapalle 0.49 Group

XVII Sandurbelow X Bharatpur Tonk Dholpur Karauli Bundi Sirohi 13 Dungarpur 2.863

states Banswara Partabgarh

Jhalawar Jaisalmer Kishengarh XI Shahpura XIDatia Orchha Dhar Dewas (Senior) Dewas

(Junior) Jaora Ratlam Panna Samthar Ajaigarh Bijawar Charkhari 26 Chhatarpur 3.113 States Baoni Nagod Maihar Baraundha Barwani Ali

Rajpur Jhabua Sailana Sitamau Rajgarh Narsingarh Khilchipur XVII Kurwau XII Cutch Idar Nawanga Bharanagar Junagadh Dharangadhra Gondal

Porbandar 16 Morvi States Radhanpur 3.654 Wankaner Palitana Dhrol Limbodi Wadhwan Rajkot X11 - A Jafra red Rajpipla Palanpar Cambay Dharampur Balasinor Baria 1.6925 Chhota Udepur States Sant Lunawada Bansda Sachin Jawhar Danta X11 Anjiri X11 Sangli Savantvadi Mudhol Bhor Jamkhandi Miraj (Senior) 1.56214 Miraj (Junior) states Kurundwad (Senior) Pudukottai Kurundwad (Junior)

-ttai Akalkot Bangap-Phaltan alle and Jath Sandur Amudh Ramurg X11 Kapurthal Jind Nabha Mandi Bilaspur Suket 14 Tehri - Garhwal States Sirmur Chamba 2.703 Faridkot Malekotla Loharu X11 Kalsia Bashahr X11 Sonepur Patna Kalahandi Keonjhar Dhenkanal

Nayagarh 25 Talcher states Nilgiri Gangapur Bamra Seraikela Baud Bonai 4.254 XVII Athgarh Pal Lahara Athmalik

Hindol Narsingpur Baramba Tigiria Khandpara Ranpur Daspalla Raia Khol Kharsawan X11 ABastar Surguja Raigarh Nandgaon 14 Khairagarh states Jashpur Kanker 2.813 Korea Sarangarh X11 Chagbhakar Chhuikhadan Kawardha Sakti Udaipur XVII A - 1 other States including three Division IX, viz. 4.26427.8229 TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON 2-4-471. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-
operation in framing an agreed constitution and to all genuine efforts towards facilitating the
transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the
General Conference of Rulers and representatives of States on January 29, 1947.

2. It ratifies the general understanding reached between the States Negotiating Committee and
the corresponding Committee set up by the Constituent Assembly in regard to the allocation
of the States' quota of seats in, and the method of selection of the State representatives to, the
Constituent Assembly, and on the fundamental points discussed at their meetings held on
February 8 and 9 and on March I and 2, subject to the acceptance of the aforesaid
understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's
plan, under which the representatives of such States as may so desire, may join the
Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with
the Cabinet Mission's plan to settle the Union constitution, provided that such participation in
preceded by acceptance by the Constituent Assembly, of the general understanding reached
between the two Negotiating Committees in regard to the fundamental points, and other
matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further
confirms the declaration made by the Cabinet Mission that paramountcy will cease at the
close of the interim period. This means that all the rights surrendered by the States to the
paramount power will revert to them, and they will be in a position, as independent units, to
negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and
emphasizes the urgency and importance of suitable action being taken without delay, where
needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20,
1947,

this conference authorizes the Chancellor and the Standing Committee of the Chamber of
Princes to conduct negotiations through the States' Negotiating Committee or such other sub-
committees as the Standing Committee may appoint, in regard to questions affecting the
States in general: (a) with the Crown Representative in regard to matters relating to the lapse
of paramountcy, and those arising out of the proposed transfer of power, so far as they affect
the States; (b) with Interim Government and the competent British Indian authorities in regard
to matters referred to in Paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committee and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

APPENDIX B

CONSTITUENT ASSEMBLY OF INDIA REPORT OF THE UNION POWERS COMMITTEE TO THE CONSTITUENT ASSEMBLY

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of 'Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following.-

A-"Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and Communications in the Cabinet Delegation's Statement -of the 16th "Defence" includes--

(1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, Organisation and control of the existing armed forces raised and employed in Indian States:.

(2) Defence industries;

(3) Naval, Military and Air Force works;
(4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;

(5) Arms, fire arms, ammunition and explosives;

(6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B—"Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects:

(1) Diplomatic, consular and trade representation;

(2) United Nations Organisation;

(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

(4) War and Peace;

(5) The entering into and implementing of treaties and agreements with other countries;

(6) Trade and Commerce with foreign countries;

(7) Foreign loans;

(8) Naturalisation and aliens;

(9) Extradition;

(10) Passports and visas;

(11) Foreign jurisdiction;

(12) Admiralty Jurisdiction;
(13) Piracies, felonies committed on the high seas and offences committed in the air against the law of nations;

(14) Admission into, and emigration and expulsion from, the Union; (15) Port quarantine;

(16) Import and export across customs frontiers as defined by the Union Government;

(17) Fishing and fisheries beyond territorial waters.

C-The term "Communications" although it is wide enough to cover any connection between place should for the present purposes of the Union, in our opinion, include the following:-

(1) Airways;

(2) Highways and waterways declared by the Union to be Union highways and waterways;

(3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule-of-the-road on such waterways; carriage of passengers, and goods on such waterways;

(4) (a) Posts and Telegraphs:

Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.

(b) Union telephones, wireless, broadcasting and other life forms of communications; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication;

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

(6) Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction;
(7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein;

(8) Aircraft and air navigation; the provision of aerodromes, regulation and Organisation of air traffic and of aerodromes;

(9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;

(10) Carriage of passengers and goods by sea or by air;

(11) Union Meteorological Services;

(12) Inter-Union quarantine.

D-The expression "the powers necessary to raise the finances required" for the Union subjects in the Cabinet Delegation's Statement necessarily includes the power, to raise finances by taxation and loans. In existing circumstances, we recommend the following sources of revenue for the Union :-

(1) Duties of customs, including export duties;

(2) Excise duties;

(3) Corporation tax;

(4) Taxes on income other than agricultural income;

(5) Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies;

(6) Duties in respect of succession to property other than agricultural land;

(7) Estate duty in respect of property other than agricultural land;

(8) Fees in respect of any of the matters in the list of Union Powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter, of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India
and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may,

for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category:

(1) Union judiciary;

(2) Acquisition of property for the purposes of the Union;

(3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies;

(4) Census;

(5) Offences against laws with respect to any of the matters in the list of Union powers;

(6) Enquiries, surveys and statistics for the purposes of the Union;

(7) Union Services;

(8) Industrial disputes concerning Union employees;

(9) Reserve Bank of India;

(10) Property of the Union and the revenue therefrom;

(11) Public debt of the Union;

(12) Currency, coinage and legal tender;
(13) All subjects in respect of Union areas;

(14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the Union of the laws and public acts Laid records of the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights.

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement:-

(1) Insurance;

(2) Company Laws;

(3) Banking;

(4) Negotiable Instruments;

(5) Patents; trade marks, trade designs; copyright ;

(6) Planning;

(7) Ancient and Historical Monuments;

(8) Standard Weights and Measures.

Such an arrangement will ensure uniformity, throughout the territories of the union, in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included Planning in the above list for the reason that, although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a coordinating machinery to assist them. 6. We recommend the insertion in the constitution of a provision on the lines of Article (xxxvii) of Section 51 of the Australian Constitution Act.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.
(Sd.) JAWAHARLAL NEHRU

GOVIND BALLABH PANT

B. L. MITTER

JAIRAMDAS DAULATRAM

N. GOLASWAMI AYYANGAR

K. M. MUNSHI

V.T. KRISHNAMACHARI

B. PATTABHAI SITARAMAYYA

BISWANATH DAS

A. KRISHNASWAMI AYYAR

New Delhi;

17th April, 1947.
Tuesday, the 29th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at half past Eight of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

EXTENSION OF TIME LIMIT FOR THE REPORT OF THE ADVISORY COMMITTEE

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General) : Sir, I move:

"That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The House is aware that when this Resolution was passed we were required to submit an interim report on Fundamental Rights within six weeks, an interim report on Minorities Rights within ten weeks and our final report within three months from the date of our appointment. We have tried our best to adhere to this time table, but regret that it has not been possible for us to carry it out. At our first meeting held on the 27th February, 1947, we decided unanimously to request you to extend the time limit for the submission of the reports in anticipation of the sanction of the Assembly.

We are full conscious of the necessity of completing our work with the utmost despatch, but we fear it is not possible to work to a rigid time table. We request therefore that the Assembly may be moved to extend the time limit to such date or dates as you may choose in your discretion.

Mr. President: The question is:

"That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The motion was adopted.
The Hon'ble Sardar Vallabhbhai Patel: Sir, I move:

"That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

Sir, this is a preliminary report or an interim report, because the Committee when it sat down to consider the question of fixing the fundamental rights and its incorporation in the Constitution, came to the conclusion, firstly, that the fundamental rights should be divided into parts-the first part justiciable and the other part non-justiciable. Even while considering the first part it came to the conclusion that we could not come to a final decision as to what fundamental rights are to be incorporated in the Constitution. Considering all the circumstances that exist today and that may arise within the course of the consideration of the various Committees' reports and the drafting of the Constitution, points may arise for suggesting additional fundamental rights and also for making minor alterations or suggestions that may be considered advisable. This report is a draft report. I may also suggest for the consideration of the House that in considering the various clauses that have been recommended by the Advisory Committee, the House may not strictly consider the wording of each clause of the rights suggested. Certain changes may be required while actually legally drafting the clauses, and it would be better to leave the drafting to the Drafting Committee which will make such changes as may be necessary to put them in proper phraseology. What I would submit to the House to do today is generally to accept the principles of each of the clauses that have been suggested for consideration, so that we may not have to devote more time in considering the technical legal details of the phraseology to be adopted.

We have now suggested for the consideration of the House those rights that are justiciable. The second chapter we have ourselves not been able to consider. The Fundamental Rights Sub-Committee met and considered this matter for a fortnight and devoted considerable labour and time. After that, the Report was passed on to the Minorities Rights Sub-Committee. That

*Appendix at end.
Committee also sat over this Report and anxiously considered various clauses and made certain changes and those changes were adopted. They sat for three days, and then this report was again placed before the Advisory Committee for its consideration. The Advisory Committee sat for two days and at their two sittings they considered the whole thing over again—so, the House will see that this is not a haphazard Report, it has been considered in all its various aspects. It is quite possible to make suggestions, alterations and additions and move amendments, but the House may not have that time which the Committees had, I would humbly submit to the House carefully to consider the various clauses that have been suggested, and when amendments are put forward before the House, they will also be carefully scrutinised. There are about 150 amendments, I hear and scrutiny of the amendments will take some time. The Office has been able to scrutinise about 25 or 30 amendments and that will perhaps take the whole of today's meeting. I move that the Report be taken into consideration, and if that motion is adopted, then we can go and consider the rights clause by clause.

Mr. President: Motion moved:

"Resolved that the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. President, the Report before us purports to deal with only those fundamental rights that are enforceable by the courts, but a close study of it shows that it refers to matters which cannot be included under the head "Fundamental Rights", and that it deals with those fundamental rights which are not justiciable. To give an instance, Sir, If a matter which does not fall under the category of fundamental rights, I shall refer to clause 10 which makes "trade, commerce and intercourse among the units by and between the citizens" absolutely free.

Sri L. Krishnaswami Bharathi (Madras: General): On a point of order, Sir. I should like to know whether Pandit Hirday Nath Kunzru is opposing the motion or supporting it. He objects to a particular clause, but this is not the time for it. I should like to know whether he is supporting the motion, for consideration or opposing it.

Mr. President: If you just allow the Hon'ble Member to complete his speech, you will be able to know whether he is supporting the motion or opposing it.
The Hon'ble Pandit Hirday Nath Kunzru: This is the stage at which according to the rules followed by the Legislatures, general observations can be made, and I hope I am strictly in order in dealing with the Report generally. It is not necessary for me to say whether I agree to the main provisions of the Report, or whether I want it to be rejected as a whole. All that I can be fairly called upon to do at this stage is to state my point of view and to ask the House to be careful in dealing with some important matters which are included in this Report.

Sir, to illustrate my first point, I refer to clause 10 of the Report which deals with what may roughly be called freedom of inter-State commerce. It may be a very desirable thing in itself, probably every one here will want that trade between the different Units of the Indian Union should be absolutely free, but I doubt whether a clause like this can be included among fundamental rights. Clause 10 deals with a matter which impinges directly on the rights of the Provinces. You may deal with it when you come to settle the powers of the Union and the Provinces; but I submit that you cannot take so important a matter outside the purview of the Committee that will consider

the Union and the Provincial Constitutions by calling the freedom of inter-State commerce a fundamental right.

Again, Sir, it is stated in one of the provisos to this clause that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subjected by them. Now, I should like this to be clearly explained. If there is to be absolute freedom of commerce and trade between the different units, how can any unit be allowed to tax the goods of.....

Mr. F. R. Anthony (Bengal: General): On a point of order, Sir. Can all of us make our respective comments on the provisions of the Fundamental Rights at this stage?  

The Hon'ble Pandit Hidayat Nath Kunzru Sir, Mr. Anthony is a Member of the Central Assembly and he knows very well that in making general observations, say, on a Bill, one can refer to a few clauses to illustrate one's point of view. I am astonished that he should get up and object to my observations, which are of a general character, though he may think that they refer to matters of detail. I am sure that on many occasions he has exercised in the Central Assembly the right which I am exercising here now.

Sir, there are other examples of this kind that I could give; but I do not think that I need do so in order to illustrate what I have in mind. Now, I will give an illustration or two to show where matters which can hardly be called justiciable have been included in the Report. Clause
8 deals with certain familiar fundamental rights; the freedom of speech, the right to assemble peaceably and without arms and the right to form associations. But they have all been made subject to certain safeguards, which, generally speaking, have been considered necessary in every country. But it is well known, Sir, that these safeguards practically make the rights that I have just mentioned non-justiciable. You may confer general rights on the citizens of India, but if they are to be surrounded with the restrictions mentioned here,-and I submit that they will have to be surrounded with some such restrictions-then the right will in practice cease to be justiciable. They will be no more than directive principles of a policy, and there seems to me to be no advantage in considering such matters at this stage when, according to Mr. Patel, we should be considering only those rights that are, strictly speaking, enforceable by the courts.

I shall give another instance, Sir, in order to make my point of view still clear. I refer, Sir, to clause 8, sub-clause (e), which deals with the right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession. This is subject to the condition that "provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes." Now, Sir, it is very desirable, in general, that there should be freedom of movement; but I do not think that we can accept without qualification the right of the people of one province to settle in another province. The Government of the province concerned must be given the power.... (Cries of "We cannot hear, the microphone is not working), Sir, I can make myself heard without the aid of the microphone. I was dealing with clause 8, sub-clause (e). This clause states that every citizen has the right to reside and settle in any part of the Union. My submission is that while freedom of movement in the Union is desirable and essential, the right to reside and settle in any part of the Union cannot be called non-controversial.

Mr. President: The microphone is now working.

The Hon'ble Pandit Hirday Nath Kunzru: Thank you, Sir, but I think I can make myself heard without it. The province, I was saying, must have the right to decide, in view of its resources what the size of its population at any time should be. No Provincial Government can fairly be asked to allow an unlimited influx of immigrants from another province in pursuance of the principle enunciated here. Let us take the case of Assam, to understand this fully. Will anybody force the Government of Assam at the present time to allow an unlimited number of people from any of the neighbouring provinces to enter Assam and settle down there? That Government
is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which will have to be clearly defined.

Dr. B. B. Ambedkar (Bengal: General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e), he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras: General): Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hidayat Nath Kunzru: As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say--and I am sure you will bear me out,-I read out the entire clause including the proviso.

Mr. President: I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

The Hon'ble Pandit Hidayat Nath Kunzru: I have given only two illustrations so far and this is only the third illustration that I am giving in order to explain clearly to the House what I have in mind. I am not discussing each and every clause. Sir, I have already read out the proviso to clause 8(e) but in order to satisfy Dr. Ambedkar, shall read it out again:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

Probably Dr. Ambedkar's contention is that this phraseology is such as to enable a province to decide whether it would allow people coming from outside to reside and settle down within its jurisdiction. If so, a special interpretation will have to be placed on these words. Again, if the proviso is so wide as Dr. Ambedkar contends it is, then the right conferred by clause 8(e) virtually ceases to be a justiciable right.

Sir, I think I have said enough in order to indicate my point of view. I need not therefore labour the point further, but, before I sit down, I may say again that there seems to be no particular advantage in considering many provisions of this Report at the present time. They can be considered along with the other fundamental rights which have yet to be dealt with by the Fundamental Rights Sub-committee. But if the House wants to proceed with the consideration of this Report, it will have to take special care to see that only those matters are included in it which are really justiciable.
Mr. Promatha Ranjan Thakur (Bengal: General): Sir, this is a list of fundamental rights which are only justiciable. I do not understand why economic fundamental rights should not be included in these justiciable rights. Economic rights are essential while framing a country's constitution and they must also be made justiciable. I do not understand why mines, key industries and basic industries should not be nationalised. Moreover, this list of fundamental rights should have been considered in the light of reports of the Minorities Sub-committee. The Minorities Subcommittee sat only for two days and they could not go into details as regards safeguards required for minority communities. You know that Minority Sub-committee's Report is very much connected with the list of fundamental rights.

Another point to which I wish to refer is in relation to clause 6 regarding 'untouchability' where it is said that-

"Untouchability in any form is abolished and the imposition of any disability on that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system. It exists as a matter of caste system. I do not understand how this, in its present form, can be allowed to stand in the list of fundamental rights. I think the House should consider this point seriously. Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially. I have nothing more to say. I hope the House will consider my suggestion seriously.

Mr. President: I take it that the Hon'ble Member does not wish to move his amendment.

Mr. Promatha Ranjan Thakur: I do not move my amendment.

Mr. Somnath Lahiri (Bengal: General): I agree with what. Pandit Kunzru suggested because it is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it will have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to no body else, that would be a social and fundamental right no doubt. But, nevertheless, it will also be a justiciable right, if that is tube given effect to.
Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights. Therefore, we would be in a better position to consider the whole thing if the full Report was forthcoming so that we might know what is in it. Otherwise, there is the danger that when we might put certain things as essential, we would be told that social and economic rights will come up not now but later on. Therefore, I support Pandit Kunzru's suggestion for taking all these things together. I do not see any great hurry for getting these few fundamental rights passed just now. I was surprised to read this Report submitted by the Committee. Before this Report was submitted by the Committee, I got a circular from the Congress Party section of the Constituent Assembly enumerating certain rights. Many good points were contained in them. Afterwards, when we received this Report, we find that many of the good points which were mentioned in that circular have been omitted. Let me put it a little more strongly. I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away. Now, Sir, what constitutes a 'grave emergency' God alone knows. It will depend on the executive obtaining at a particular period of government. So, naturally anything that the party in power or the executive may not like would be considered a grave emergency and the very meagre fundamental rights which are conceded in this resolution will be whittled down. Therefore, it is necessary for us to see the whole thing together and see what people are going to get. I should like to mention one or two things as examples. What should be our conception of fundamental rights? Apart from the knowledge that we can gather from the experience of other countries, there is also the knowledge born out of our own experience, that is, there are certain rights which we have been denied in the past by an alien and autocratic government. We have come up against those difficulties. We want to incorporate every one of those rights which our people want to get. One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every congressman, and, therefore, in his heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the
Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.

Similarly, there is another thing that we have found all along that a Government which does not depend on the people and which rules the country by autocracy and by means of force, detains people without trial, without having to go through a judicial process. This is a thing against which Indians have been entertaining the bitterest feelings and they have been agitating against this from the Congress and every other platform. But in the fundamental rights that have been cooked up by this Committee we do not find this right. That is why I am constrained to say that these are fundamental rights from a police constable's point of view and not from the point of view of a free and fighting nation. Here whatever right is given is taken away by a proviso. Does Sardar Patel want even more powers than the British Government an alien Government, an autocratic Government which is against the people-needs to protect itself? Certainly not. Sardar Patel has the support of the overwhelming masses of the people and, therefore, he can do with much less powers to rule the country than an autocratic government would require. But here we find that none of the existing provisions of the powers of the executive has been done away with; rather in some respects those powers are sought to be increased. And if some of the amendments are passed-specially that of Sri Rajagopalachariar- it will in certain cases be even worse than the conditions obtaining at present. I will give one example. Here according to Patel a seditious speech is a punishable crime. If I say at any time in the future, or the Socialist Party says, that the Government in power is despicable, Sardar Patel, if he is in power at that time, will be able to put the Socialist Party people and myself in jail, though, as far as I know, even in England a speech, however seditious it may be, is never considered a crime unless an overt act is done. These are the fundamental bases of the fundamental rights of a free country, but here a seditious speech also is going to be an offence; and Sri Rajagopalachariar wants to go further. Sardar Patel would punish us if we make a speech, but Rajaji would punish us even before we have made the speech. He wants to prevent the making of the speech itself if in his great wisdom he thinks that the fellow is going to make a seditious speech.

Dr. B. Pattabhi Sitaramayya: Sir, we cannot anticipate amendments.

Mr. Somnath Lahiri: I will not discuss any more of the amendments.

We thus find that the feeling among Congressmen in general, as evidenced by this circular of the Constituent Assembly section of the Congress Party, is for extended fundamental and civic rights which will enable the country to function in a free manner and for political oppositions to grow. What is the necessity of fundamental rights in a bourgeois national
democracy which you are trying to have? There one of the fundamental objects is that a political opposition must have full freedom to express its views, to draw its own conclusions and to say anything it likes. If I am in the opposition or if someone else is in the opposition it is certainly his business to say that the existing Government is despicable; otherwise he would not be in the opposition. Why should my right to say that be curtailed and at the same time we should assume that political opposition will grow and democracy will develop? It cannot; it will have to depend on the sweet will and the tender mercies of the party in power or the executive in power. That is not the basis of democracy.

Sir, I would request the Committee to consider the amendments very liberally and try their best to accommodate the amendments so that we can have really good and democratic fundamental rights which will give our people a real feeling of freedom and from which our country will go on gathering strength. Otherwise, if we lay down fundamental rights and then insert provisions in every clause for taking away those rights, we will simply make ourselves a laughing stock before the whole democratic world.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, I will deal with Mr. Lahiri’s statement first. He has misinformed the House by stating that the Committee has absolutely ignored the economic rights and the fundamental rights in various aspects. Sardar Patel in moving his motion made it clear that this is only a preliminary report or rather an interim report; the motion regarding economic and political rights is not here and will be taken up hereafter. Mr. Lahiri must know that we are not unmindful about this matter. We are much more keen on these economic and political rights of the citizens than he imagines; and therefore to say that those rights should have been presented to us now in this document and that failing that we would be making a laughing-stock of ourselves to the world is not fair to this House.

Now, coming to Dr. Kunzru, I was really very sorry to find him stating that some of the clauses in this statement do not come within the purview of fundamental rights or justiciable rights. If any one has studied the various constitutions of other countries he will find that there are chapters and chapters and clauses and clauses dealing with economic, commercial and trading rights of the people. And for Dr. Kunzru to state that this is not a fundamental right or a justiciable right is not fair to this House. I will quote a few paragraphs from some constitutions to show that commerce and trade and economics are considered justiciable fundamental rights. In Germany, Part 2 of Art. 138 says:
"Property and other rights of unions in respect of -a property devoted for public purposes, social and commercial, are guaranteed."

Then in Art. 151 it says:

"Freedom of trade and industry is guaranteed in accordance with the provisions of the laws of the Reich."

A number of these may be quoted but I will content myself with just a few. Art. 156 says:

"The Reich may by legislation in case of present necessity and in the economic interest of the community oblige economic undertakings and associations to combine in a self-governing basis for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interests of the community."

Then further take South Africa. Section 136 says:

"There shall be free trade throughout the Union, but until Parliament otherwise, provides the duties of customs and of excise leviable under the laws existing in any of the colonies at the establishment of the Union shall remain in force."

Clause 10 and clause 8, to which Dr. Kunzru has made reference, refer to trade within the Units and the Union, and I see no reason why such a clause should not stand for the protection of the various trades that would move about from Unit to Unit and from Unit to Union. As regards clause 8(e) it says:

"The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession."

It is considered a justiciable and fundamental right. If a right to reside and settle is not a justiciable or fundamental right, I do not know what else it could be. Under the circumstances I do feel that the objections of Dr. Kunzru are untenable and I agree with Mr. Lahiri that in some respects this Report is certainly not complete, and we have to give elaborate personal and political rights. It is not that we have ignored that part. There are various amendments on the order paper; I have moved some of them and other Hon'ble Members have also done so. They will be considered
by this House. I might also state that the Committee had suggested that the secrecy of correspondence should be guaranteed and that there should be no kind of interception of correspondence, telegrams and telephones, but the main Committee has deleted it. Therefore, it is unfair to say that the Fundamental Rights Committee did not consider this question. We have now moved amendments to that effect, and it is for the House to consider those amendments. Mr. Lahiri should not have made all those general remarks; he should have confined himself to the amendments which have been moved. Therefore, I contend, Sir, that these fundamental rights are justiciable, and I do feel that the objection of Dr. Kunzru is not justifiable and that Mr. Lahiri, in his anxiety to move more amendments to protect the rights of every citizen, made an uncalled for remark that we will be making this country a laughing-stock of the world. This is too much indeed.

Prof. N. G. Ranga (Madras: General): I wish to congratulate this Committee on having produced this very valuable document and presented it to this House.

I think it is not worthy of any member of this House to describe this as a sort of cooked-up document from a responsible Committee like this. But I am not surprised that this remark, unworthy as it is, has fallen from the lips of one of our members, considering the political history of the member as well as the antecedents of his party.

Mr. President: Please do not make any personal remarks.

Prof. N. G. Ranga: I have said enough about it.

We are told that this document is prepared from the view point of a policeman. I do not know where the policeman comes in except by way of our attempt to keep him out of the exercise of our fundamental rights. That is exactly the main object with which this charter of Fundamental Rights has been prepared. We have had such a bitter experience of policemen in this country that the authors of this document have had to formulate these clauses in such a way as to have the least possible interference of policemen. If there are any provisions, they are intended to see that those people who believe in liberalism at one end and communism at the other will not be enabled to take advantage of these rights to pave the way for totalitarianism. It happened like that in several States of Europe between the two wars. They took advantage of the fundamental rights there to the extent that they came to power and paved the way for Nazism on the one hand and for communism on the other. We want to safeguard ourselves against such a menace. We have had this experience before us and it is the duty of any responsible body like this to make provision for such provisos as will enable a democratic parliament in this country to prevent any mischief-monger--organized or
unorganized-from demoralizing our own democratic State to such an extent as to pave the way and effectively achieve a totalitarian State in this country.

A reference has been made to the absence of any reference in this particular document to freedom of the press. But if a little care had been exercised, it would have been found that this has been provided for in the very first clause--sub-clause 8(a):

"The right of every citizen to freedom of speech and expression."

'Expression' includes freedom of the press.

Now come to the other point-where is the provision for the functioning of the opposition party in these fundamental rights, we are asked? To draw your attention to a very small thing I need only say that the Congress Party itself is such a democratic body as to make it possible for people like Rajaji to give notice of one set of amendments and people like so many us to give notice of other amendments which may be diametrically opposite to them, and yet we are able to digest these, consider them all and come to an agreeable decision, a decision which will be democratic and which may come to be acceptable to all parties in the House. We have to make it possible for various political parties to function in our country; we all agree on that. It does not come to us as a sort of a new thought from abroad or from other country, but what I wish to remind this-House as well as the member concerned is this: in that country which is upheld as a sort of an ideal to us all, where is there any scope for the opposition party? Is there any scope for the opposition party at all? Indeed in Soviet Russia, people are not allowed to organize themselves into free trade unions. Here in in this country we are already enjoying these rights and we are epitomizing them in this great document. Look at it from every point of view and You will find that this document proposes to give to our masses in this country more democratic, more liberal, more comprehensive, and more fundamental rights than are being enjoyed in any other country, not even excluding Soviet Russia.

There is another point raised by my Hon'ble friend, Dr. Kunzru, namely that several of these things are not justiciable. I am not a lawyer, and, therefore, I do not wish to go into the technical side of it. All that I say is to express my extreme satisfaction with regard to clause 22(1) and 22(2) wherein the right is given to the ordinary citizen to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. This is a very important privilege that is being conferred on our citizens. The only additional privilege that I wanted to be conferred upon them is that-as I said on an earlier occasion-those
citizens who are so poor as not to be able to move the Supreme Court, should be enabled under proper safeguards, of course at the cost of the State, to move the Supreme Court in regard to the exercise of any of these fundamental rights. With all these provisos Dr. Kunzru told us that the very essence of these fundamental rights is being lost and Mr. Lahiri has agreed with him. It is rather amusing how Liberalism and Communism can come together and coincide with each other. We have our experience of the way in which the Public Safety Ordinances were enforced in this country. We know that those Ordinances were very arbitrary; they conferred terrible powers, unquestionable powers upon the executive. Are we to be told now that in the same way we should not have any of these provisos at all but that simply power should be conferred upon the Government and that any order made under this particular clause or that particular clause cannot be questioned in a court of law? That is how it is. We were detained and the orders that were passed to detain us could not be questioned at all in any court of law. But in spite of that there were noble judges. Hon'ble judges of the Calcutta High Court and also of the Central Provinces, who had the courage of their conviction, who were able to look in between the words of those very same ordinances as well as the Public Safety Act and were able to save many people from the gallows by setting aside the judgments of the so-called Special Courts. Similarly, it must be possible and it would be possible, when this document becomes a part of our own Constitutional Law. This document has been so carefully drafted as not to give arbitrary powers but to give just as much power as can possibly be digested in the organisational or institutional exercise of his rights by the ordinary citizen in this country, either organisedly or individually—as much power as possible to those people to see that these individuals, these organisations or institutions are given every possible safeguard or protection. Therefore, these provisos are not going to make these rights nugatory at all. These provisos are intended to prevent our democracy being demoralised or degraded into a dictatorship. These rights are intended to protect our citizens, our law-abiding citizens who believe in democracy from those who believe in dictatorship but only pretend to work for the cause of democracy in order to establish their own dictatorship.

Dr. B. Pattabhi Sitaramayya: Sir, I now move for closure being applied to the discussion

Mr. President: I think we have had sufficient discussion on the motion.

The question is:

"That the question be now put."
The motion was adopted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, when I moved my motion for the consideration of this Report I did not anticipate any long debate on this question. I thought that there would be plenty of opportunities for scrutinising the clauses, omitting some clauses, if necessary, that may be considered objectionable or improving any if need be. Now that the debate has taken place I want to place before the House certain aspects of the proceedings of the Committee which will give the House an idea that this is neither a haphazard Report nor a report cooked or uncooked. It is carefully considered Report. There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report-rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn which was considered to be a very good mean. It must not be understood, because this Report is called an Interim Report, that the second Report will be much bigger, or that many more important things will come under the subsequent report. It cannot, in the nature of things, be that the principal report which comes before the House would be containing less important things. Very essential things have been included in this Report. But there is another report which has to be considered and that is the report on fundamental rights which are non-justiciabible. There may be other points that may strike this House or may be suggested from outside which may have to be considered and the Committee may take them into account. But I may inform the House that this Report has gone through three Committees. Of course the third school of thought was absent in the Committee. That school would require that under the fundamental rights which were provided for a free India there should be no police, there should be no jail, there should be no restrictions on the press, the baton, the lathi or the bullet. Every body should be free in a free India to. do what he likes. That school was absent in the Committee. But the two schools of thought that considered this Report studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions but what I have moved in this House, now is,
that this Report may be taken into consideration. Therefore, I thought that any elaborate speech was not necessary and hence I suggested that whatever has to be considered, or whatever suggestions have to be made, may be made at the time when clauses are considered. As I told the House there are about 150 amendments, though the time given was about ten hours or so. The House contains members who are very studious, very critical and very well-informed and therefore it is to the credit of the House that we have got as much as 150 amendments in such a short space of time. I think if we proceed at this rate we will debate perhaps for a much longer period than we expect. So, I suggest that the Report be taken into consideration, and if that is accepted, we may take clause by clause.

Mr. President: The question is:

That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The motion was adopted.

CLAUSE I-DEFINITIONS

Mr. President: We now proceed to consider the Report clause by clause. Clause 1.

The Hon'ble Sardar Vallabhbhai Patel: Clause I is a clause which gives the definition:

"Unless the context otherwise requires-

(i) 'The State' includes the legislatures and the governments of the Union and Units and all local or other authorities within the territories of the Union.

(ii) 'The Union' means the Union of India.

(iii) 'The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof."

I do not think that this clause requires any speech in support of it. Therefore I formally move this clause for the consideration of the House.

Mr. President: I have got notice of several amendments to clause 1. Mr. Kamath.
Mr. K. M. Munshi (Bombay: General): I have given notice of certain verbal amendments to this clause. I could do this only this morning, and if you will be pleased to give me leave...

Some Hon'ble Members: Louder, please.

Mr. K. M. Munshi: I have submitted to the Office certain verbal amendments to clause 1, which I have already presented to you, and I beg leave under our rules to move these amendments. They are not amendments of substance; they merely make some verbal changes. If you will be pleased to give me leave I may also move them.

Mr. President: I am afraid I have not seen those amendments. But if they are only verbal amendments, I suppose the House will have no objection to their being moved. But I should like to say that I would not allow substantial amendments to be taken up without due notice. (To Mr. Munshi), I shall take up your amendments a little later, unless they can be covered by Mr. Kamath's or any other amendment.

The Hon'ble Sardar Vallabhbhai Patel: Are there any amendments to this clause?

Mr. President: I have got notice from two Hon'ble Members.

Mr. K. M. Munshi: Before Mr. Kamath moves his amendment, may I say that mine is a verbal amendment to clause 1 (i). If that is permitted to be moved, it will remove any doubt that there may be.

Mr. President: You can move yours. (To Mr. Munshi).

Mr. K. M. Munshi: I beg to move that in clause 1 sub-clause (i), insert the words "for the purpose of this Annexure" between the words "State" and "includes". The reason of this amendment is very clear. In order to have one convenient phrase only for the purpose of this annexure we have to use the word "State ". The word "State" has been used here only for the purpose of verbal convenience and only for the purpose of this Chapter. If it be left as it is, it might lead perhaps to an impression that this is the definition of "State" in the Constitution Act. Therefore, I submit that the words "for the purpose of this Annexure", that is, for the purpose of the preliminary report in this Annexure, be inserted as I have moved above.

An Hon'ble Member: Then how will the clause read?

Mr. President: Clause 1, sub-clause (i) will read thus:
"The State' for the purpose of this Annexure includes the legislatures and the governments of the Union, etc., etc."

(To Mr. Munshi). In other places the word "Part" is used, and the word can be used in place of "annexure".

Mr. K. M. Munshi: I will accept that.

Mr. President: Sub-clause (i) will read as follows:

"'The State' in this Part includes the legislatures and the governments of the Union, etc., etc.".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Sri L. Krishnaswami Bharthi: I submit that amendment of Mr. Munshi may appropriately be prefixed to the first sentence itself to cover all the three definitions of that clause. We can say-

"Unless the context otherwise requires, and for the purpose of this Part- " and than give the definitions as in the clause.

Mr. President: Instead of putting in-the words "for the purpose of this Part" after the word "State". let those words come in the beginning. Then it will read as follows:

"In this Part, unless the context otherwise requires-

(i) 'The State' includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union......." and so on.

Mr. K. M. Munshi: I have no objection, Sir. "Union" must mean the Union of India wherever it is.

Sri K. Santhanam (Madras: General): The amendment is to the definition of "The State" and not to any other definition.

Mr. President: Mr. Munshi's amendment as recast by me has been accepted by the Mover. Does the House accept the amendment?

The amendment was adopted. Mr. K. M. Munshi: I have an amendment to clause 1, sub-clause (iii), that is purely verbal. Sub-clause (iii) says:
"The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof."

I want to delete the word "as" in the phrase "as in force".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Mr. K. M. Munshi: It was felt by many that if the word 'as' is put in, it would mean something as may be in force. Otherwise the word 'as' should be deleted.

Mr. Promatha Ranjan Thakur, Sir, the words "The law of the Union" include any law made by the Union. Sometimes the Union executive may pass orders which have got the force of law. I think the orders 'made by the Union executive must also be included in this clause.

Mr. President: Did you move an amendment?

Mr. Promatha Ranjan Thakur: No, it is not an amendment.

Mr. President: Mr. Munshi's amendment wants the word 'as' to be Omitted and the mover has accepted this amendment. Can I take it that the House accepts this amendment?

The amendment was adopted.

Mr. President: Mr. Kamath will please move his amendment.

Mr. H. V. Kamath (C.P. and Berar: General): Mr. President, since I sent in my amendment I have learnt that the terms whose definitions have been incorporated in this clause have been arranged in alphabetical order and I am further told that in the matter of definitions the alphabetical order should and does take precedence over any other order. In these circumstances, I do not desire to move my amendment and beg leave of the House to withdraw the same.

Mr. President: Dr. Syama Prasad Mookherjee may move his amendment.

Dr. Syama Prasad Mookherjee (Bengal: General): Sir, in view of Mr. Munshi's amendment, it is not necessary for me to move my amendment.

Mr. President: Mr. Chaudhury may move his amendment.
Srijut Rohini Kumar Chaudhury (Assam: General): Sir, I beg to move that in clause 1, the following new definitions be inserted:-

"(iv) 'School' means any educational institution." In these clauses dealing with the fundamental rights, we find the word 'school' and also the words 'educational institutions' being used at different places, leading one to think that some distinction is intended. I would like it to be clearly stated that by school we mean any educational institution. I am referring to clause 18 sub-clause (2) where it is stated- "No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

Here the words used are "State educational institutions". In sub-clause (3) (a) it is laid down-

"All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice."

Here we have the words "educational institutions". And in sub-clause (3) (b) the word 'schools' is used-

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

This is likely to lead to confusion and my amendment is intended to avoid this confusion.

We have to safeguard our rights in the schools also. Some like you, Sir, are extremely good at their studies and knock off all the prizes. But others there are who have other kind of memories of their school days. They remember standing on the bench, standing on the floor, kneeling down on the floor, kneeling under the bench, and all that. We do not want any such things to happen again, because the clauses here are not clear. They should apply equally to schools and to all educational institutions. Therefore, I suggest it may be put down that schools mean any educational institutions.
Mr. K. M. Munshi: In clause 18 (3) (b) the word "schools" has not been used to narrow down the scope of the clause but to discriminate them from other educational institutions. This question, I think can best be dealt with when we come to clause 18. Actually sub-clause (3) (b) was intended to apply only in regard to the system of primary education.

Mr. President; Shall I put the amendment to vote now? The amendment is-one part of it-

That in clause 1, the following new definitions be inserted:-

'School' means any educational institution. The amendment was negatived.

Srijut Rohini Kumar Chaudhury: The second part of my amendment is, for defining untouchability, it may be clearly stated that.

"'Untouchability' means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Sir, in the fundamental rights, it has been laid down that untouchability in any form should be an offence punishable by law,. That being so it is necessary that the offence should be properly defined. As it stands, the word 'untouchability' is very vague. It should be defined in the manner in which I have put it, or in some other better form. which may be decided upon by the House.

Dr. S. C. Banerjee (Bengal: General): Mr. President, the word 'untouchability' actually requires clarification. We have be-en accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of 'Harijans' into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of 'untouchability', has used it in various ways and on different occasions with different meanings. So when we are going to use the word 'untouchability', we should be very clear in our mind as to what we really mean by it. What is the real implication of this word? I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions. It is incumbent on us that we should be very clear as to make it explicit that in the future
independent India, there should be no distinction between man and man in the social field. In other words, caste distinction must be abolished. Of course there is difficulty as to whether we can make it justiciable or not. I have thought over it for a long time. I do really believe that in place of untouchability, some other word, -such as, 'caste distinction' should be used or the word 'untouchability' should be clearly defined so as to leave no doubt in the mind of any one as to what we really mean by it.

Mr. K. Munshi: Sir, I oppose this amendment. The definition is so, worded that if it is accepted, it will make any discrimination even on the ground of place of birth or 'caste or even sex Untouchability. What does the definition say?

"Untouchability' means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Now, Sir, clause 4 does not deal with untouchability at all. It deals with discrimination regarding services and various other things. It may mean discrimination even between touchables and touchables, between people of one province and another. The word 'untouchability' is mentioned in clause 6. The word 'untouchability' is put purposely within inverted commas in order to indicate that the Union legislature when it defines 'untouchability' will be able to deal with it in the sense in which it is normally understood-

The present amendment will be extending the scope of the definition of untouchability. Sir, I oppose the amendment.

Mr. Dhirendra Nath Datta (Bengal: General): Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases. Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing. So, unless a definition is put in, it would be impossible for the judiciary to deal with offences coming under untouchability. Whether you accept the amendment of Mr. Rohini Kumar Chaudhury or not, some definition must be there. This question may be left to the Drafting Committee to find out some suitable definition of the word 'untouchability'. I strongly feel
that unless there is a definition it cannot be dealt with as an offence. We all feel that untouchability should be made an offence and it should be done away with. I also feel with my friend Mr. Thakur that the root cause of untouchability, namely, the caste system, in Hindu society should be abolished altogether. Unless the caste system is abolished, untouchability will persist in some form or other. It has been said times without number by our leaders that unless Hindu society is drastically reformed by abolishing the caste system, it is bound to perish. Caste system should be abolished. So, if we are to deal with 'untouchability' as an offence, there should be some definition and I hope it would be left to the Drafting Committee to frame suitable definition so that it will be placed before the House for discussion. With these words, I support the amendment.

Mr. President: I should like to draw the attention of the House to clause 24 which says:

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

Srijut Rohini Kumar Chaudhury: I beg leave to withdraw the amendment.

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

Mr. President: I do not propose to put to vote of the House clause by clause. We will discuss each clause and the House will come to certain decisions. These decisions will be reviewed when the whole Constitution is ready. Suitable alterations will be made in the light of what precedes and what follows, so that there might be no discrepancy between one part and another. Therefore, the House need not be very meticulous about words now.

The Hon'ble Sardar Vallabhbhai Patel: There shall be no duplication of debates and it shall not be open to reopen the whole thing. There shall be only reconciliation between various clauses, in the matter of phraseology.

Mr. President: I do not suggest any duplication or any second discussion clause by clause. When the whole draft comes back we shall see how each clause fits 'M and that there is no discrepancy. Subject to that I think the House can take clause by clause into consideration.
Srijut Rohini Kumar Chaudhury: Sir, on a point of information, I should like to know whether a separate Bill like the Bill of Rights will embody all these provisions and then will be presented to this House. In that case it will be unnecessary to discuss these amendments.

Mr. President: We are now discussing that very thing. As I said, we shall see at the end that all conflicts and discrepancies are removed; not that we shall discuss the whole thing over again.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, you should put the question that clause 1, as amended, be passed.

Mr. President: I am not taking formal votes because it will not then be open to review later on. Therefore, I am taking up the consideration of the clauses one after another.

The Hon'ble Sardar Vallabhbhai Patel: Sir, unless it is accepted by the House there is no point in going through, the whole Report. When the whole Report is gone through, if is understood that the necessary adjustments will be made. But if you leave the whole thing open without taking votes there is no point in going through the Report.

Mr. N. V. Gadgil (Bombay: General): Does a vote mean that it is finally accepted and there is no further scope of any further suggestions even in the matter of principle?

Sri K Santhanam: Sir, some of the rules may be changed afterwards and you can ask the House to change anything. But let us accept the clauses.

Mr. President: It is always open to the House to review its own decisions and in that way every decision that we take today will be open to review. But I was suggesting that even without reopening the whole thing we might remove all conflicts and discrepancies which may appear later on by making the necessary adjustments. In any case I will put clause 1 to vote.

The question is that clause 1, as amended, be passed.

The motion was adopted.

CLAUSE 2-APPLICATION OF LAWS

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move that clause 2 be accepted. The clause runs thus:
"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.'

If we make a fundamental right justiciable this is not a necessary corollary of it but in this connection I should like to draw the attention of the House to paragraph 7 of the Report which says: "Clause 2 lays down that all existing laws, regulations, notifications, customs, or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While the course of our discussions and proceedings we have kept in view the provisions of existing statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

Therefore, this clause is subject to examination of its effect on the existing laws and this should be done before the Constitution is finally drafted and the clause finally adopted.

Sri, I move.

Sri K. Santhanam: Sir, I gave notice of an amendment but I will move it in a somewhat modified form in terms of a suggestion made by Sardar Patel. I move that in clause 2 for the words "nor shall the Union or any unit make any law taking away or abridging any such right", the following be substituted:

"Nor shall any such right be taken away or abridged except by an amendment of the constitution."

The only reason is that if the clause stands as it is then even by an amendment of the Constitution we shall not be able to change any of these rights if found unsatisfactory or inconvenient. In some constitutions they have provided that some parts of the Constitution may be changed by future constitutional amendments and other parts may not be changed. In order to avoid any such doubts I have moved this amendment and I hope it will be accepted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I accept the amendment.

Mr. Promatha Ranjan Thakur: Sir, the words are "nor shall the Union or unit ..., etc." "Union" has been defined in the first clause but not "unit". That also should be defined.
Mr. President: The word "unit" does not occur in Mr. Santhanam's amendment and so the question does not arise.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Sir, we understand that there will be provincial constitutions and each province will frame its own constitution. If so, the amendment of any law relating to a province should be left to the provinces instead of to the Union. The power to amend the Provincial law must lie in an autonomous province. If it is true, as we understand now, that the Union will deal with certain subjects only like Defence, External Affairs and Communications, we do not want that any provincial power should be limited by any fundamental right or any of its powers to be taken by the Union of India. Therefore, it seems to me that this amendment will be dangerous. I suggest that we should deal with all the fundamental rights first and take up this clause 2 last. I want to see whether any provision in the fundamental rights, does not encroach on the powers of an autonomous province or State.

Mr. B. Das (Orissa: General): I am inclined to agree with the Hon'ble Rev. Nichols-Roy, and I cannot accept Mr. Santhanam's amendment. We cannot delegate that power to the Union Legislature or the Provincial Legislature. That means that the future Constituent Assembly be called upon to make such fundamental changes that are implied by the amendment of Mr. Santhanam. I would suggest to the House to see to whom we are delegating this power before we accept this amendment and leave the Provincial Legislature to do anything it likes.

The Hon'ble Sardar Vallabhbhai Patel: The amendment suggested would make all the fundamental rights obligatory because it is absolutely essential that this clause should be passed if these rights are considered justiciable and fundamental. If these are not justiciable then they are not consistent. But if it is considered that those clauses which confer rights on citizens which could be enforced in law, then it is necessary that any act, custom, regulation or notification which takes away or abridges this right, must be abrogated. Otherwise, it is meaningless. Therefore, Sir, I oppose the postponement of the motion. I have of course accepted Mr. Santhanam's amendment.

Mr. President: The mover of the Resolution has accepted Mr. Santhanam's amendment. The question now is:

"That in clause 2 for the words 'nor shall the Union or any unit make any law taking away or abridging any such right, the following be substituted:
'nor shall any such right be taken away or abridged except by an amendment of the constitution.'"

The motion was adopted.

Mr. President: The question is-(I will now read the amended clause)--

"All existing laws, notifications, regulations, customs or usages in force within the territories it the Union inconsistent with the rights guaranteed under this part of the constitution shall stand abrogated to the extent of such inconsistence, nor shall any such right be taken away or abridged except by an amendment of the constitution."

The Constitution will provide rules for its own amendment, and the Constitution will be amended in accordance with the rules which will be provided in the Constitution. This clause also, if necessary, may- be amended in the same way as any other clause in the Constitution.

The motion was adopted.

CLAUSE 3--CITIZENSHIP

The Hon'ble Sardar Vallabhbhai Patel: Now I will take up clause 3:

"Every person born in the Union or naturalised in the Union according to its laws-and subject to the jurisdiction thereof shall be a citizen of the Union."

To this should be added:

"Further provision governing Union citizenship may be made by the laws of the Union."

That was originally passed by the Committee but in printing it was Omitted. by mistake. It will be moved by Mr. Munshi.

Mr. K. M. Munshi: These words were originally in the Report which was placed before the Advisory Committee, but it seems due to some oversight they did not find a place in the final Report. The idea is that the Union will not only have -to make laws with regard to naturalisation but with regard to citizenship further provisions may also have to be made. So those words have to find a place in this particular clause; otherwise the whole idea will
remain incomplete. I therefore move that the following words may be added at the end of this clause:

"Further provision governing Union citizenship may be made by the laws of the Union."

Mr. Promatha Ranjan Thakur: The clause as it stands is rather vague. It reads-

'Every person born in the Union or naturalised in the Union according to its laws... "

I do not understand how a person can be born according to law. There should be a comma after 'Union'; you must not leave it vague.

Mr. B. Das: This clause is the only outstanding fundamental right a citizen can claim-political equality. 'Every person born in the Union..' will include any non-Indian-a German, or a Japanese who will enjoy the rights of Indian citizenship from the 14th to 21st year unless he declares that he is not an Indian. I would like a provision should be made that--

"a person born in the Union can declare for the nationality open to him by virtue of descent."

It seems that the Fundamental Rights Committee has not bothered about this aspect of the question.

European born sons and daughters will seek occupation in State and private services and later they can turn as aliens. Lord Roberts was born in India and yet. he was one of the greatest straps to keep down Indians. Of course only one European, Pierre Loti, was born in India and he remained a friend of India throughout. I do agree with my leaders as far as they are thinking on the right lines, viz., that 'they will bring further provisions by legislation to define fundamental rights. It appears to me that the present draft of citizenship is very wrong as it concedes economic exploitation to aliens on some pretext. Nowhere have you defined nationality, as has been suggested by Mr. Sidhwa. We do see that the Fundamental Rights Committee had to race against time and that they had no time to take into consideration certain factors which they have ignored so far. I do hope that this House will look into that aspect of the matter and will not agree to exploitation of Indian citizens in any shape or manner, by aliens or alien-born I feel very unhappy over this lacuna (if exploitation.

Mr. K. M. Munshi: Sir, on a point of personal explanation I was in error in stating that this clause was omitted by mistake. I looked into the Minutes and I find that it was
dropped in the Advisory Committee. I Was Under a wrong impression.
Mr. President: The point that has been raised by Mr. Das deserves consideration and I want
the mover to consider it. The wording of the clause as it stands is-
"every person born in the Union shall be a citizen of the Union."

Mr. Das says that the wording is too wide and may include the child of -any foreigner born in
this country, as he would acquire the right of citizenship by the mere fact of his birth.

Mr. K. M. Munshi: May I point out that the wording is "subject to jurisdiction"- That is the
doctrine of allegiance. Persons born of foreigners, consuls and diplomats, will not be
included.

Mr. President: "Subject to jurisdiction" will not include allegiance. I am not quite sure about
it but the lawyers in this House have to help us on that.

Mr. K. M. Munshi: "Subject to jurisdiction" has been defined by several authorities and it
means persons born of persons who owe allegiance to the Union. If necessary, I will satisfy
the Hon'ble Member who has put forward this point of view. The wording "subject to
jurisdiction" has been taken from the American Constitution' and has been expressly
'construed to mean this.

Mr. President: Our Constitution should be self-contained as far as possible. We should not
depend on the interpretation of clauses in other constitutions, as it may lead us to any amount
of confusion.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, this clause has been
borrowed from the American Constitution. There are two ideas of citizenship. In. the
Continental countries citizenship is based upon race: it has nothing to do with the birth of a
person in any particular place. In the Anglo-American system if a person is born in a
particular place, he gets his citizenship. If you want to adopt a different system you may.
Under the American system if a Hindu goes to America even today, he becomes an American
citizen, though if it is a question of naturalisation there are difficulties in the way of such
naturalisation. So the question of birth stands on a different footing from the question of
naturalisation. If I may say so, with respect to my friend, Mr. Munshi, that phrase "subject to
jurisdiction" is put in for a purpose different from what he stated. Supposing a consul is here
and a child is born to him, the child will not get citizenship. because the consul or his child
will not be subject to the jurisdiction of the Union. That, is why "subject to jurisdiction" is
used here, because a person born to a consul here is supposed to be born in his own country.
So far as any ambassador or consul or any other person holding a similar status is concerned, the child will not get the citizenship. That is why the expression "subject to the jurisdiction" occurs in that clause. Therefore the main principle underlying this clause is that if a person is born here he must get the citizenship, even if he is a foreigner. That is the principle obtaining in England -in America and in every other country in which Anglo American jurisprudence prevails.

So far as continental countries are concerned citizenship is based upon blood: it is based upon race: and therefore wherever that person may be if he is the son of a person of a race he has to get citizenship. That is the principle. No doubt difficulties have been expressed in regard to this principle of birth, when people leave their country and children are born to them. That is why provision is made in the British Nationalities Act in regard to birth of children to British citizens abroad and an appropriate provision may be made in the Union laws to cover such cases. The first part of the clause commits the Constitution to the fundamental principle that every person who is born in this Union is a citizen of the Union. The second part of it refers to naturalisation and then both of them are subject to the jurisdiction thereof. Other cases where children are born to nationals who go abroad from this country will have to be provided for by the Union law. That is the exact position. This is merely the principle obtaining in the Anglo-American law, viz., that if a person is born within the jurisdiction he shall get the citizenship. If you want to depart from it, it may land you in difficulties. You may borrow the whole of the continental system-either the German, French or the Italian system of nationality. But we thought that it would be much better to follow the Anglo-American system, a system with which we are acquainted.

Mr. President: I want to ask one question. Suppose a Japanese by birth is travelling through this country and while travelling a child is born to him. What happens?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: In spite of the language of the clause the American Supreme Court has held on this very clause that a casual visitor like that will not come within the language of the Constitution.

Sri M. Ananthasayanam Ayyangar: Why not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: My answer is that the Supreme Court of America construing this particular clause has held that. I think it is a reasonable exception which can be made. I have looked into this particular point yesterday thinking that this point would come up for consideration, because even a lady passenger in a railway train may Live
birth to a child, and an exception should be made to cover that class of person who is transiently present in this country to whom a child is born, that that person shall not have citizenship. But then what exactly is the meaning of 'transient presence'? That will have to be provided for and it will be very difficult. Under those circumstances there is no great-hardship felt in America by ad-opting the rule that birth determines citizenship. Otherwise you must have a detailed provision as in the British Nationalities Act, where there are four special clauses to cover such cases. You must borrow all the clauses of the British Nationalities Act, which provides a more comprehensive definition than this. But we thought that on the whole it would be better, to adopt the shorter form as in the American Constitution which can find a place in a chapter on Fundamental Rights.

Mr. President: It seems to be a very important question and we should thrash it out. What would happen to a man -who is not simply passing through the country but stays in this country, say, for some years for trade purposes or some other purpose ?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: His son will become a citizen, but political rights are distinct from civic rights. There is no general rule of law that a citizen is entitled to political rights, because we know as a fact that according to the American law of citizenship the citizen is only entitled to civic rights. It does not stand in the, way of the Constitution being so framed as not to concede political and other rights to the citizen. Citizenship by itself does not carry anything like minimum rights. Citizenship may confer certain rights in particular cases. If you think that those clauses should not be extended to all the citizens, it is for you to make a distinction. Citizen right by itself normally under the American law from which it borrowed---does not connote any minimal rights, Though the Eighteenth Amendment is applicable to every State in U.S.A., the citizen does not possess political and other similar rights in various States in the Union. Certain rights we have extended to all people. So far the area of fundamental rights of citizens has been considerably reduced and no considerable difficulty can possibly arise in regard to citizenship in matters relating to religion, protection of property, protection of person, protection of organisation and some safeguards as to public order and all that. But the difficulty is likely to arise by importing the idea of political rights into citizenship. Otherwise, we must consider the question whether We have to borrow this principle at all or depart from it altogether. We have got that very thing in the British Nationality Act itself. Or we

shall, have to have some concept of citizenship distinct from the British Nationality Act, distinct from the American law, borrowing from the German or Italian conception or we must have our own idea of what citizenship is. That is how the matter stands.
Mr. President: Personally, I do not like that we should follow the precedent of any other country. We should have our own citizenship and formulate what that citizenship connotes.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: While I greatly appreciate that, I cannot altogether forget the fact that citizenship will carry with it protection in the international field. In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be secretarian. That is a question of politics on which I am not so competent as some other people here. But so far as this is concerned, I merely state the law as it is and the principles on which the Fundamental Rights Committee has proceeded.

Sri M. Ananthasayanam Ayyangar: Take the case of a Japanese who comes into this country and stays here for some time and a son is born to him. Does he lose the citizenship which he inherits from his mother in Japan or he does not do so and he continues to be a citizen of both countries.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of statelessness or double nationality- Owing to conflict between the continental and Anglo-Saxon systems differences might arise. You might provide for a particular person choosing his citizenship in cases where such conflict arises, but you cannot possibly provide in a chapter on fundamental rights all the complications that may arise on account of the problem of double citizenship, statelessness and all those considerations.

Sri M. Ananthasayanam Ayyangar: In clause 4 it is said:

'The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.'

Therefore, that is an unqualified citizenship and this a fundamental right. This can only be modified by a modification of the Constitution, not even by the law of a unit or of the Union Legislature. Therefore, you are not making a discrimination between citizenship rights and political rights. Is it not desirable that we should not leave this definition in an indefinite form as it now stands in this paper?
Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The clause relating to discrimination in the context can only refer to civic right. It will be for the Provincial and the Union Constitution to give franchise in any form. You can make it subject, if necessary, to qualifications as to franchise both in the Provincial and the Union Constitutions. I may also say that in fact some members of the Committee were anxious to say that every right must be a human right. I hope I am not disclosing any secret when I say that Mr. Masani went to the length of saying that most of the rights should be extended to human beings who are in this country; that was the stand he took up. As a matter of fact, there is nothing novel in that. The first Ten Amendments of the American Constitution are not confined to citizens. Whatever may be the interpretation put upon them by the Supreme Court, the first Ten Amendments of the American Constitution are not confined to citizens. It extends to every human being generally. Of course, the word "discrimination" has been understood not to extend to Political right, and it is Only confined to civic right ordinarily exercised by the citizen. We arc not doing anything novel.

Shri R. V. Dhulekar (United Provinces: General): I submit there is no provision made for any child which has been born outside the Union of parents who are citizens of the Union. I should like to know whether that child will also obtain the right of citizenship or not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: That is why provision has been made that the law of the Union may provide for it.

One other suggestion I would like to make. When we draft the Union Constitution you may consider, it. If you accept the view, that normally Waking we have to adopt the general principle in Anglo-Saxon or American jurisprudence subject to necessary modifications or modifications that may be, introduced by the Law of the Constitution for the time being, especially in view of what has already fallen from you, we will consider the whole thing in juxtaposition with other provisions of the Constitution, and if it is likely to come into conflict, that may be considered. But one thing. Are we going to bring in race idea, namely, only those who are born of parents-you call them Indians or other people-are entitled to citizenship or are you going to subscribe to the principle that birth settles citizenship, though necessary exception will have to be engrafted for the purpose of providing for children of Indian nationals who are born abroad? I am not at all suggesting that you must rigorously follow the principle of what you call lex soli, that is, place of birth? The' two principles are lex soli and lex sanguinis. Lex soli means the law of the place of birth arid lexsanguinis means according to blood. These are the two different principles in the field of international law.
Mr. R. K. Sidhwa: When this question was considered in the main Advisory Committee, the clause read thus:

"Every person born in the Union or naturalised in the Union shall be a citizen of the Union."

I moved an amendment there that the citizenship clause being very vague should be made more clear as you have rightly pointed out. I put a definite period. I said, whoever is not naturalised for at least ten years in this country shall not be considered a citizen.

On this the following words were added-

"According to the laws and subject to the jurisdiction thereof." I was told that this would cover my point; although I was not satisfied as commonsense man I felt -that this did not cover the view point I raised. I was, however, helpless before the views of the legal luminaries. It is, therefore, very necessary that we should have a clear definition of the word 'citizen', and it should be put down in the Constitution and not left to be dealt with when we are making laws hereafter. I suggest that it should be explicitly defined here, and that this clause be postponed and dealt with tomorrow.

Mr. Jagat Narain Lal (Bihar: General): Sir, I feel that the definition of citizenship given in the Constitution of the Irish Free State may be useful in this connection. The definition there is-

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State."

I think, Sir, if some such time limit, as seven years for domicile is laid down, that will solve our difficulty.

Sri M. Ananthasayanam Ayyangar: Sir, I find that the words in this definition are taken, almost word for word, from the American Constitution. In the American Constitution it reads thus-

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United states and of the State wherein they reside."
But this definition of 1868, we are told, has been given various interpretations during the subsequent years. I would therefore request this matter to be left over for being dealt with tomorrow. It is one of the most important clauses. On the question of citizenship there have been lots of quarrels all over the world, in Jerusalem, for instance. This is a matter on which there is scope of difference of opinion. For example, if a Japanese child is born in this country, should it be allowed to become a citizen of this country or become a national of this country merely because of the fact that it was born here? Or can we lay it down that if a man lives in this land for a period of 10 or 15 years, he should get the right of being a citizen of this country? I do not think we should make any distinction between foreigners in the matter of citizenship in this country. I feel it is not contemplated in the fundamental rights, it is an innovation. These are matters which require deep thought. I would, therefore, suggest leaving this question over till tomorrow when we will sit together and find out how to modify the present definition.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, I would only invite the attention of the House to the definition of a British citizen' and even this has given rise to difficulties and they have had to make special provision for married women. It is not an easy thing to produce a Nationality Act by tomorrow morning.

The definition says:-

(1) The following persons shall be deemed to be natural born British subjects, namely:-

(a) Any person born within His Majesty's dominion and allegiance; and

(b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either,

(i) his father was born within His Majesty's allegiance; or

(ii) his father was a person to whom a certificate of naturalisation had been granted; or

(iii) his father had become a British subject by reason of any annexation of territory; or

(iv) his father was at the time of that person's birth in the service of the crown; or (v) his birth was registered at a British consulate within one year or in special circumstances, etc.
(c) Any person born on board a British ship whether in foreign territorial waters or not. Even this Act had caused difficulty in the case of married women. Therefore, if at least one thing is decided upon and if we generally accept the general principle, that will be better. My friend, Mr. Ananthasayanam Ayyangar is more hopeful than myself. I do not think it will be possible to come with a ready-made solution of this difficulty by tomorrow coming. For the time being, let us accept the general principle. The exact qualifications and modifications necessary may be considered later. We need not overnight manufacture a law of nationality before 11 o'clock tomorrow morning.

Mr. President: May I make one suggestion for the consideration of the mover? As it is a very important matter and it is one to which I myself attach great importance—if an amendment like this could be accepted, it might remove most of our difficulties. You begin the sentence like this:

"Save as otherwise provided by the law of the Union, every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union."

Now, as the clause reads, apart from what the American precedent is., about which I do not know, it seems to me that it is so wide that every one born in this country will be a citizen of the Union, and the rights of a citizen are specifically given, in clause 9.

The Hon'ble Sardar Vallabhbhai Patel: There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view.

Mr. President: We claim for Indians in South Africa the nationality of that country not merely by birth but by reason of settling there.

The Honourable Sardar Vallabhbhai Patel: Yes. This Constitution is for a period of ten years after which it will be subject to revision. We have added a proviso which covers all our difficulties. I suggest for your consideration how many foreign men and women come to India for giving birth to children to acquire Indian nationality. It is a curious idea that, for that purpose you introduce racial phraseology in our Constitution. It is important to remember that the provision about citizenship will be scrutinised all over the world. They are watching what we
are doing. We will be undergoing great risk if you postpone this matter and raise legal controversies. By commenting on every word in this, you will never come to an end. This is a simple problem. We must always have a few foreigners coming here. This will be accidental nationality- If by the accident of birth, some one comes and stays here, subject to the proviso which we have enacted, we can control double citizenship by our legislation. We can always control that.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): We must remember that this clause is intended for the positive purpose of creating a unitary citizenship of India. We should not be obsessed by foreign accidental possibilities.

The Hon'ble Dr. Kailas Nath Katju (United Provinces: General): Mr. President, it is hardly necessary for me to add to the illuminating exposition of Sir Alladi Krishnaswami Ayyar. I suggest that in the definition as it stands we might add something on these lines. Under the present law every person who is born in British India today has Indian citizenship. If a person is born anywhere outside India, then he becomes an Indian subject because he is the son of an Indian subject. That ought to be made quite beyond controversy. That should not be left to the proviso. Wherever the subject of the Indian Union goes to any part of the globe and if a child is born to him there, then that child becomes the subject of the Indian Union. I understand that to be the law. If that is not the law, then it ought to be the law of the Union. We are now sending a number of Ambassadors abroad in order to establish contacts with all foreign countries. It would be lamentable if Indian people who go there and if a child is born to them, then that child should not be treated as an Indian subject. This ought to be added to the definition. I do not wish to say anything about double nationality. The law is quite clear. It was very much stressed during the trials of the Indian National army personnel. It was then found that it sometimes happens that if a child of a non-British subject is born in India, then that child may have double nationality of the country where he is born and of the country of his parents. When he becomes a major, it is open to him to accept one nationality and renounce the other. Speaking for myself, whoever is born on Indian soil should be welcomed as a subject of the Indian Union. That is a plain and intelligible proposition. I think we should accept it.

Mr. K. M. Munshi: As has been suggested by Dr. Katju, every child born of Indian parents should have the citizenship of the Union. Now as a matter of fact, the clause as originally sought to be inserted, has this provision that children would he citizens of India, if when they are born the parents are Indian citizens. But it was felt that if you once start introducing various elements and considerations in this clause, then we will be engaged in enacting a
nationality law here and now. Therefore the amendment, which I moved, was inserted, viz.,
that further provisions required for these different cases will be made by a law of the Union.
After all we are not making a law of nationality. We are only enacting two indispensable
conditions, namely, persons born in India and naturalised according to the law of the Union
shall be citizens. The world is divided between the ideas of racial citizenship and democratic
citizenship, and therefore, the words 'born in India' become necessary to indicate that we align
ourselves with the democratic principle.

The Hon'ble Sardar Vallabhbhai Patel: As I have already explained all
these different points of view can be easily provided for under the clause,-

"Further provision governing Union citizenship may be made by the law of the Union."

All the difficulties suggested from various points of view can, be covered: in this. It is open to
the Union to make any law governing citizenship, if it is necessary. After all how many
people are going outside ? A few people. Supposing some children are born outside and if
there is any such necessity, this proviso amply covers such difficulties. The difficulties on the
opposite side also are covered. Therefore, our general preface or the general right of
citizenship under these fundamental rights should be so broad-based that any one who reads
our laws cannot take any other view than that we have taken an enlightened modern civilised
view. The citizenship clause has been taken from the American model which is more or less
consistent with the English. And therefore we should not disturb this and we need not be
frightened about it because it is not going to create any difficulties in the intervening period of
ten years. If we find any difficulties after our experience of the working of the Constitution
for ten years one can easily change it. But I have no doubt that there is going to be no
intricacy or difficulty. It is a simple clause which will be fit and proper for the first
Constitution of free India, and we need not have any suspicions.

The Hon'ble Sri C. Rajagopalachariar: Sir, I think it should be "further provisions". It must be
plural and not singular.

Mr. President : Even after listening to the learned discourses that have been given to us by
eminent lawyers, I confess that I am not yet convinced that the clause as it is, has been rightly
put. But it is of course open to the House to accept it in this form.

Srijut Rohini Kumar Chaudhuri: Sir, I suggest that the consideration of this clause may be
further postponed.
Mr. President: I am afraid that is not possible. The words-

"Further provisions governing Indian citizenship may be made by the law of the Union." would not improve matters, because "further" means in addition to and not in modification of. Therefore, that would not in any way take away from the amplitude of the clause as it is in the first part of it. But, as I have said, I do not like to influence the House beyond expressing my own opinion, and I leave it to you to give your vote.

Several Hon'ble Members: The clause may be held over.

The Hon'ble Sri C. Rajagopalachariar: Sir, will you permit me to say a word? There is some misunderstanding.

Mr. President: I do not think it would be right at this stage to allow any member to speak on this clause. There is a suggestion which seems to come from many members that the consideration of this clause may be postponed.

The question is:

"That the consideration of this clause be postponed."

(Votes were taken by show of hands). The motion was adopted. Mr. President- I will particularly request lawyers and jurists who are members of this House to give their attention to this clause and to give us something which will be acceptable to all. If they too feel that the clause as it stands should be accepted, I have no doubt that the House will accept their opinion with the respect which is due to them.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, we have a big Committee and it is an unworkable proposition for twenty people to discuss the question of citizenship. The whole point has been discussed and I suggest that a small Committee may be appointed to consider this clause.

Mr. K. M. Munshi: That will be better; they can meet and have a discussion because this is a purely technical discussion.

Mr. President: This is a purely legal matter and, therefore, I should like to leave it to the lawyers to give us a draft.
Mr. K. M. Munshi: Three Committees have discussed this question thread-bare and you can now nominate any persons you like and they can discuss it with you.

Mr. President. It is not as if I alone am not convinced about it but a great part of the House is doubtful about this. So there is no use discussing with me alone; even if I am convinced and if the House is not convinced that would not take matters very far.

Shri R. V. Dhulekar: Sir, I propose that a small Committee consisting of Sir B. L. Mitter, Dr. Katju and Mr. K. M. Munshi be appointed to go into this.

The Hon'ble Pandit Jawaharlal Nehru: I think it should be left to the President and the Chairman of the Committee.

Mr. President: If it is left to me I will ask the lawyers to go into it.

Dr. B. Pattabhi Sitaramayya: I suggest that in addition to three lawyers one man of common sense may also be added.

Mr. President: I do not exclude lawyers from the category of people with common sense.

CLAUSE 4-RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Sir, I beg to move clause 4 which runs as follows:

"4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to-

(a) access to trading establishments including public restaurants and hotels; (b) the use of wells, tanks, roads and places of public resorts maintained wholly or partly out of public funds or dedicated to the use of the general public: Provided that nothing contained in this clause shall prevent separate provision being made for women and children."

This is a nondiscriminatory clause which is provided in almost all constitutions and adjustments -have been made here to suit the special conditions of our country. There may be various points of view and in the Committee also there was a full discussion on this question.
and I am sure there will be discussion in this House also. A proviso has been made which was found to be necessary because even in a non-discriminatory clause it would be necessary in the present condition of our country to make special provision for women and children.

Some amendments have been given notice of to remove doubts. In clause (2) (a) the words "and places of public entertainment" were suggested in the course of discussion to be added; and in clause 2(b), the words "State funds" are sought to be substituted for "public funds", Public funds may be by subscriptions or private arrangements, the clause is meant to apply to State funds. In clause (1) it is suggested that for "make no discrimination" the words "not discriminate" should be substituted. I shall accept these amendments when they are formally moved.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): Is Sardar Patel himself putting forward these amendments?

The Hon'ble Sardar Vallabhbhai Patel: I said that when these are formally moved I shall be prepared to accept them.

Shri Mahavir Tyagi (United Provinces: General): May I know one thing from the Hon'ble the mover? Allay I know why he thought it necessary to repeat in sub-clause (2) what he has already said in subclause (1)- I mean the words-

"There shall be no discrimination against any citizen on any ground of religion, race, caste or sex."

The Hon'ble Sardar Vallabhbhai Patel: It is very simple. The first clause is about the State obligation; the second clause deals with many matters which have nothing to do with the State, such as public restaurants--they are not run by States; and hotel--they are not run by State. It is an entirely different idea, and therefore, it is absolutely essential.

Shri Mahavir Tyagi: It does not satisfy me. The second clause pertains to hotels and restaurants. To say that restaurants and hotels shall do this or that and there shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to access to trading establishments including public restaurants and hotels, is including such establishments which are not included in the State. It is their outlook. But if we are also to enact for those which are not included in the State, then we should make it clear. Could we not put it in one clause that no discrimination shall be allowed against any citizen in regard to restaurants, hotels, well, tanks, roads, and so on? The clause as it stands does not
mean this. Either the language should be slightly different, or perhaps I have not exactly followed the meaning of this clause.

Mr. R. K Sidhwa: The words 'Hotels and public restaurants' have been mentioned for special reasons and specific purposes. They are used by the public and even at present licence from the local bodies is necessary before they are allowed to function. It is very necessary that these public places of entertainment-hotels, and restaurants should be specifically mentioned, so that the-owners may not say that A shall be allowed and B shall not be allowed. These words have a definite and special meaning, and they are absolutely necessary. I, therefore strongly suggest that the words be retained as the Hon'ble Sardar Patel has moved.

Mr. K. M. Munshi: Mr. President, Sir. I move: 1. "That in clause 4 (1) the words 'not discriminate' may be substituted in place of 'make no discrimination'."

It is merely a matter of phraseology.

2. "That in clause 4, sub-clause (2) (a) the following words may be added: and places of public entertainment'." A doubt was raised whether places of public entertainment could be treated as trading establishments. In order to make it clear that places of public entertainment are trading establishments, this amendment has been moved:

3. "That in clause 4, sub-clause (2) (b) substitute the words 'State funds' for public funds'."

"Public funds" might be construed differently; it may be even money raised by public subscription for specific purpose. This amendment will clear this doubt.

Mr. President: We have received notice of a number of other amendments to this clause.

Mr. P. S. Deshmukh (C. P. and Berar: General): May I say a word as a matter of general observation on this clause'? In drafting such a long clause we are throwing a shadow of untouchability over the whole Constitution of India. In this particular clause, I submit to the House, if we merely say that-

"the State shall not permit any discrimination against any citizen on grounds only of religion, race, caste or sex." it should be quite sufficient, and it will leave ample opportunity to the Union Government to make specific provisions with regard to hotels, restaurants, parks, theatres, etc. I think, therefore, that the whole of the second part should be omitted. We should not forget that we have to confine ourselves to the rights which are and must be fundamental. This is not the place to enumerate all the various rights a citizen should have.
We are here concerned with only justiciable fundamental rights and it would be improper to burden the clauses with a detailed list of places which should be accessible to all. I, therefore, suggest I Sir, that it will serve our purpose if we merely substitute in the place of the whole clause the following-

“That the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion, race, caste or sex.”

Mr. Somnath Lahiri: Sir, I support the original motion but there should not be any discrimination on the ground of political creed. The whole idea of these clauses is that discrimination should not be exercised by the State or by other public bodies in respect of religion, caste etc. In the unnatural circumstances of today in India, religious, communal, caste and similar distinctions loom large. But when things have settled down political differences are sure to come to the forefront and there may be a tendency on the part of the State or public bodies to discriminate against members of political parties on the basis of difference in political creeds. In every country in the world you will find that measures are taken generally to obviate this kind of discrimination on the ground of political creed or party. Therefore I want to move:

"That in sub-clause (1) of clause 4, after the words 'grounds of', the words 'political creed' be inserted.”

Similarly, I beg to move:

"That in sub-clause 2 of clause 4, after the word 'caste' the word 'creed' be inserted."

I support also Mr. Kamath's amendment to the same sub-clauses of clause 4.

Mr. President: Have you moved both the amendments?

Mr. Somnath Lahiri: I have moved both the amendments, Sir.

Mr. H. V. Kamath: Sir, in moving this amendment I seek to draw a distinction between religion and creed. I think the word religion is not comprehensive enough to include in its scope creed as well. For instance, a person may not accept any religion in the conventional or formal sense of the term, yet he may have a creed. A man may say that he has no religion, yet he may say that he is a rationalist or a free-thinker and that I suppose is a creed which anybody can profess and still he may say that he does not belong to the Hindu, Muslim or
Sikh religion, or for the matter of that to any other religion. Therefore, I think that the word creed should be inserted in this clause.

I do not subscribe to my friend Mr. Lahiri's suggestion regarding political creed. I do recognise that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods. We may have to impose discrimination against such persons. But I submit that the word 'creed' has a different connotation from the words political creed'.

As regards 'colour' perhaps it is included in the word 'race'. Yet I have my own doubts on that point as well. Personally, I do not think that the word 'race' should find a place here, as that would mean that we recognise a multiplicity of races in India—a doctrine to which I do not subscribe. Yet if ethnologists who are present here think that there are many races in India and the word 'race' must be there, I will yield to them on that point. But I think in that case the word colour should find a place in this clause.

An Hon'ble Member: What do you mean by colour?

Mr. H. V. Kamath: 'Colour' means colour of your complexion. Two persons may belong to the same race but may have different colours physically. Therefore to make it comprehensive I move:

'That in sub-clause (1) and (2) of clause 4, after the word 'caste' the words 'colour, creed' be inserted.'

Srijut Rohini Kumar Chaudhuri: Sir, I beg to move: "That in sub-clause (2) of clause 4, after the word "sex', the following words be inserted: "or of dress worn by any nationality.'"

It seems almost a laughing matter. But even today when we are on the threshold of independence there are hotels which do not welcome people dressed in Indian style. I know of an instance which recently occurred when four Indian gentlemen of my province were not allowed to live in a hotel because they wore Indian dress. I am not afraid that in future the same restriction will be observed by any hotel owners. Today of course unfortunately there are some European-owned or European-managed hotels which do not take in Indians in Indian dress or make it a condition that they must not come to their dining rooms in that dress. I am not afraid of the future, because I believe that when India is independent such restriction would disappear. But what I am afraid of is a reprisal or a revenge taken against such European minded people and people in European dress may not be allowed to come into
hotels. For that reason particularly I want that this amendment should be accepted by this House.

Mr. Dhirendra Nath Datta: Sir, I do not want to move the amendment which stands in my name. (Amendment No. 12 on Supplementary List, dated 28th April 1947).

Sri D. Govinda Doss (Madras: General): (Spoke in Telugu). Sir, I move:

That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, temples or places of worship be inserted."

Sri V. C. Kesava Rao

(Madras: General): I move:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, hostels, temples or places of worship' be inserted."

I want to say that though some schools are thrown open to the Harijans in the villages, they are not allowed to sit along with the caste Hindu students. They are asked to sit on the floor or at a distance. I would like to say in this connection that education is the birth-right of every citizen. So a Harijan or an untouchable should be given the same right as every other citizen. As regards temples, I may submit that untouchables are made to worship God only from a distance and not before God. Even though the untouchables are saying that they are Hindus for the last so many centuries, they are being denied this right and they are made to worship God only from a distance and not within the temple itself. I think that untouchability is the sole cause for the non-admission of untouchables into temples. I request that these things may be taken into consideration.

Mr. President: There is another amendment in the name of Shri P. Kakkan. But that is covered by the amendments that have already been moved by Mr. Govinda Doss and Mr. Kesava Rao, and it is not necessary to move that amendment (that is, amendment No. 15).

Shri Ajit Prasad Jain (United Provinces: General): I beg to move:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary', be inserted; and after the word 'resort' the words 'built or' be inserted."
The speaker who preceded me just now has spoken about educational institutions. It is not necessary for me to repeat those arguments. I have also included hospitals and dispensaries among the places in regard to which no discrimination should be made provided they receive aid from State funds. Educational institutions, dispensaries and hospitals are very necessary for the moral, mental and physical, development and my opinion is that any public institution which receives any assistance from State funds should be open to all persons irrespective of their religion, caste, race or sex. In this connection, I would like to refer to paragraph 18 (3) (b) which says:

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

Now, the amendment which I have suggested would negative this provision, for I would make it compulsory that any educational institution, hospital or dispensary, if it receives any aid or assistance should be thrown open to all persons. Secondly, I want the words "built or" to be inserted after the word "resort", for the State's assistance may take the form of a lump sum or a periodical amount for the purpose of maintaining the thing. The present clause as it stands will not include institutions which receive any lump sum aid for construction and, therefore, my second suggestion is that the words "built or" be inserted after the word "resort", so that both the institutions which have been built or are maintained by the State funds may come within the mischief of this clause.

Mr. R. R. Diwakar (Bombay: General): I beg to move:

"That in sub-clause (2) (b) of clause 4 for the word 'and' a comma be substituted, and after the word 'resort', the following words be inserted:- and schools, colleges and other institutions."

I should like to bring to the notice of the House that this is a question of equal opportunity—Equal opportunity to all should be given in schools, colleges and other institutions which are State-aided, so that people may not be shut out from any institution on account of race, creed, religion, etc. There may be some apprehension that if this amendment is accepted certain schools which are denominational or run by certain sections or communities may be flooded, or entry may be demanded by all into such schools. But I may state that there is a sufficient safeguard in the phrase which says, "dedicated to the use of the general public". Unless the institutions are run wholly or partly by State funds and are dedicated to the use of the general public, there is no such
danger arising by the acceptance of this amendment. Therefore, I request the House to accept it.

I also move:

"That after the words 'general public' at the end of sub-clause (2) (b) of clause 4, the following be added: --

"and (c) the use of all kinds of public conveyances'."

I do not think it necessary for me to say anything about it.

Srijut Rohini Kumar Chaudhuri: I beg to move:

"That the following explanation be added at the end of clause 4:--

'Explanation : A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public'."

There are many temples which have got attached to them houses called Nat Mandirs. During festivals and on other occasions also dramatic performances and cinema shows are held there. The performances are sometimes given by people belonging to what you call the Harijans, but the Harijans themselves are not allowed to go. This is very galling to the people. Therefore, whenever any show or any dramatic performance takes place in any place attached to the temple, all members of the public must have access to it.

Mr. President: Have you a new clause to be added, or is it an amendment to clause 4?

Srijut Rohini Kumar Chaudhury: It has been misplaced, or wrongly placed. It should be under clause 6 as an amendment.

Mr. President: You can take it up with clause 6.

Now all the amendments of which notice was given have been moved. Therefore, the motion as well as the amendments are now open for discussion.

Mr. K. M. Munshi: Sir, regarding adding the words "schools, etc." to clause 4, I submit that this matter be left over till we come to clause 18. Otherwise the discussion on clause 4 will drift to other matters which are connected to this subject. If it becomes necessary as a result of
discussion, to make some modification in clause 4, that may be made later. The discussion will be more cognate so far as education is concerned, if it is taken up with clause 18.

As regards the amendments relating to temples, they relate to untouchability and I submit that they should be taken up with clause 6. This particular clause--clause 4, relates only to rights of citizens with regard to places of public use.

I, therefore, submit that permission may be given to members to deal with these amendments under clause 18 and clause 6.

Mr. R. R. Diwakar: In view of the suggestion by Shri Munshi, I hold over my amendment regarding schools.

Sri M. Ananthasayanam. Ayyangar: I would like to submit that there are sources of water supply other than wells, tanks, etc., such as channels, and I think these also should be covered by clause No. 4. Therefore, I think it necessary to add the words "and other sources of water supply" after the word "tank". Otherwise, there will be a lacuna. Then again, there may be discrimination in giving medical relief, on grounds of religion, etc. That will be a dangerous thing. Therefore, Sir, if you do not think want of notice a serious objection against it, I would request you to permit me to add the words "and medical institutions" after the word "public resort". It will then read:- "the use of wells, tanks, roads and places of public resort and medical institutions maintained wholly or partly out of public funds or dedicated to the use of the general public."

Mr. R. K. Sidhwa: I want to have one point clarified, Sir. Suppose a well is constructed by a philanthropic person at a public place in a small village, but he has not dedicated it for public use, and allows everyone to use it, except a few persons in the village, he has used a public place but not dedicated for public use, what will happen? What will be the position then? As it is, this clause is not happily worded, and the House might like to have it worded in a better way.

Mr. President: I would request the mover to give his reply now.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is from Mr. Somnath Lahiri. He wants that there should be no discrimination on grounds of political creed. I do not know what discrimination he has in view. The non-discrimination clause is restricted to, or is provided for on grounds of religion, race, caste or sex. He wants 'political creed' also to be included. I think it is an absurd idea to provide for non-discrimination as regards a political creed.
Political creed may be of any kind. There may be some political creeds highly objectionable. Some may not be deserving of discrimination, but may actually be deserving of suppression altogether. So, I think it does not fit in here. The other amendment relates to colour. I do not know what is the meaning of it. There are different kinds of colours among Indians themselves. Have we got to provide for all of them. Therefore, I donot think all these amendments are necessary at all. The amendment relating to schools and colleges can be provided for when we come to discuss a separate clause relating thereto.

I am glad that on the whole the House is of opinion that this clause is aptly drafted.

Now there is only amendment left of Srijut Rohini Kumar Chaudhury. I do not think this is really necessary. There is no bar against any particular kind of dress. In my present dress I go to the Viceroy's house as well as to the abode of the humblest peasant. There is now no discrimination on account of dress.

Srijut Rohini Kumar Chaudhury: In some hotels and restaurants there is ban against the entry of Indians dressed in Indian national costume.

The Hon'ble Sardar Vallabhbhai Patel: All the foreigners are going. You need not be obsessed on that account Such things as dress cannot be put in the fundamental rights. If the world at large should read such provisions in our fundamental rights, then they would naturally conclude that we do not even know how to treat our nationals and how to treat our fellow beings. I may assure my friend that there is no discrimination now on account of dress. I do not think such things should be provided for in fundamental rights.

Srijut Rohini Kumar Chaudhury: What about the ban of entry of Indians in some hotels and restaurants because of their dress?

The Hon'ble Sardar Vallabhbhai Patel: The whole conception is born out of the idea of slavery. That idea of slavery has been haunting some of our people. Not even a shadow of it is left now.

Mr. President: Mr. Deshmukh has suggested that it would be sufficient if you put one clause as follows:

"The State shall not make or permit any discrimination merely on the ground of religion, etc:........"
The idea is if you put it like that, that would cover all cases and the second sub-clause will not be necessary. It would cover cases of private institutions as well as State institutions. We can have one comprehensive clause.

The Hon'ble Sardar Vallabhbhai Patel: If there is no formal amendment, I should prefer the present clause to stand as it is.

Mr. President: Now, I will put the amendments one by one. The first amendment of Mr. Munshi is:

"For the words, 'the State shall make no discrimination', the words 'the State shall not discriminate' be substituted."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is that above amendment be adopted.

The motion was adopted.

Mr. President: The second amendment is:

"In sub-clause (2) (a) of clause 4, after the word 'hotels', add the words 'and places of public entertainment,'"

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment. The word 'and' before 'hotels' should be omitted and should be placed after 'hotels'.

Mr. President: The amendment:

"In sub-clause (2) (a) of clause 4, omit the word 'and' before hotels and add the words 'and places of public entertainment' after the word 'hotels.'"

The motion was adopted.

Mr. President: The next amendment is in sub-clause (2) (b) of clause 4, for the words 'public funds' substitute the words 'State funds.'

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.
Mr. President: The question is:

"In sub-clause (2) (b) of clause 4 for the words 'public funds' substitute the words 'State funds.'

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (1) of clause 4 after the words, 'grounds of' the words 'political creed be inserted."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4 after the word 'caste' the word 'creed' be inserted."

The motion was negatived.

Mr. H. V. Kamath: Regarding my amendment No. 10, I desire to withdraw so far as it relates to the insertion of the word 'colour'. With great respect I am still not convinced that religion and creed are the same and so I press that portion of the amendment relating to the insertion of the word 'creed'.

Mr. President: A similar amendment in the name of Mr. Lahiri has just been put to the House and negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4, after the word 'sex' the following words be inserted:

'or of dress worn by any nationality'."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'schools, hostels, temples or places of worship' be inserted"
The motion was negatived.

Mr. President: Amendment No. 14 covers the same ground and is therefore lost.

The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary' be inserted."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'resort' the words 'built or' be inserted."

The motion was negatived.

(Mr. Diwakar's amendment about public conveyances was withdrawn.)

Mr. President: No. 19 is withdrawn. The question is:

That the following explanation be added at the end of clause 4:-

"Explanation: A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public."

The motion was negatived.

Mr. President: The question is that clause 4, as amended, be passed.

The motion was adopted.

CLAUSE 6

The Hon'ble Sardar Vallabhbhai Patel: Sir, I request that clause 5 may be held over because it requires some further consideration and I may be allowed to move clause 6 which runs thus:

"6. 'Untouchability' in any form is abolished and the imposition of any disability on that account shall be an offence."
There can be no difference of opinion on this question. This is now an accepted proposition all over and should be provided for in the fundamental rights, and any one who suffers a disability on this account should have the right to go to a court of law and have redress. I hope there will be no amendment on this.

Mr. H. V. Kamath: Sir, I move that in clause 6, after the word "Untouchability" the word "unapproachability" be inserted, and after the word "any" the words "and every" be inserted.

By this amendment I want to make the clause more comprehensive because in some parts of India the practice of unapproachability besides untouchability used to obtain some years ago, to my own knowledge, in some places like Malabar specially; I do not know what it is now. So I thought it that if you include the word "unapproachability" it would make the clause more comprehensive. The other small amendment that I propose is purely verbal. It does not change the meaning but only emphasises the clause.

Sri S. Nagappa

(Madras: General): Sir, I move that in clause 6, for the words "imposition of any disability", the words "observance of any disability" be substituted. My reason is that imposition implies that one party that imposes it on another is guilty but I suggest that if the untouchability is observed by any person it must be an offence. Unless this amendment is made I do not think the provision made here is enough to punish a person. So I request the House to see that by accepting my amendment observance of untouchability is made a punishable offence.

Sri P. Kunhiraman (Madras: General): Sir, I move that in clause 6 after the word "offence" the following words be inserted:

"punishable by law."

The original clause makes it an offence and implies that it will be punishable; I want to make it more explicit. It is just a verbal amendment and I commend it for acceptance. Moreover, if we only say that it is an offence it may be interpreted later on in the sense that it is not a legal offence. So it is necessary that it should be made explicit.

Mr. President: The motion and the amendments are now under discussion.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is by Mr. Kamath. He wants the addition of the word 'unapproachability'. If untouchability is provided for in the fundamental rights as an offence, all necessary adjustments will be made in the law that may be passed by
the Legislature. I do not think it is right or wise to provide for such necessary corollaries and, therefore, I do not accept this amendment.

The other amendment is by Mr. Nagappa who has suggested that for the words 'imposition of any disability' the words observance of any disability' may be substituted. I cannot understand his point. I can observe one man imposing a disability on another, and I will be guilty. I have observed it. I do not think such extreme things should be provided for. The removal of untouchability is the main idea, and if untouchability is made illegal or an offence, it is quite enough.

The next amendment was moved by Mr. Kunhiraman. He has suggested the insertion of 'punishable by law'. We have provided that imposition of untouchability shall be an offence. Perhaps his idea is that an offence could be excusable, or sometimes an offence may be rewarded. Offence is an offence; it is not necessary to provide that offence should be punishable by law. Sir, I do not accept this amendment either.

Then, it was proposed that for the words 'any form', the words 'all forms' be substituted. Untouchability in any form is a legal phraseology, and no more addition is necessary.

Mr. H. V. Kamath: In view of the explanation given by the Hon'ble Sardar Patel I beg leave of the House to withdraw the amendments moved by me.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 6, for the words 'imposition of any disability', the words observance of any disability' be substituted."

The motion was negatived.

Sri P. Kunhiraman: Sir, in the light of the observations made by the Mover of the Resolution I beg leave of the House to withdraw the amendment moved by me.

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

Mr. President: The question is that clause 6 be accepted.

The motion was adopted.
Mr. President: I have received a request from several Members that they should be permitted to give notice of amendments to the clauses which have not yet been considered, and their ground is that yesterday they received the Report rather late and they could not send in their amendments before 5 o'clock. We have already got a large number of amendments, and I do not know if the House would like to extend the time to receive more.

Shri Mahavir Tyagi: It does not matter because your disposal is so fast.

Mr. President: It is not my disposal, but it is done by the House.

If we get the amendments up to 5 o'clock then there is this difficulty. The amendments have to be tabulated, typed and cyclostyled, and there is very little time in the evening because of the Curfew Order. On previous occasions they had to work up to late at night. Now they find it difficult to work at night. If, the Members waive their right of getting copies of these amendments, I might accept their request.

Rai Bahadur Syamanandan Sahaya (Bihar: General): The may be amendments which were received in office after 5 o'clock yesterday....

Mr. President: Those which have already been received will be accepted and even today if notice of amendments is received up to 2 o'clock they will be taken in. But after that it will be very difficult. In any case, amendments to amendments can be handed in until the Session begins tomorrow morning.

As regards the time, we met at half past 8 o'clock today and we have carried on for 4 hours. But I am told that time is not convenient to, some Members, and it is still more inconvenient to our Office people, some of whom live in distant parts of the city. They have to work from 8 o'clock in the morning to late in the evening. If the House agrees we might meet at 9 o'clock tomorrow morning.

Several Hon'ble Members: Yes, yes.

Mr. President: The House now stands adjourned.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 30th April 1947.

CONSTITUENT ASSEMBLY OF INDIA
No. CA/24/COM/47

Council House,

New Delhi,

the 23rd April, 1947.

FROM

THE HON’BLE SARDAR VALLABHBHAI PATEL,

Chairman, Advisory Committee on Minorities,

Fundamental Rights, etc.

To

THE PRESIDENT,

Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing
with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to this report be incorporated in the constitution so as to be binding upon all authorities, whether of the Union or the Units. 5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law "I not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its disposal. It was also suggested during our
deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities SubCommittee were agreed that the following should be included in the list of Fundamental Rights:

"Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union."

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the constitution.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) VALLABHBHAI PATEL,

Chairman,

Advisory Committee on Minorities,

Fundamental Rights, etc.

ANNEXURE
JUSTICIABLE. FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires--

(i) "The State" includes the legislatures and the governments of the Union and the Units and all local or other authorities Within the territories of the Union.

(ii) "The Union" means the Union of India.

(iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to--

(a) access to trading establishments including public restaurants and hotels, (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.
5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-

(a) The right of every citizen to freedom of speech and expression: Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms : Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a
danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions: Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession:

Provision may be made by law, to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and-tribes.

9. No person shall be deprived of

his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and
(b) forced labour in any form including begar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted; are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.-Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.-Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.-The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination,

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.
17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.
(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Rights to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in case of rebellion or invasion or other grave emergency, the public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.
Wednesday, the 30th April, 1947

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

Mr. President: We shall now proceed with further consideration of the Interim Report on the subject of Fundamental Rights. We have passed clause 6. We have held over clause 5. Before we go on, I desire to make the following announcement.

ELECTION TO STEERING COMMITTEE

Mr. President: For the two seats to be filled on the Steering Committee from among representatives of Indian States in accordance with the resolution of the House of the 28th April, only two nominations have been received, namely, those of Mr. P. Govinda Menon (Cochin) and Mr. C. S. Venkatachar (Jodhpur). I accordingly declare these two members duly elected to the Steering Committee. (Cheers).

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

CLAUSE 5.-RIGHTS OF EQUALITY

Mr. President: Hon'ble Sardar Vallabhbhai Patel.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Yesterday we had held over clause 5*, because we wanted some time to consider it. We have given thought to the matter and now I proposed to move clause 5. We have made some changes, but they are only formal changes. Some portions are dropped and formal amendments for the changes will be moved. Clause 5 will now run as follows:

"There shall be equality of opportunity for all citizens in matters of public employment."
The words "and in the exercise of carrying on of any occupation, trade, business or profession" have been taken over to some other clause at a later stage. We are dropping those words now. Mr. Munshi will move

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public service.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

As regards the subsequent words of this sub-clause we have come to the conclusion that they are unnecessary here and they will be taken over to some other place. Therefore, this portion as I have read, remains and as regards that, formal amendments will be moved. Then comes the proviso which is sub-clause 2 of this clause. It runs as follows :

"Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services."
Then the last sub-clause remains:

"Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

This is clause 5 as I move it, and if there are any amendments to be moved, we shall discuss them afterwards. I formally move.

Mr. President: I have got notice of a number of amendments to this clause. Some came to us day before yesterday and others reached us yesterday. I think there are ten or twelve amendments and I propose to take them one after another. Mr. Munshi's amendment will come first.

Mr. K. M. Munshi (Bombay: General): I move:

"1. In clause 5 paragraph I may be marked '(a)', and paragraph 3 may be marked '(b)'.

2. Paragraph 3 may be placed immediately after paragraph 1.

3. Delete from paragraph I the words 'and in the exercise of carrying on of any occupation, trade, business or profession', and from paragraph 3 the words 'or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union'."

This amendment is intended to classify the two heads of rights under two different clauses. As the House will be pleased to see, clause 5 deals not only with public employment but also with occupation, trade, business or profession, and the right to acquire, hold and dispose of property. The same right occurs once again in clause 8 and proviso has been put in at the end of clause 8 permitting Government by law to restrict this freedom under certain circumstances. It was felt that these two clauses were overlapping, and for the purpose of having a proper logical division, clause 5 is now being only restricted to public employment, while freedom to carry on occupation, trade, business or profession and freedom to acquire, hold and dispose of property have been transferred to clause 8 (e). The result of all this change is that this
clause will stand only with regard to public employment, and the right with regard to trade, occupation, etc., and with regard to property will come under clause 8 (e). Sir, I move.

Mr. B. Das (Orissa : General) : In paragraph (e) of clause 5 it is said:

"No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union."

I have got the experience of many Afghan Princes in India. These Afghan Princes were punished by the King of Afghanistan and sent to India as State Prisoners. There are still some prisoners in India, but some of these Princes cannot hold any office in India, and they cannot carry on any business. In my public career, I have met some of these Afghan Princes, they have come and told me that they were having trouble and they could not get a job even under the old India Government, because the British in league with the Afghan Government, did not allow them to function as free citizens at all. I want to know whether Indian-born Afghan-Princes, most of whom are prohibited from going to Afghanistan and have got to live in India,--whether they will be allowed as Indian citizens to hold public office or will be eligible for the same. I want to know whether the draftsman of this clause has envisaged such a contingency.

Some Hon'ble Members: We have not followed what Mr. Das said, we could not hear him.

Mr. President: Mr. Das, the members have not followed what you said. Will you please come to the mike and explain?

Mr. B. Das: What I was saying was this. There are some Afghan Princes in India who are banished by the Afghan Government and in league with the British Government of India they are to remain in India under certain conditions. They are the sons and grandsons of Afghan Princes, but they are not allowed to get any job in British India. Will they be allowed to get jobs in India if the present interpretation of clause 3 of citizenship is accepted and they become citizens of India? Up to now there is a political ban on these
people and they cannot hold any office in British India. I have met dozens of them. I would like to know what the intention of the draftsman is in this matter.

Mr. President: I will take up the amendments of which notice was given day before yesterday.

Mr. Rajagopalachariar has come up with an amendment which suggests the rearrangements of the paragraphs.

The Hon'ble Sri C. Rajagopalachariar: (Madras: General): That amendment has been agreed to by Mr. Munshi.

(Amendments Nos. 23 to 28 of the Supplementary List I were not moved.)

Mr. Somnath Lahiri (Bengal: General): My amendment (i.e. No. 29 of the Supplementary List I) is on the same grounds as my amendment of yesterday, relating to political creed. So I do not want to labour the point further.

Mr. President: Amendment No.30.

Mr. H.V. Kamath (C.P. & Berar: General): Sir, after what happened to my amendment yesterday, I do not wish to repeat that amendment today.

(Amendments Nos.31 to 33 of the Supplementary List I were not moved.)

Mr. President: Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, Sir, my amendment reads as follows:

"That in clause No.5, after the words, "There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession", the following proviso may be added after the first para:
Provided that a Unit may frame rules whereunder in the matter of public employment it may give preference over others to such citizens as are bona fide or domiciled residents of its own territory."

Sir, I have only to submit that for those who are employed at present in the Government offices of different provinces, it is desirable that they should be residents of that province, so far as possible. I think, to establish self-government in the true sense of the word, it is most essential that in any part of the world, only the residents of that part should be government servants and officials. If there are open chances for the residents of one province to serve in another, it means that the residents of that province shall not be able to enjoy self-government. My real intention is that so far as possible, the administration of a province should be run by officers and employees who are residents of that province. This province and the unit, in which the staff is required, should employ mostly the descendants of the residents of that place. According to the form to which this rule is being framed there is no consideration of the domicile of the candidate, or his place of birth. There shall be freedom to serve anywhere. This may create troubles that in order to secure service the residents of one province will compete with the residents of another. By this the self-sufficiency of an autonomous unit will be destroyed. Now-a-days there are restrictions of domicile and residence in all provinces. In our U.P. in every advertisement of the Public Service Commission, a condition is laid down that only those who are domiciled in U.P. Rampur, Benaras or Tehri States can apply for the posts. If this condition is waived and no preference is given to birth-place, then there may be a danger that people of other parts of the province may compete and capture subordinate and higher posts. This will go against the real spirit of Swaraj. Perhaps the clause as moved by Sardar Vallabhbhai Patel may provide that the provincial Governments can give preference to their residents. If this is so, I will not move my amendment, but I would request Sardar Patel to put it on record in today's proceedings that:-

"That there shall be no restrictions in giving preference to place of birth for recruitment to Government Service."

It would mean that provincial Governments will be able to give preference to their residents over others. If, in the proceedings of this House,
it is recorded that the right of allowing privileges to its domiciles will vest in every province and in matters of employment it shall be able to allow privileges to its residents over those of other provinces, then I need not move any amendment. I hope that this will be possible. I shall not have to move my amendment if the mover or any other member of this Committee admits that the freedom of the provinces in running their administration through their residents is maintained so far as possible.]*

**Mr. R.K. Sidhwa** (C.P. & Berar: General) : Sir, which is the amendment he is dealing with?

**Mr. President** : He is moving his amendment to clause 5, which is amendment No. 2 in the list circulated this morning (Supplementary List II).

**Mr. President** : Amendment No. 3 of the Supplementary List II by Mr. Munshi.

**Mr. K.M. Munshi** : That has been incorporated in the one that has been moved.

**Mr. President** : Rao Bahadur Chaudhri Suraj Mal.

**Rao Bahadur Chaudhri Suraj Mal** (Punjab: General): *[Mr. President, with your permission, I wish to move the following amendment:

"That in clause 5, the following be added after the third paragraph:

'Provision may be made by law to impose such reasonable restrictions as may be necessary in the interest of agriculture.;"

My object, in moving this amendment is that India is an agricultural country, where we have many "petty proprietors", who are commonly known as Bisvadars or petty Zamindars. Their number is very large, and larger still in the Punjab. There are many petty zamindars or Bisvadars in Ambala and Jullundur Divisions. In our Punjab, restrictions of this sort exist even now. It appears from para.5, that these restrictions may be excluded from the operation of law in future. Therefore, my object in moving this amendment is to give such powers to the Units, which in the interest of agriculture will enable them to protect the petty zamindars and "Bisvadars" from the big
Landlords, Capitalists and wealthy people, who do not cultivate the land themselves. In my opinion, such restrictions are very essential for the benefit of the whole country. I hope that such powers will be given to the Units, which will enable them to protect their cultivators.

Secondly, I want to point out, in particular, that the petty Zamindars or "Bisvadars", who inhabit our area, belong particularly to martial classes and are in the army in large numbers even now. I think, and rightly so, that if they do not possess these lands, they will be reduced to the status of mere peasants. The spirit of self-respect is inherent in them. They can fight with courage and the name which they have earned, they will not be able to earn in future. May I point out to you that you may issue statements, publish messages in papers and deliver speeches; but this is the age of the sword. Only that man will rule, who has power in his hands. Therefore, it is necessary that the children of those who are in the army, should be treated well and should not be allowed to grow weak, because their services shall be required. Their support will be needed to enforce the Constitution, which is being framed for the future. Therefore, I submit that such restrictions should be imposed, which will debar wealthy people from acquiring the lands of the weak. I appeal to Sardar Vallabhbhai Patel, because he is a well-wisher of the Zamindars. I hope that he will keep this in view and add some provision in the Constitution, in order to protect them from the operations of the existing laws. Once the peasantry is destroyed, it can not be recouped. As an English poet has said, once a peasant is destroyed, it is very difficult to rehabilitate him. With these words, I move this amendment.]*

(Amendment No. 6 of the Supplementary List II was not moved.)

Mr. President: *[There is another amendment in your name]*

Rao Bahadur Chaudhri Suraj Mal: * [Sir, the object of the second amendment is also the same. As I have already moved a similar amendment, the second one is unnecessary.]*

Mr. President: *[Then you do not move it.].* The clause and the amendments have been placed before the House. They are now open for discussion. Those who wish to speak may do so.
Sardar Prithvi Singh Azad (Punjab: General): *[Mr. President, I stand to oppose the amendment moved by Rao Bahadur Suraj Mal. There is a black law in the Punjab, which is known as "Land Alienation Act." The purpose of this amendment is to preserve this law. It is highly detrimental to our depressed and other non-agricultural classes. It has allowed those who go under the name of Zamindars or label themselves as peasants to permanently enslave a large section of people in the Punjab. If this amendment of R.B. Chaudhri Suraj Mal is accepted, it would mean that those communities, which have been forced to live under the tyranny of Zamindars for centuries, and which by the help of the black law of "Land Alienation Act" have been kept in the clutches of the Zamindars will not be able to recover for centuries. Hence in this age when we are formulating such a law that all should be provided with the same facilities and opportunities, and every one should have equal rights, it is not proper that this black law should be maintained. Hence, on behalf of the depressed classes, I oppose Mr. Chaudhari's amendment in strong words and appeal to the House that this amendment in strong words and appeal to the House that this amendment should not be accepted in any form, for this amendment will amount to injustice and tyranny for the depressed and other non-agriculturist classes. If you now adopt this amendment, it means that you would be perpetuating that tyranny which we are present here to end.

I oppose the amendment with these words.]*

The Hon’ble Sardar Vallabhbhai Patel: Sir, almost all the amendments have been withdrawn and there is not much room for debate. I wish to give a reply to one or two points that have been raised by some of the members.

Mr. B. Das has some doubts about the Afghan Princes who have been deported from Afghanistan, and he wants to know whether they and their children will be eligible for office. I do not know that this is going to create any difficulty for us. If the children of the Afghan Princes propose to stay here, it is quite possible they will get themselves naturalised if they have been deported from their country. After all, the clause makes provision for eligibility, but it does not restrict the right of provinces to impose restrictions by legislation on the question of employment. It only says that no citizen can
be declared ineligible for office on only the following grounds, that is, on the
ground of race, religion, sex, descent, etc. Therefore, there is no reason to
have any apprehension on that account. Now, Mr. Tyagi also raised a similar
point though of a different type- that preference should be given to the
residents of the province and provinces should have opportunity to give
preference by legislation to the residents of the provinces. This does not
deprive the province of its rights to legislate. This simply removes
ineligibility of a citizen; that should be so, and therefore it is provided in the
Fundamental Rights. So on that score also, there is no difficulty.

Mr. Chaudhri Suraj Mal has raised a point in which he is afraid that
persons having agricultural holdings may be affected. He has in his mind that
the Punjab Land Alienation Act which is working, gives some protection to
these persons and he thinks they will be deprived of their protection. Now, in
this connection, I can only suggest for his satisfaction that there is an
amendment to this clause moved by Mr. Munshi, which I proposed to accept,
as I have explained in the beginning. This clause so far as it concerns the
acquiring, holding or disposing of property is removed from there and is
going to be taken over to another clause that follows, that is clause 8, but in
that clause also the provision clause that follows, that is clause 8, but in that
clause also the provision has been made that this can be done only on
grounds of, I think, public interest. Therefore, in this clause even if the
principle is there, it is to be be restricted, but in this clause this principle is
to be removed. In the other clause the principle is discussed and as the
principle is restricted only to cases of public interest, I think there is no
difficulty and his difficulty is also removed. I, therefore, think that this clause
5, as amended, should be passed by the House.

Mr. President: Now I take Mr. Munshi’s amendment. The clause as
amended by Mr. Munshi will read like this:

“(a) There shall be equality of opportunity for all citizens in matter of
public employment.

(b) No citizen shall on grounds only of religion, race, caste, sex, descent,
place of birth or any of them be ineligible for public office.”
(c) Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

(d) Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.”

The question is that the amendment of Mr. Munshi be adopted.

The motion was adopted.

Mr. President: There is only one amendment which has been moved and that amendment is by Rao Bahadur Chaudhri Suraj Mal. His amendment related to holding or disposing of property, etc., and that part of the clause has been deleted. So his amendment does not arise and no vote will be taken on that. Now the clause, as amended, will be put to the vote.

The clause, as amended, was adopted.

CLAUSE 7.- RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Now Sir, I beg to move clause 7. As it stands, it runs thus:-
"No heritable title shall be conferred by the Union."

We have discussed this at length in the Committee and there was difference of opinion in the various committees in which this question was discussed and adopted. It was a very controversial matter. The matter was settled after a prolonged debate and we came to this formula. But the word 'heritable' became a matter of controversy and it was agreed after considerable discussion that that word should also be dropped, and there would be a formal amendment for that purpose. So what will remain will be-

"No title shall be conferred by the Union."

This is the general public opinion in the country. Outside also, in many free countries, it is disappearing. The title is often being abused for corrupting the public life of the country, and, therefore, it is better that it should be provided in the Fundamental Rights. I do not know if there will be any objection or any prolonged controversy over this matter. I move this clause.

**Mr. President** : There are several amendments to this clause, of five or six of which notice was given the day before yesterday and of one or two of which notice was given yesterday.

I think Mr. Masani's amendment is the most comprehensive one. I will ask him to move.

**Mr. M.R. Masani** (Bombay: General): Mr. President, the amendment of which I have given notice is an amendment to the amendment given notice of by Mr. Santhanam. It reads as follows:

"No title other than one denoting an office or profession shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign State."
In sentence, 1, paragraph 1, the words, "other than, one denoting an office or profession" may be deleted, so that the clause would read "No title shall be conferred by the Union." In paragraph 3 "or title" should be added in the last line of the clause so as to read:

"No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

That is, I understand, the consensus of opinion. If the House would permit this modification to be made, it will perhaps become a non-controversial amendment.

Mr. President: Mr. Masani has given notice of an amendment and he just wants the permission of the House to drop a few words in the amendment as he has suggested, so that his amendment would read like this:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union government accept any present, emoluments, office or title of any kind from any foreign State."

Mr. M.R. Masani: In commending this amendment to the House, I would point out that changes made in the present clause are in two directions. The first, which is an important one, is that the word "heritable" be dropped. This will mean that the Free Indian State will not confer any titles of any kind, whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a Free India. I think, Sir, the House will support this principle, because it has been found not only in subject countries but even in so-called free countries, that titles become dangerous and a source of corruption both to those who bestow them and to those who accept them. Therefore relying on
patriotism, self-respect and the motive of service, we shall do without titles of any kind.

The other modification is to distinguish between citizens of the Union and those holding office under the State. Citizens of the Union, in the clause as amended, will not be free to accept any title from any foreign State while persons holding any office of profit or trust under the State would be able to accept emoluments or presents from foreign Governments only when their own Government permits it. That, Sir, would permit diplomats and others who might be permitted by their own Government to accept tokens of respect or appreciation from foreign Governments. I take it, Sir, that the meaning of the amendments has been made clear and I do hope that in the interest of equality between human beings and of democracy, the change which drops the word "heritable" will be accepted as well as the other change which I have indicated.

**Shri Sri Prakasa** (United Provinces: General): I think, Sir, that my amendment is included in the amendment which was moved by Mr. Masani. There is now no need for my amendment to be moved at all. I am not moving it.

**Mr. H.V. Kamath**: In view of the change in the clause as indicated, I think there is no point in pursuing my amendment.

**Shri K. Santhanam** (Madras: General): My amendment has been included in Mr. Masani's amendment.

**Mr. R.K. Sidhwa**: In view of the amendment moved by Mr. Masani, I do not think any necessity arises for me to move my amendment. I have stated that with the exception of academic degrees, no titles of any kind shall be conferred by the Union. I am told academic degrees will not be considered as titles; these could be given by the Universities or institutions. In view of this, Sir, I do not desire to move my amendment.

**Seth Govind Das** (C.P. & Bearer: General): ![Mr. President, the resolution that has been moved is clear regarding future titles. But nothing has been said about those who already possess titles. It is an accepted fact that most of the title-holders have been so honoured by the foreign...
Government which has been ruling this country for the last two hundred years. If we look into the history of other countries, we find that after the French and Russian revolutions, all the titles were withdrawn. So far this Government has also been doing the same. If any of its title-holder participated in any political activity, it withdrew his title. Although I am not proposing any amendment in the matter, I wish to ask Sardarji if he does not want to redeem the people from medals of slavery.

I want that even the titles held by people at present should be withdrawn. The present title-holders should live in free India just as other people live.]

Shri Balkrishna Sharma (U.P: General): *[Mr. President, I oppose this sub-section which lays down that no title shall be conferred in free India. I consider this against the tradition of my country and against the psychology of its people.

We have time and again tried to honour the dignitaries of this country in so many ways. We call some one 'Acharya', and Mr. President, we call you 'Deshratna'. We call Mahatma Gandhi by the name of 'Mahatma'. I consider it improper to make a decision against honouring our leaders as this tendency is inherent in our minds, our hearts and our culture. Therefore I oppose it.

Mr. Masani and other friends have expressed a contrary view but there is a reason behind it. The present democratic feeling compelled them to say that there should be no titles in our country. But I think that if in our free India some persons of our country do such work as deserves respect, there is no reason why we should not honour such great men with national titles on behalf of our countrymen. In Russia itself where socialism was first experimented upon, it was felt necessary after some time that the country should honour its generals, its military leaders and its distinguished workers with titles and medals. Therefore, I urge that before passing this resolution this House should seriously consider this matter, and should realize that the resolution is against our psychology and against our tradition. Therefore it should be rejected.]*

Shri Sri Prakasa: Mr. President......................
I think Sir, the acoustics of this hall are perfect, if only members knew not only what to say but how to say it. Sir, my esteemed friend Pandit Balkrishna Sharma has gone off the rails completely. (*Hear, hear*). He says that it is against the tradition of our country to abolish all titles and that we are very fond of such titles. What he forgets is that we are not claiming it as a fundamental right that no one could be given a title or an honour unofficially. What we object to is the State having the power to grant titles. (*Hear, hear*). You cannot prevent a whole people from paying their spontaneous homage to their liberator by calling Gandhiji, Mahatma Gandhi. While the State refuses to recognize that title, while the State puts him to long terms of imprisonment, the people go on calling him Mahatma Gandhi and cursing the State that puts the great man in prison.

There is difference between the two titles. The receiver of a spontaneous title from the people feels embarrassed at it. He asks the people not to call him Mahatma or Deshratna or such things, while the person who receives a title from the State is most anxious that he should be called what the State gives him the privilege to call himself. Sir, I was horrified at the last session when you yourself referred to a member from your Province as "Rai Bahadur Sahib". I felt that the parents of the poor dear had forgotten to give him a name, and he had to wait for long years for the State to step in to give him one and ensure his being called "Rai Bahadur" for ever. While one title embarrasses the receiver, the other title makes him feel vain and proper. I think it is necessary in the name of freedom to ask for freedom from the imposition of such titles from the State and freedom from having to curry favour with the authorities in order to get a distinction from them.

Sir, I should like to make it plain that this clause does not prohibit even the State from bestowing a proper honour. We are distinguishing between titles and honours. A title is something that hangs to one's name. I understand it is a British innovation. Other States also honour their citizens for good work but those citizens do not necessarily hand their titles to their names as people in Britain or British-governed parts of the world do. That is all that this clause seeks to do. If the State wants to honour a citizen, if a citizen has
done particularly good work, then there are a thousand ways in which that State can honour the citizen. If the people want to honour a leader, then they can also honour him; but we want to abolish this corroding, corrupting practice which makes individuals go about currying favour with authority to get particular distinctions.

We all know that long lists are printed or used to be printed every six months saying so and so is to be so and so, and many anxious people used to scan these list with great anxiety to find if their names were included or not. We want to stop all that practice. It is well known the Government did honour certain very deserving persons. In fact, when Mahatma Gandhi's name was included in the Honours' List, it was definitely stated by one of the leading papers that the Honours' List it was definitely stated by one of the leading papers that the Honours' List itself was honoured- that lustre was shed on the Honours' List by the inclusion of the honoured name of Mahatma Gandhi in it. Later on, Mahatma Gandhi found it necessary to throw away that title in disgust, but the title of Mahatma still adheres to his great name and he has not thrown that away. Pandit Balkrishna Sharma, myself and all of us can go on and will go on calling him by that dear name and no one can prevent us from doing so. We must distinguish between the title as imposed on an individual by the State and the honour that the people give spontaneously to one of their great men. I hope, Sir, that it would be clear to all sections of the House that it is most essential that the system of bestowing titles by the State should disappear. I also hope, Sir, that, the amendment moved by Mr. Masani will commend itself to the unanimous acceptance of the House. (Hear, hear).

Shri R. Dhulekar (U.P.: General): *[Mr. President, it is painful to me that my friend Mr. Balkrishna Sharma should have made such criticisms against the tradition of Indian civilisation, which were never to be expected of him. In ancient days our State authorities considered the sages outside their jurisdiction. If Panditji (Balkrishnaji) has looked through our ancient books, he would know that the religious places of the Hindus were outside the jurisdiction of the State.

I beg to submit that such observations and particularly from such a gentleman are not desirable. At a time when India is going to be liberated, it
is improper for us to say that we should continue the old slave mentality; it is utterly unbecoming of us to say that since we are doing this for the welfare of the world, we should be rewarded with honour in our life-time. I beg to tell the House that it has always been the tradition of sages in India that they considered God as their guide and with all sincerity and humility did their work. I believe India is the only country in the world where deeds are not actuated by selfish motives. Even religious devotees in India do not pray to God for any selfish purposes. I want to tell the House that Indians want this ancient way of life to be followed in the world. We want to tell the world that we Indians work for the welfare of the whole world and want nothing in return. What Panditji has said will prove that we want some return for the work we do for the benefit of the public. Therefore, I would say that it is not fair on his part to make such an observation. I support the amendment moved by Mr. Masani and appeal to the House to accept it.]*

Mr. H.V. Kamath: Mr. President, Sir, I rise to support my hon'ble friend, Seth Govind Das. The issue raised by him is to my mind an important one inasmuch as, while we are thinking about the future, we have given no consideration as to what we shall do about the titles that have already been conferred by the alien imperialist Government who have been all these years suppressing our freedom movement and who have been conferring titles on these people who have aided them in suppressing our freedom movement. This point is, to my mind, a vital one. I am very well aware that in this House we have got a few title holders. I do not seek to cast any aspersions or any reflections upon them individually, but today let us remember that we are standing between two worlds, one dead, the other struggling to be born, and we are trying to usher in a FREE INDIA which will redress the balance of the old decrepit world. Our "Quit India" resolution is fast coming to a successful close, and while we are seeing that the British Government is going lock stock and barrel, we eager, nay, anxious- that all associations, all connections with that foreign Government should also go with it. Therefore, I support my hon'ble friend Seth Govind Das and submit that all titles conferred by the alien Government, by the foreign imperialist Government, shall be void at the time of the inauguration of the free Indian Union.

The Hon'ble Sardar Vallabhbhai Patel: Closure.
Shri Sri Prakasa: If Seth Govind Das's amendment is accepted, will the name of his palace at Jubbulpore also be changed? (Laughter.)

Mr. President: We will settle that later. (Laughter).

Mr. R.K. Sidhwa: On a point of order, Sir, may I ask whether we can give retrospective effect to this clause?

Mr. President: That question does not arise as no amendment has been moved.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I do not see any point in discussing this matter of giving retrospective effect by people who have no title to surrender. But in the first place, I will read the motion as it runs after the acceptance of some of the amendments that have been moved. The motion is:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

Now, this in effect becomes the motion, and if, it is passed by the House, instead of our discussing what happened in the past, it would work automatically and therefore we need not go into the discussion of past events or try to give retrospective effect. After all, many titles have been surrendered during the last year or two and and titles have lost their value. What we are legislating really is for the future and not for the past. But there are still some people who have got that attitude, that frame of mind; because of what happened in the past they still think of the past. It is unnecessary to dilate on this matter. It may show an attitude which may be resented by some and which may be interpreted as a sign of spiteful feeling. I do not think we should discuss this matter at all: after all, some of the people who have got titles may even carry them after their death. They have spent so much and have worked so hard for it. You do not know- you have no idea- how titles are got. Therefore we cannot put all of them on the same line. Let us leave
them alone. Let us forget all about past titles. What we now want to do is to think about the future. One Hon'ble Member from Benaras says: "I oppose this Resolution." Another Hon'ble Member from the same city says: "I am in favour of it." I do not understand this. What is this? Who is going to prevent people from conferring a title or take away a title conferred by the people? They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called "Mahatma Gandhi", it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore the State has nothing to do with it. We are legislating, or trying to legislate, on that the State will do or what the State should do, not on what the people can or should do. There may be sections of people who want to give titles. For instance, which State will prevent the Muslims from conferring the title of "Quid-e-Azam" on Mr. Jinnah? It is an absurd idea. We should not think about it. People will do what they think proper to do. But these titles are conferred by the State. There may be party governments; there may be other governments. They should have no authority to give any inducements or to corrupt people in order to build up their party or to obtain or derive strength by unfair means. Therefore there is no need for discussion on this question and I move that the clause as amended- I accept the amendments- be passed.

**Mr. President:** I will read the amendment first:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State

No person holding any office of profit of trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

I now put the amendment to vote.

The amendment was adopted.
Mr. President: This becomes now the amended clause. I put the amended clause to vote.

The clause, as amended, was adopted

Clause 8- Rights of Freedom.

Mr. President: Then we go on to Clause 8*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 8 which reads thus:

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-

(a) the right of every citizen to freedom of speech and expression;"

I do not move the proviso to be found in the Report:

"(b) The right of the citizens to assemble peaceably without arms."

Hence again I do not propose to move the proviso:

"(c) The right of citizens to form associations or unions."

The proviso to this sub-clause also I am not moving:

"(d) The right of every citizen to move freely throughout the Union;"
(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession".

To the proviso to this sub-clause, there is a small formal amendment to be made which I will move presently. It will be moved later. This proviso is on the lines of clause 5. It reads:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word 'reasonable' may have to be omitted after discussion on an amendment that is expected to be moved.

I see that there are some amendments to this motion. When they are moved I shall give my reply.

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Rights of freedom

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to the such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-

(a) the right of every citizen to freedom of speech and expression: Provision may be made by law to make the publication or utterance of
seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:
Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:
Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union:

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession:

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

Mr. President. I now call upon Shri Ajit Prasad Jain to move his amendment.

Shri Ajit Prasad Jain (U.P. : General): Sir, I have given notice of an amendment to this clause, but I do not propose to move it. I would, however, request the Hon'ble Mover to make it clear that the declaration of an emergency should be done under authority derived from law. It is not now clear as to who will be the authority that is empowered to declare an emergency. I wish that the Legislature should have the right to declare an emergency and no other body. If the power to declare an emergency is placed in the hands of the executive, it may on occasion, work harshly. It is with this object that I sent up this amendment.
Mr. President: Do you or do you not move the amendment?

Shri Ajit Prasad Jain: I do not move the amendment, Sir.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, before we proceed with the amendments I should like to make a submission. Actually we are considering the Report at present and the proposition moved was that the Report be taken into consideration. The Hon'ble Mover, in moving Clause 8, suggested dropping all the three provisos and, in fact, did not move their adoption at all. The proper thing to do, it seems to me, is to move for their omission by way of an amendment and not simply to say that they are not being moved. This forms part of our proceedings. If we simply omit the provisos in the manner suggested by the Hon'ble Mover, one may not know how and why they were omitted. I simply want to draw the attention of the mover to this position.

The Hon'ble Sardar Vallabhbhai Patel: I have no objection to the course suggested. It may be taken that I have formally moved for the omission of the provisos to (a), (b) and (c).

Mr. Somanth Lahiri: Sir, as I have amendments to all the sub-clauses of clause 8, I request you to allow me to move all of them together. Some of them have become redundant now in view of the fact that the Hon'ble Mover has dropped the first three provisos.

Sir, my amendment to the proviso 8 (a) to delete the word 'seditious' has become unnecessary, because the whole proviso is to be deleted.

My next amendment is to substitute for the whole of clause 8 (b), the sentence "The right of the citizen to assemble". Here also, except two or three words, the rest have already been proposed to be deleted.

My last amendment runs thus:

"After clause 8 the following new clauses be added and existing clause 9 be renumbered as clause 14, and consequential changes be made in the subsequent clauses:-

9. No person shall be detained in custody without trial."
10. (a) Liberty of the press shall be guaranteed subject to such restrictions as may be imposed by law in the interests of public order or morality.

(b) The Press shall not be subject to censorship and shall not be subsidised. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

11. The privacy of correspondence shall be inviolable and may be infringed only in cases provided by law.............

**Mr. Dhirendra Nath Datta** (Bengal: General): The Hon'ble Member is suggesting new clauses. We are now dealing with clause 8. He may at best move his amendments to clause 8 and not move new clauses.

**Mr. Somanth Lahiri**: All these clauses have reference to the subjects' right to freedom and so on. I can move them now or later on. Both mean the same thing.

**Mr. R.K. Sidhwa**: I rise to a point of order. If Mr. Lahiri is allowed now to move all his amendments, similar opportunities may have to be given to other members also. I submit that the consideration of all these new clauses may be held over till we finish the main business. It will otherwise be doing an injustice to us.

**Mr. Somanth Lahiri**: Even if you ask me, Sir, not to move this amendment now, as soon as this is over you will have to ask me to move it. So it comes to the same thing.

**Mr. K.M. Munshi**: May I rise to a point of order? Clause 8 has been moved. The House is considering a number of amendments to clause No.8. Now, Mr. Lahiri wants to suggest certain additions. Really speaking, they are independent matters, and as such they require independent consideration. They have nothing to do with clause No.8, and as such, they should be treated as independent motions. The House is now considering the Report and after the Report is finished, if there are any additional matters, they may be considered by the House. In the Report itself, it has been mentioned that several fundamental rights have not been brought before the House and that
the Advisory Committee is considering them. The appropriate procedure would be for all these new matters to be sent to the Advisory Committee for its consideration. This is what clause 20 of the May 16 Statement contemplates.

Mr. Somnath Lahiri: I have already said that, since I have put up these amendments, I have to be called after clause 8 has been finished. The clauses that I have moved also refer to the same subject "Rights of Freedom". Therefore I am quite in order in asking to be allowed to speak now.

Sri K. Santhanam: Many of us have got similar clauses to be added. For the convenience of the House, I propose that all the new clauses be taken up later on after the Report has been considered.

Mr. Somnath Lahiri: If you give a ruling like that, Sir, I have no objection.

Mr. President: There are two viewpoints placed before the House. Mr. Lahiri has a number of fresh proposals which are not exactly amendments, but which are new proposals which he wants to be added to the fundamental rights. The question is whether they should be taken as independent resolutions at this stage or later on.

Mr. K.M. Munshi: Later on, Sir.

Mr. President: Those who would like these new clauses to be taken up at the end of the discussion with regard to fundamental rights will please say 'Aye'-those against will say 'No'.

The motion was adopted.
Shri Balkrishna Sharma: (United Provinces: General): I submit this is a matter for your ruling, Sir, not a matter for voting, Sir.

Mr. Somnath Lahiri: I do not take part in the voting as a protest, Sir, because I think this is not a votable matter.

Mr. President: Your amendments now.

Mr. Somnath Lahiri: My amendments are Nos. 48, 49 and 52 of Supplementary List I.

No. 48- "That in clause 8 for the words 'security of the Union' the words 'defence of the Union' be substituted."

No. 49- "That in clause 8 (a) the word 'seditious' be deleted."

No. 52- "That for the whole of clause 8 (b) the following be substituted:-

"The right of the citizens to assemble".

I am glad that the Mover of the Resolution has agreed to the delegation' of some of the provisos of this clause. I am especially glad because the Congress party members did not take the advice of Professor Ranga who thought that democracy and liberty are harmful to India, because democracy and liberty are supposed by him to have helped Nazis to power in Germany. Anybody who knows a little bit of history knows that Nazism was not the result of having too much of democracy. Nazism came into power in Germany because the rights and liberties that were given under the Weimar Constitution were challenged by force by the capitalist classes in Germany with the help of Hitler's Nazi gangsters, and the Social Democratic Party failed to rally the working classes of Germany to challenge that force with force. That was the main reason why Nazism came into power there, not because there was an extra amount of freedom.

I am very glad, Sir, that these provisos against which I fought—may be, very bitterly for which I express my regrets also—have been done away with. That is very good. That means that my amendment No. 49 will not be
necessary and No. 52 also will not be necessary. Only 48 will be necessary. The clause reads:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit...........

I want it to read, "defence of the Union" instead of "security of the Union". The word 'security' is a very vague term and may mean anything. In the past we have seen the Government taking advantage of the vagueness of this term. Defence of the Union is certainly a thing which should be guarded and for this special power may be needed. It is an important amendment. I have got nothing more to say:

Mr. R.K. Sidhwa: My amendment which is in relation to clause (c) on the agenda reads thus. Sub-clause (c) says:

"The right of citizens to form associations or unions,"

My amendment is to the following effect: Add at the end of the sub clause the words:

"for the purpose of safeguarding and ameliorating economic condition and the status of workers and employees shall be guaranteed."

As this is considered a new clause, I reserve my right to move it at the appropriate time.

With regard to provisions to (a), (b) and (c) as the motion for deletion of the same stands in my name, with your permission, I would move that these provisos be deleted. My point is that when we are giving the right to every citizen the freedom of speech, it is certainly desirable that we should not restrict this liberty by these provisos. I do not think that it is necessary, because the clause is otherwise self-explanatory. While we are prepared to give certain rights to every citizens the provisos make those rights nugatory. I therefore, propose that they may be deleted.
As regards Mr. Lahiri's amendment regarding the substitution of "defence" instead of "security", I do not understand how defence could be secured without security in the country. Security is essential in the State and in the Union. Therefore, security is very necessary and I do feel that the original wording, as it stands, should remain.

Shri Mahavir Tyagi: Sir, I am rather in a fix about my amendment. There is already an amendment before the House which seeks to remove all the three provisos that occur after sub-clauses (a), (b) and (c). If this amendment is carried my amendment would be redundant. But if the House thinks otherwise and remains the said provisos, then I should suggest that the words "or to prevent or control meetings in the vicinity of any Chamber of a Legislature" occurring at the end of the proviso to sub-clause (b) be deleted. Sir, I deem it a privilege of the people to hold meetings even immediately in the vicinity of any Chamber of a Legislature and thus make their legislators feel what their voters want them to do. In short, I beg to request you, Sir, to take into consideration my amendment only if the House decides not to delete the said provisos altogether.

The Hon'ble Rev. J.J. Nichols-Roy (Assam: General): Mr. President, Sir, the amendment which stands in my name has two parts, namely, - (1) that in the first line of the proviso to sub-clause (e) of clause 8, the word 'reasonable' be deleted; and (2) that after the word 'tribes' the words 'and tribal areas' be added. I want to move only the first part. I do not want to move the second part. So the proviso as I propose will read thus:

"Provision may be made by law to impose such restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word "reasonable" will create a great deal of contention and confusion. If a State or a Unit will impose restrictions some one may go to the Supreme Court as provided in clause 2 and say they are not reasonable. So I consider that protection to be made by law for groups and tribes is not a proper and safe protection. At present there is a great deal of misapprehension in the minds of the people in the tribal areas and in the partially excluded areas of Assam that their coming in with India will partially being them under the
exploitation of the people of other parts of India and that the present protection which they have for their lands will be withdrawn. So many of them are afraid to be brought within the new Constitution of India. When we, the Sub-Committee of the Advisory Committee were in the Lushai Hills, some of the Lushai people expressed an idea that it might be better for them to be connected with Burma instead of being connected with the Province of Assam. Though they are now in Assam, yet they are afraid that in the new Constitution all the protection which they have up to the present received from the British Government might be withdrawn. In order to remove this suspicion, it will be very necessary that an authoritative statement be made by the Member of the Interim Government, Pandit Jawahar Lal Nehru, who is in charge of these Tribal Areas, that the protection which the tribes in Assam now have for their land will not be withdrawn. I shall indeed be very thankful for such a statement if it will be made in this House or somewhere else. I understand that this provision is purposely put in here in order to safeguard the land and other interests of minorities and tribal people. But this provision will be misunderstood and misinterpreted in some quarters especially on account of the privileges given by the main sub clause (e) to every citizen in India- and therefore it will create a great deal of confusion in their minds. For that reason I do request again that such an authoritative statement be made by Pandit Jawahar Lal Nehru. This will greatly help the Sub-Committee who will visit these tribal areas, during their course of enquiry.

Prof. K.T. Shah (Bihar: General): I do not move my amendment (No. 18 of Supplementary List II) at this stage.

Mr. Jaspal Singh (Bihar: General): Mr. President, there was hardly an hour between our rising yesterday and the time fixed by you for submission of amendments. I have to apologise to the House for the wording of my amendment No. 19* of Supplementary List II, not being exactly as a draftsman would have put it.

The whole idea behind my amendment is to point out to the House that the Sub-Committees appointed to go round the Excluded and Partially Excluded Areas have not yet submitted their findings and their report has not yet gone to the bigger Advisory Committee. Here we have a clause with a provision which is vital to Adibasi millions and which should depend upon
our knowledge of the recommendations of these two subcommittees, particularly the Sub-Committee which has to deal with the Tribal Areas of the North East, shall I say, the Bengal-Assam Group. Until we know what their recommendations are, it seems to me unwise, inexpedient and premature that we should be discussing a clause and its provisions at the present moment. I would like to suggest, Mr. President, if I may, that this clause be held over till the reports, particularly of the two Tribal Sub-Committees, are submitted. Then we would know what their recommendations were.

Mr. President, I have said on another occasion previously on the floor of this House that land is the bulwark of aboriginal life. Here we are dealing with a provision which is going to mean the life or death not only of the 34 Tribal areas which are now known as fully Excluded or Partially Excluded Areas, but of many more millions living outside these tracts. Take, for example, Bengal. There you have very nearly 20 lakhs of Adibasis who are in neither the Excluded nor the Partially Excluded Areas. Their problem also will have to be considered by these two Sub-Committees although technically they are supposed to deal only with those tracts that are called Excluded or Partially Excluded Areas. I have no desire at this interim stage to press my amendment. I only want to point out that we are trying to arrive at a decision, even though we may call it an interim decision, - I am told at the present moment all this will come under review, - we are simply multiplying our work, wasting time by trying to come to a decision on an issue that must depend on the recommendations about to be submitted by these two Sub-Committees. This is my humble submission. I am relieved to hear that the mover has no objection to the deletion of the word "reasonable". If you read the wording of the amendment I have submitted, it falls into two parts. First, I want an unequivocal assurance, either here or somewhere else, which will make it absolutely clear to the nearly 30 million tribal people in India, -this is according to the 1941 Census, and whether it is right or wrong, that is beside the point- a definite assurance that the protection that obtains for Adibasis under the existing laws shall continue. The clause, as it stands, has already created a very very serious fear in the minds of the tribal people. The two Sub-Committees will have to go again to Assam; they have still to go to areas like Chota Nagpur. I want to stress from the Adibasi point of view, that land is and must be the bulwark of aboriginal life. I think the Premier of Assam
will bear me out when I say that it will be impossible for him and the Sub-
Committees to go about Excluded and Partially Excluded Areas unless this
assurance is given that this clause is in no way going to affect their present
protection. The Honourable Member preceding me has, in a way, stressed
that point. There is already much misunderstanding. I would rather that this
clause stood over till the report of the Sub-Committees were submitted. For
example, wherever we have been, it has been urged upon us that for several
years to come, the aboriginals' land must be inalienable. If I were to fight for
that particular, shall we say, protection, most members would laugh. A friend
of mine, only this morning when I was talking to him, said, "Do you want for
eternity that aboriginal land should remain inalienable?" That is how some of
the demands vital to Adibasis are ridiculed. We have been talking about
equality. Equality sounds well; but I do demand discrimination when it
comes to holdings of aboriginal land. That is why I urge that this particular
clause be held over till the reports of the particular Sub-Committees which
have to deal with the people whose rights will be affected are received before
we come to any decision however temporary or interim it might be. I appeal
to the Mover, Sardar Vallabhbhai Patel, that this clause and its provisos be
held over. I have no desire at this stage to press my amendment.

Shri Khurshed Lal (United Provinces: General): In view of what has
been said already I do not move my amendment (No.20 of the Supplementary
List II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the
decision taken just now, I shall move my amendment (No.21 of the
Supplementary List II) at the appropriate time.

Shri Khurshed Lal: I desire to reserve my right to move my
amendment at a later stage. It was put in as an independent clause after clause
8. I wish to reserve my right of moving if after the Report has been
considered.

Mr. K.M. Munshi: Mr. President, Sir, now that the other provisos to
Clause 8 are gone, the only proviso that is left is the proviso to sub-clause (e);
but before I refer to it, I should like to move my amendment with reference to
sub-clause (e):
"(1) That the following words be added in Clause 8 (e):

'Hold or dispose of' between the words 'acquire' and 'property':-

'(2) Substitute the words "exercise or carry on" between "to" and "any occupation".",

With these changes, the sub-clause will run as follows:

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property and to exercise or carry on any occupation, trade, business or profession."

This is, all those portions which were omitted in clause 5 by reason of this amendment will be carried into this clause. Then I understand there is another amendment moved with regard to the deletion of the word "reasonable". My third amendment is to the same effect. With regard to the last sub-clause, there was a reference to an amendment that "tribal areas" should be used there instead of "tribes". The word "'tribes" has been used in the proviso for this reason that there may be tribes which may not be in tribal areas and it is necessary that the proviso should cover both, viz., tribes which are in tribal areas as well as those outside it. There is no need of any apprehensions with regard to it. If I may mention, Sir, this proviso fully covers the doubts raised by my friend, Mr. Jaipal Singh. It does not say that all the existing rules would be abrogated. On the contrary, under clause 2 all the existing laws in force in the Union or any part thereof will continue unless they conflict or are inconsistent with the Fundamental Rights.

Dr. P.S. Deshmukh (C.P. & Bearer: General): I rise to support the amendment which seeks to delete the word 'reasonable' from the proviso, I also support the suggestion made by my friend, Mr. Jaipal Singh regarding deferment of the whole of the clause for further consideration. I have, however, no objection to retaining the first portion of the sub-clause, that is to say, "the right of every citizen to reside and settle in any part of the Union". The other part of the sub-clause should however, be held over. In supporting my friend, Mr. Jaipal Singh, in this particular matter, I have some very strong considerations in view. I would like to point out to you, Sir, and to the House that the whole of India and especially the masses of India expect the Indian
constitution to have a definite socialistic bias. If this clause is retained in the form in which it is put down here, I am sure we will be strengthening the suspicion of the Indian masses that this Constituent Assembly is so inalienably wedded to the vested interests that they have no hope of any socialistic principles being embodied in the Indian Constitution. Here, Sir, we have a very curious provision indeed. I do wish to avoid the use of strong words, but it is strange that we should set out to protect the minority groups, in the matter of acquisition of property. I think it should be a matter of common knowledge that the vast majority of the population of India which consists of agriculturists and labourers has everywhere been exploited by small minority groups. This is so great an evil that the majority is crying for protection against them. In the Fundamental Rights before us we are trying to protect precisely those very minority groups against whom we want protection against whom the labouring classes and the peasants want protection. My submission to this House is that we must give this matter a little more consideration. Although Sardar Vallabhbhai Patel stated that the Interim-Report presented to the House was not haphazard. It was admitted that the Committee did not have time to consider properly every possible point of view. With that statement of the situation, Sir, and with all the things that have been mentioned in the forwarding letter of Sardar Patel it is clear that the Report contained many things which will lend themselves to further consideration. So far as this clause is concerned, it is the labour who requires protection, it is the agriculturists who require protection against unlimited acquisition of property. It is also worth investigating if this matter could not be left to the Provinces to legislate upon; I would certainly welcome this. In my opinion the Centre should not interfere because the effect of this would be that while you are not going to have socialism at the Centre, you will be preventing it from being introduced in the future Indian Provinces also.

**Mr. Somnath Lahiri:** Sir, I support the suggestion of Mr. Jaipal Singh regarding special protection to the tribal people. These people are down trodden and backward and need special provisions for their protection. It is not even, as Prof. Shah seems to suggest, a question of socialistic bias, but even in a bourgeois democracy the tribal people should have the existing and future provisions for their protection to bring them up, at least to a minimum level. That is why I support Mr. Jaipal Singh's suggestion.
Srijut Rohini Sahay Chaudhury (Assam: General): I oppose the amendment which was moved by my Honourable friend, Mr. Jaipal Singh. I consider that it would be extremely unwise to have that amendment accepted by the House.

Mr. Jadubans Sahay: (Bihar: General): On a point of order, Sir. Is it a fact that Mr. Jaipal Singh has not pressed his amendment and that he has made certain general observations only?

Mr. President: I think he did move an amendment.

Srijut Rohini Kumar Chaudhury: I want to refer to that. I support the main motion as amended by the Hon'ble Mr. Nichols-Roy, but I would like to make some alteration as regards the proposal which was made that special protection of existing laws should be maintained. There is a regulation called Chin-Hill Regulation. I wonder how many Honourable Members of this House know about it. That Chin-Hill Regulation entitles any political officer to evict from its precincts anyone who may be considered undesirable. That regulation has now been withdrawn in some places, but it is still in force in most of the places in the Hills. I only desire to point out that such curtailment of liberties in towns and other places where people can be evicted should be looked into.

They were not intended *bona fide* to protect the tribal people, but were meant to isolate them from their brethren in the plans so that there could be greater exploitation by British people.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I confess I am a little confused. I do not know where we stand after all this welter of amendments which have been moved and not moved and withdrawn and not withdrawn. I do not know how other Members stand in this matter, but there is utter confusion in my mind as to what is being discussed. As far as I can make out, the present position is this. The clause stands with the first three provisos omitted and with certain other minor changes. In regard to (e) the proviso remains with this difference that the word "reasonable" is sought to be removed, and certain other changes have also been sought to be made. So much has been said which has no reference to the clause. I do not know if I am correct in understanding the position as
that. I am supporting for clause, that is to say, without those three earlier provisos, with the last proviso to clause (e) being retained and with the removal of the word "reasonable" from that proviso.

It seems to me that there is also confusion in regard to another matter. Honourable Members seem to forget that we are dealing with fundamental rights. We are not legislating at the moment in regard to any matter. Various things have been brought to our notice—very desirable things which should be done or should not be done, but they having nothing to do with fundamental rights in a constitution, we can consider them separately; we can lay them down even as a part of the Constitution, if you like—or much better, a law could be framed accordingly. There is this confusion, this overlapping, and hence I think a great deal of difficulty has been brought into the picture. A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution. The other matter should be looked upon—however important it might be—not from this permanent and fundamental point of view, but from the more temporary point of view.

Now Mr. Jaipal Singh moved an amendment which I gather he did not press. As far as I am concerned, I entirely agree with him, but I do not see what it has to do with fundamental right. I completely agree that the tribal areas and the tribal people should be protected in every possible way (Hear, hear), and the existing laws—I do not know what those laws are, but certainly the existing laws should continue and may be, should be, added to when the time comes. But thinking of this in terms of a fundamental right would be, I submit, entirely wrong. Mr. Nichols-Roy called upon me not once but several times to speak here and make clear my position apparently in some other capacity than I possess here. He referred to the Interim Government and to the External Affairs Department. Well, Sir, I need not remind the House that I am not here as a Member of the Interim Government or as a Member in charge of the External Affairs Department. I am here as representing the people of the United Provinces. But forgetting my representative capacity, I should like to say—and I am quite sure the House will agree with me, and indeed, the House, in accepting the first Objectives Resolution, made this point clear even then,—that every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault
of theirs, through the fault of social customs, and may be, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance. I can assure Mr. Nichols-Roy that in so far as I have any say in this matter in any Government or otherwise, I shall try to do that. I think, however, that it is not a question of my desire or someone else's desire. I think it is bound to be the policy of any Government of India because that is likely to be an accepted principle of Indian politics today and I do not think any Government even if it was not keen on this issue would very well go against it. So I submit, Sir, that people interested in tribal areas should rest assured completely because, if any person ceases to be vigilant in the defence of any right or freedom, that freedom or right is likely to be swept away. So I want them to be vigilant, but nevertheless, I want them to feel sure that they have the sympathy of the whole of India with them. *(Cheers)*.

**Mr. K.M. Munshi:** May I in the interest of a little more accuracy suggest a change of wording? I find that there is a defective word used in the first Preamble:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency."

I move this verbal change that instead of the words "to the existence of grave emergency"- that does not sound much sense- we use the words "except in grave emergency".

**The Hon'ble Sardar Vallabhbhai Patel:** Now, Sir, I accept Mr. Munshi's verbal amendment in the first paragraph. I also accept that the word "reasonable" be dropped in the last proviso. So the clause is as I moved dropping the proviso to clause (a), proviso to clause (b) and proviso to clause (c) and in clause (e) there is an addition which Mr. Munshi has moved which I accept. Mr. Nichols-Roy said something about the tribal areas. Now, there remains another amendment by Mr. Lahiri about the word "security". Mr. Lahiri has moved an amendment to substitute for the words "security of the Union", the words "defence of the Union". I strongly oppose it. Mr. Lahiri has an acute mind. He knows that internal security is more necessary than security outside. However, he puts "defence" instead of "security", so that
there will be defence outside and internally there may be chaos. The word 'security' was selected deliberately and it should not be replaced.

The Hon'ble Rev. Nichols-Roy, was concerned about the protection of minority groups and tribes and Mr. Jaipal Singh had some apprehensions about the tribal areas. Now, with regard to the word 'tribes', my own feeling is that it is not an appropriate word. The expression 'protection of tribal areas', similarly, is not a happy one. This expression will convey the meaning that we are now concerned with the protection of certain areas. That is, if some external trouble is expected or if some encroachment is going to be made there, the protection of tribal areas', will carry a different meaning.

Mr. Jaipal Singh has apprehensions that the present laws which afford protection and security to the tribal people will be removed. I do not see why there should be any such apprehension. We are not here legislating or doing anything by way of repealing the existing Acts. This clause relates to Fundamental Rights. It does not do away with the existing laws. Existing legislation is left untouched except in so far as it abrogates the fundamental rights for the protection of the Constitution. Therefore there is no reason to entertain any fear about it. But I would like to make one thing clear. Is it the intention of people to defend the cause of the tribals to keep the tribes permanently in their present state? I do not think it is in their interest to do so. I think that it should be our endeavour to bring the tribal people to the level of Mr. Jaipal Singh and not keep them as tribes, so that, 10 years hence, when the Fundamental Rights are reconsidered, the word 'tribes' may be removed altogether, when they would have come up to our level. It is not befitting India's civilization to provide for tribes. What is the meaning of tribes. What is it that the word means, and is it so? It means something and it is there because, for two hundred years, attempts have been made by foreign rulers to keep them in groups apart with their customs and other things in order that the foreigners' rule may be smooth. The rulers did not want that there should be any change. Thus it is that we still have the curse of untouchability, the curse of the tribes, the curse of vested interests and many other curses besides. We are endeavouring to give them all fundamental rights. It should be our endeavour to remove these curses. Therefore, ten years hence, when we reconsider the position, we hope to be in a position to replace the word. All the laws that have been given them protection are there. But have they
protected them? It is not our desire to keep the tribes in their present condition. It is not the existing laws that are going to protect them. It is our own work, our own action and our own sincerity that will give them protection. Therefore, I would appeal to Mr. Jaipal Singh not to entertain any apprehension. In free India there would be no occasion for fear haunting them as it has done during the last 200 years.

Mr. Jaipal Singh: On a point of order, Mr. President, may I say that I have no apprehensions of the kind regarding the tribal areas attributed to me by the Hon'ble Sardar Patel? He has, I am sorry to say, put his own interpretation on what I said. It may be true that the lot of the tribes might be improved hereafter. They may come to my level. But that does not mean that the policy we are pursuing should not be more protective and sympathetic. I know that we are going to reconsider it after ten years.

Mr. President: I shall now put the amendments first. As most of the amendments have been accepted by the Mover, I take it that the House assents to them. (Voices: 'Yes')

The amendment for the deletion of the provisos to 8(a), (b) and 8(c) was adopted.

The Assembly also accepted the amendment to substitute the words "except in" for the words "to the existence of" occurring in line 2 of clause 8.

Mr. President: I shall now put Mr. Lahiri's amendment to the House.

The amendment seeks to substitute the words "defence of the Union" for the words "security of the Union" occurring in the first para of clause 8. As amended, it will read:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the defence of the Union or the Unit, as the case may be, is threatened."
The amendment was negatived.

**Mr. President:** Then I come to amendment to sub-clause (e). As amended it will read:

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property add to exercise or carry on any occupation, trade, business or profession."

The amendment was adopted.

**Mr. President:** I shall now put the whole clause. I suppose it is not necessary that it should be read out.

Clause 8, as amended, was adopted.

**CLAUSE 9-RIGHTS OF FREEDOM**

**Mr. President:** Then we come to Clause 9*.

**Mr. K.M. Munshi:** I move that for the words "the equal treatment of the laws" the words "equality before the law" be substituted.
Mr. President: As regards the proviso there is a formal amendment to drop it. Then there are some amendments of which notice has been given.

(Messrs. Diwakar, Mohanlal Saksena and Mahavir Tyagi did not move their amendments.)

Mr. President: Then I come to the amendment saying that the proviso be dropped.

Mr. President: Then I come to the amendment saying that the proviso be dropped.

Mr. K.M. Munshi: I move that the proviso be dropped.

The amendment was adopted.

Mr. President: I put Clause 9 as amended.

Clause 9, as amended, was adopted.
9. No person shall be deprived of his life, or liberty, without due process of law, nor shall person be denied the equal treatment of the laws within the territories of the Union.

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

Mr. President: Now, we shall take up the Report of the Order of Business Committee. We shall take up the discussion of the further clauses of the Fundamental Rights tomorrow. Now, Mr. Munshi will move his Resolution.

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. K.M. Munshi: Mr. President, Sir, I beg to move the following motion:

"Resolved that the Constituent Assembly do proceed to take into consideration the report of the committee appointed by the resolution of the Assembly of the 25th January, 1947, to recommend the order of the further business of the Assembly."

In moving this motion I have a few remarks to make. The report is before the House and I need not trouble the House at this late hour by reading it. The Report, as has been explained, is an interim report. We were expected to make a final report of the order of business, but we found it impossible to
make a final report, and are seeking the permission of the House to submit a final report at a subsequent stage. The reason is obvious to all the Members. The political conditions in this country are changing fast and these changes naturally have their repercussions on the programme of this Assembly. Therefore, the Committee found it impossible to submit a final report.

Two factors, as has been already referred to by you, Sir, and also by Panditji have come into the forefront during the last few weeks. The first is the overwhelming insecurity in two of the provinces of India—Bengal and the Punjab—and this brought to the forefront the question about the partition of those unfortunate provinces, already referred to by you in your preliminary remarks. This might entail certain changes in the programme of the Assembly and this was one of the factors which prevented us from submitting our final report. The second factor has been the unfortunate fact that the Muslim League has not seen its way to come into the Constituent Assembly even now, and there does not appear to be any prospect of an immediate change, though every concession has been made and every consideration shown and though even the largest party in the country has given an invitation to it. This requires certain changes of programme on the part of the Constituent Assembly.

The Constituent Assembly as well as the Congress have over and over again said that they do not desire to impose any constitution on unwilling parts of the country, and if any unwilling areas stay out, it is not desirable that the Constituent Assembly should wait for ever for them. Now certain changes in the programme of business have become necessary and therefore it was impossible to set out a programme right to the end. Of course, it does not mean, so far as I understand it, that the Constitution that this House will form will not take into account the whole of India. We do hope to make the Constitution on the basis that a time might come when even the unwilling areas who are staying out, or who want to stay out, will, within a short distance of time, come into the Union of India. The Constitution that we propose to formulate must be such as to enable the prodigal sons to return and they will be welcomed whenever they choose to come in. In view of these factors the Committee wants time to submit our final report.
The second consideration which was weighed with the Committee in formulating its programme has been the statement that His Majesty's Government made in Parliament on 20th February, 1947. That puts a time-limit. The Committee has, therefore, submitted that the Constituent Assembly must finish its work of framing the Constitution by the 31st October at the latest. This time-limit is essential in order that our work should be expedited and that the work should be done with promptness. If the House approves of this Report, a resolution will be moved that two Committees may be appointed. These Committees will perform work of an exploratory nature, and will work side by side. One of them will deal with the main principles of the Union Constitution, and the other with the principles of a model Provincial Constitution. It is expected that these two Committees as well as the other Committees, except perhaps the one dealing with tribal areas, will be ready with their reports by the third week of June. The programme that is envisaged in the report therefore is that all these reports not only of the Minorities Committee, the Advisory Committee, but also of these two Committees, should be before the House in its June-July sessions in the shape of, if I may use a well-known expression, a White paper. Then decisions will be taken on the broad outlines of the Constitutions of the Union as well as of the Provinces.

According to the Rules of the Constituent Assembly, we have to circulate our preliminary decisions to the provinces in order that their respective legislatures may consider them and give the House the benefit of their opinions. That will take about a couple of months, and possibly the period between the middle of July and the middle of September will be taken up in Provincial legislatures considering those proposals. Then it is proposed that we should meet somewhere about the middle of September or end of September so that we can complete our task before the 31st October. In the interval, after the House has taken decisions with regard to the main outlines of the Constitution it is intended that the drafting of the Acts should begin side by side so that in the October Session we may have a full and complete draft of the Constitution placed before the House. This is the general sketch of the programme and I hope that it will meet with the approval of the House.

Mr. President: I suppose nothing is to be said about the report. There is nothing more to be done I believe.
Mr. K.M. Munshi: The report has to be adopted.

Mr. President: I put the report to the vote of the House.

Sri K. Santhanam: There is nothing to vote about. The report may be recorded.

The Hon’ble Sri C. Rajagopalachariar: It is a report of another body to us. We record it.

Mr. K.M. Munshi: I beg your pardon. What I moved was consideration by the House because we want the permission of the House to make a subsequent report at a later date. There must be a decision of the House. Therefore, I move formally, if necessary, the adoption of this Report by the House.

Sri K. Santhanam: That means we accept the whole Report. The Honourable Member can move a motion for the appointment of the Committees, but the Report may be recorded. We accept the proposal for the Committees, but about the actual contents of the report, we need not commit ourselves to any particular date or any particular paragraph.

Mr. H.V. Kamath: The motion is for consideration and not adoption. It only says, "proceed to take into consideration the report..."-- there is no question of adoption.

Mr. R.K. Sidhwa: This report is merely for the information of the House. But if we want a decision of the House, there is one thing to which I would like to make a reference regarding the date. It is apparently stated that the work should be completed by the end of October. We all wish that it should be done by that date, but there are yet many factors to be taken into consideration. Under the Rules, the Constitution in the draft form has to go to the various provinces, and we do not know whether the Provinces will adhere to the dates we fix. I also wish that the work should be finished as scheduled but our experience has shown that the dates fixed have had to be changed frequently. It will not be proper to consider every time an extension of the date. I submit that we should respect the laws we make ourselves and the
rules which we have made and stick to the date, but in view of the existing conditions it is better not to fix a date.

Mr. President: I take it that the Report is to be recorded. Is that the view of the House?

The Assembly agreed.

The Report was recorded.

Mr. President: There are one or two points in the Report which the House will have to consider. One is that the Committee wants permission to submit a subsequent report. I hope the House agrees.

The second is that the Committee recommends that two separate Committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principle of a model Provincial Constitution.

Dr. B. Pattabhi Sitaramayya (Madras: General): That will come up as a separate resolution.

Mr. President: Shall we take that up now?

Dr. B. Pattabhi Sitaramayya: It will be a fuller resolution because the strength of the Committees has to be mentioned.

Mr. President: Shall we take that up now?

Mr. R.K. Sidhwa: The motion may be made tomorrow.

An Hon’ble Member: You may take it up now.
Mr. K.M. Munshi: I move:

"This Assembly resolves that in accordance with the recommendations contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instructions to report before the next Session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

That carries out the recommendation at page 2 of the Report.

Mr. President: The motion before the House is:

"This Assembly resolves that in accordance with the recommendation contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instruction to report before the next session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I have a suggestion to make in connection with the terms of reference of the proposed two Committees which we are going to constitute, one for determining the principles of the Union Constitution and the other to prepare a model Provincial constitution. Sir, we have now in India four Chief Commissioners' provinces which are centrally administered. When the future principles of our Union Constitution are going to be determined, it obviously means that the question whether the future Union Government should have under its authority such centrally administered areas or not will have to be incidentally examined. The Cabinet Mission Statement of May 16, 1946, has reserved only defence, foreign affairs and communications for the Union Government.
that basis, I think, the Union government in future will have nothing to do with the details of administration of any province including the Chief Commissioners' provinces. That being the position, the Committee that we are going to set up naturally will have to go into the question and give its recommendations thereon. Therefore, while determining the principles of the future Union Constitution, this problem will certainly have to be dealt with.

Coming to the functions of the other Committee, viz., that which would draft a model Provincial Constitution, I am of the opinion that the existence and functions of the present Chief Commissioners' provinces will have to be incidentally covered because, while determining the minimum area, population and revenue, judiciary, principles of taxation, representation, administration and such other matters, the case of these small administrations will naturally be affected. Thus, it is clear - and I take it to be so to everyone here,- that the scope of both these Committees will certainly include the problem of the Chief Commissioners' provinces. Therefore, Sir, I would like to suggest that a small sub-committee of three—one from the Union Constitution Committee and two from the Model Provincial Constitution Committee- be constituted to examine the case of the existing Chief Commissioners' provinces by visiting each Chief Commissioner's province and help the above committees to formulate their report. Such a procedure will also help us to deal with these subjects quickly in our Sectional meetings. We have the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg in Section A and the Chief Commissioner's province of Baluchistan in Section B. A detailed examination and suitable recommendations thereon will not only be useful but will also help us to speed up our work in the Sections.

Speaking about my own stand, Sir, I have given an assurance at the time of my election to this Constituent Assembly, stating that before deciding about the future of Coorg one way or the other, the people of Coorg will be consulted. So, the visit of a committee to these areas will also give an occasion to contact public opinion in these provinces while making a study of the various aspects connected therewith.

With these remarks, Sir, I suggest that the question of the Chief Commissioners' provinces be specifically included under the terms of
reference of these two Committees and for that purpose a small subcommittee of these two Committees, as explained already be constituted. Sir, I have done.

Dr. B. Pattabhi Sitaramayya: Sir, I welcome the proposal to appoint these two Committees and I wish to bring to your notice that I have given notice of a proposition relating to the linguistic redistribution of provinces. That will be discussed in due course. I do not know whether I shall be in order in referring to the proceedings of the Party, but the Party has been good enough to say that that the subject would be referred to these two Committees. I think it is opportune now for us to say that these two Committees will not only go into these questions which have been associated with them but that it would also be competent for these Committees to go into the question of the redistribution of provinces on a linguistic basis.

Mr. President: Do you want to reply? (To Mr. Munshi.)

Mr. K.M. Munshi: This does not require a reply.

Mr. President: There are two points which have been raised one- by Mr. Poonacha that these, Committees should go into the Constitution of the Chief Commissioners’ provinces and that there should be a sort of sub-committee of these two Committees to deal with the question of the Chief Commissioners’ provinces. There is another suggestion by Dr. Pattabhi Sitaramayya that this Committee should be authorised to deal with the question of the creation of linguistic provinces. I take it that these two Committees when constituted will take into consideration all these and other matters so far as they arise and will make their recommendations in due course. It will be remembered that what is wanted is only a sort of model constitution for the provinces and a constitution for the Union. The model provincial constitution might apply equally to any number of linguistic provinces that might be created. The model constitution need not necessarily require linguistic provinces for that purpose. It is just possible this may fall within the purview of the other Committee which will deal with the general principles of the Union Constitution and that Committee may suggest ways and means for the creation of linguistic provinces. I take it that this Committee will take into consideration all these questions and the question of the Chief Commissioners’ provinces will also naturally arise before them.
Prof. N.G. Ranga (Madras: General): Does that mean that, supposing these two Committees come to the conclusion that this question need not be discussed at all and that they need make no detailed suggestions, this House will not be able to have any say in the matter?

Mr. President: Nothing of the sort. The Committees will make their recommendations. It is always open to the House to correct any errors and remove any defects in their recommendations.

Now this motion is put to the House.

The motion was adopted.

Mr. President: I think we shall disperse now and meet tomorrow morning at 9 o'clock.

The Assembly then adjourned till Nine of the Clock, on Thursday, the 1st May, 1947

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

Report of the Order of Business Committee
We, the undersigned, members of the Committee appointed by the Resolution of the Constituent Assembly dated the 25th January, 1947, to recommend the order of the further business of the Assembly, have the honour to submit this our report.

We met on the 5th March, and on the 21st, 23rd and 27th April, 1947. Pandit Jawaharlal Nehru was, by special invitation, present at all the meetings of the Committee except the one held on the 23rd.

The Statement of His Majesty's Government made in Parliament on the 20th February, 1947, has imported an element of urgency into the work and proceedings of the Assembly and, in our opinion, it is essential that the constitution should be prepared well before the end of this year. The task of arranging the order of business and of framing a time-table is, however, by no means easy. The political situation is developing with great rapidity, and the changes that are taking place inevitably affect the work of the Assembly. We are not, therefore, in a position at this stage to make final recommendations except in regard to the immediate future; and we request that we be permitted to submit a further report at a subsequent stage.

We understand that when the Assembly meets on the 28th April, it will have before it the reports of the following Committees:-

(1) The States Committee appointed by the Constituent Assembly on 21st December, 1946.

(2) The Union Powers Committee appointed by the Constituent Assembly on 25th January, 1947.

(3) The Advisory Committee appointed by the Constituent Assembly on 24th January, 1947, but only on the subject of Fundamental Rights.

After the business connected with these reports has been disposed of by the Assembly, we recommend that two separate committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principles of a model Provincial constitution. We consider that there are many advantages in having two committees, perhaps with an
element of common membership, working side by side and considering the interrelated principles of the Union and the Provincial constitutions. The work of the committees will be of an exploratory nature to facilitate and expedite the work of the Union Assembly or the Sections thereof, as the case may be. After the committees have been set up, we recommend that the meeting be adjourned to a date to be fixed by the President at his descretion. We suggest this flexible arrangement partly in order that the Assembly may avoid difficulties likely to arise from the fixation of a date in advance and partly because experience has shown that committees are not always able to work up to a rigid time-table.

The constitution Assembly should complete its work by the end of October this year. A meeting will be necessary at the end of June or the beginning of July to consider the reports of the various committees and thereafter the matter of going into Sections. A meeting of the Assembly to finalise the constitution should be held in September.

K.M. Munshi,

N. Gopalaswami,

Biswanath Das,

New Delhi, the 27th April, 1947.

*[* ] Translation of Hindustani speech
CONSTITUENT ASSEMBLY OF INDIA - VOLUME III

Thursday, the 1st May, 1947

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

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall proceed with the discussion of the remaining clauses.

CLAUSE 10-RIIGHTs oF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Clause 10 reads as follows:

"Subject to regulation by the law of the-Union trade, commerce, and Intercourse among the Units- by and between the citizens shall be free; -

Provided that any Unit may by. law impose restrictions in the interest of public order, morality or health or in an emergency;"

In paragraph 2 we have dropped the word "reasonable."

"Provided that nothing in this section shall prevent any Unit from sin on goods imported from other Units the same duties and taxes to impression the goods produced in the Unit are subject;"

After this word "subject", We have decided to add the words, "and under regulations and conditions which are non-discriminatory."

"Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another."

So these are the few changes that are suggested and in order to cut short the discussion and save the time of the House I have mentioned these changes which were reached after certain discussions. I move.
Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I beg to move the following amendment to clause 10.

"In paragraph 2, clause 10, delete the word 'reasonable'."

The word "reasonable" gives a certain amount of vagueness and therefore it is not necessary. The second amendment which I beg to move is:

"That after the word 'subject' in the 3rd paragraph of clause 10, add the words 'and under regulations and conditions which are non-discriminatory'."

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health in or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce revenue by a Unit to one Unit over another.

The proviso contemplates that a Unit can impose certain customs duty with a view to bring up the level of the price of goods imported to the level of the price of the goods manufactured in the Unit itself. Otherwise, the goods produced in other Units will flood that particular Unit. With that view only has this proviso been added. Provinces, therefore, can impose certain duties and taxes on goods imported from other units with a view to bring up the value to the level of goods manufactured in the Unit itself. But it was felt, Sir, that this was incomplete. Such regulations and conditions may be made as to favour the goods produced in the Unit and, therefore, the words 'and under regulations and conditions which are non-discriminatory' have to be added, so that conditions must not be such as to force up the price of the goods imported. Therefore, the whole point is that there should not be any regulation or any
conditions of such a nature which would favour the goods produced in the Unit as against those produced and imported from outside.

Sri K. Santhanam (Madras: General): Sir, I have given notice of an amendment. It was more or less to meet the point raised in it that Mr. Munshi has moved the present amendment. But, in my opinion, the amendment moved by Mr. Munshi does not fit in with the clause, because the point of my amendment is that when a Unit imposes certain conditions besides duties on goods within its Own frontiers, it should be able to insist that the goods coming from other Units should also conform to the same conditions. For example, there may be regulations about packing, labelling, disclosure of the materials used in an article and many other conditions and the goods produced from other Units should not have in these matters any advantage over goods produced in the same Unit. As Mr. Munshi's amendment stands, it will be subject to regulations and conditions which are non-discriminatory, but it does not say that the Unit concerned will have the right to impose these regulations on goods produced from other units. Therefore, either his amendment should be properly integrated with the clause or my amendment which says that in the second proviso to clause 10, for the words 'the same duties and taxes' the words 'the same regulations, duties and taxes' be substituted should be accepted. I am quite willing to accept any amendment which makes it clear that the Unit can impose the same conditions and regulations on goods produced from other Units as on the goods produced in the Unit. Therefore, I move my amendment.

Prof. K T. Shah (Bombay: General): I do not propose to move the amendments in my name.

Mr. President: So we have, as a matter of fact, two amendments before us, one moved by Mr. Munshi and the other moved by Mr. Santhanam.

The Hon'ble Sardar Vallabhbhai Patel: There is one thing to which I wanted to draw the attention of the House that paragraph 5 of the Report which I forgot, which provides for the different condition prevailing in the States for which provision has to be made. We have mentioned in the Report, para 5:

"We, therefore, consider that it would be reasonable for the Union to enter into agreement with such States, in the light of their existing rights, with a view to giving them time, upto a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union."
About the amendment of Mr. Santhanam, I think Mr. Munshi's amendment which I propose to accept, satisfies the requirements because it is non-discriminatory. I do not think any further discussion on this is necessary.

I therefore move the clause as amended for the acceptance of the House.

There is a clerical error in the third proviso. The words "by a Unit" are unnecessary. The clause will read:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

Mr. President: Now, I will put this clause to vote.

"Subject to regulation by the law of the Unit trade, commerce, and intercourse among the units by and between the citizens shall be free."

There is no amendment to this clause.

The clause was adopted.

Mr. President: First Proviso:

"Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency"

The amendment proposed is- that the word "reasonable" should be dropped.

The amendment was adopted.

Mr. President: Second Proviso:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject."

There are two amendments to this, one by Mr. Santhanam and the other by Mr. Munshi. I shall put Mr. Santhanam's amendment first. As amended, it reads:
"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

He had at first used the word "regulations". He has changed the word "regulations" into "restrictions". The last portion will read-

"the same duties, taxes and restrictions to

which the goods produced in the Unit are subject.

The other amendment of Mr. Munshi is:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory."

Shri M. Ananthasayanam Ayyangar (Madras: General): I, would like to add the word "similar". Otherwise, it is meaningless.

Mr. President, I have not got your amendment. (To Mr. Ananthasayanam Ayyangar).

Mr. Santhanam's amendment was negatived. Mr. Munshi's amendment was adopted. Mr. President: Third Proviso:

"Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another."

Here there is a verbal change suggested. We are asked to omit the words "by a Unit" because they are unnecessary. The proviso will read like this:

'Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another.'

As amended the proviso is put to the House,

The proviso, as amended, was adopted.

Mr. President- I shall now put the whole clause as amended. Mr. C. Rajagopalachariar suggests that the first proviso should come last and the other should be changed.
The Hon'ble Sri C. Rajagopalachariar (Madras: General): The reason is this. The restrictions to be imposed in the interests of public health will certainly differ from Unit to Unit. If we say in the second proviso that there shall be no discriminatory restrictions, it will mean that when there is infection, you will have to impose on all Units whatever you impose on one Unit. That will be avoided if you add the special proviso as the last proviso instead of that being the first.

Mr. President: I put the whole clause as amended with the change in the order of provisos.

Sri L. Krishnaswami Bharathi (Madras: General): The word "further" must be added so as to read "Provided further."

Mr. President: The amendment is:

'That the word 'further' be added to the first proviso which becomes the third.,

The amendment was adopted. Mr. K. M. Munshi: It is only a matter of arrangement. I do not want to argue. At the time of drafting the Act, it will be placed here.

Mr. President: The clause, as amended, is put to the House. The clause, as amended, was adopted.

CLAUSE 11.-RIGHTS OF 'FREEDOM

The Hon'ble Sardar Vallabhbhai Patel Clause 11 is as regards forced labour and it reads:

"11. (a) Traffic in human beings, and

(b) forced labour in any form including begar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,are here by prohibited and any contravention of this prohibition shall be an offence.

Explanation-

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".
Mr. President: The suggested amendments have not been circulated to the Members and they do not know what changes are suggested. Would request that you move the clause and then the amendments may be moved.

The Hon'ble Sardar Vallabhbhai Patel: Then I move this clause.

Mr. President: I have got notice of a number of amendments to this clause. Mr. Munshi’s amendment has not been circulated. I have got this only two minutes ago. Still we have to go on with the work. I will take the other amendments first.

Mr. M. R. Masani (Bombay: General): It is very difficult to decide whether to move the other amendments until Mr. Munshi’s amendment is moved. I would suggest that the agreed amendment be moved.

Mr. President: I am not aware of any agreed amendment.

Mr. K M. Munshi: Mr. President, Sir, the amendment I move is the following-

"That for clause II the following be substituted:

'Traffic in human beings, and begar, and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence."

The object is to deal in one sentence with both subjects.

The Explanation has to be dropped because in view of the shortening of the whole sentence, the Explanation is not necessary at all. The object of this is that if there is any sort of forced labour like begar, it will be prohibited. Traffic in human beings will be prohibited. But the other forms of labour e.g. labour for educational purposes or for any other purpose of public service, will be regulated by legislation.

Mr. P. R. Thakur (Bengal: General): The word 'begar' should be in italics.

Mr. President: The clause, as amended, if the amendment is accepted, will read thus-

"Traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence,"
The Explanation to the sub-clause (b) is dropped, and so the whole thing will be much shorter and more comprehensive.

There are a number of amendments of which notices have been received. I will call the members to move one after another.

The Hon'ble Mr. Jagjivan Ram (Bihar: General): In view of this amendment, I do not want to press my amendments. (Nos. 27 and 28 of the Supplementary List II).

Mr. H. V. Kamath (C.P. and Berar: General): In the event of acceptance by the House of Mr. Munshi's amendment, there is no necessity for my amendment. (No. 29 of the Supplementary List II). If it is not accepted, I will reserve the right to move my amendment later on.

Mr. M. R. Masani: Mr. President, I had given notice of an amendment (No. 36 of the Supplementary List II) in order to safeguard the rights of Conscientious Objectors in view of the very wide powers given to the State by the Explanation.

I am glad to see that the Explanation has been dropped. I do Dot, therefore, wish to press my amendment at this stage.

Mr. President- Now the motion and the amendment are Open for discussion.

Dr. B. R. Ambedkar (Bengal: General): The point that I want to make is this, that, while I have no objection to the redrafting of subclause (a) and (b) in order that they may run in a compact manner, I have a certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, nonetheless, the State will have the right to introduce compulsory military service. I 'have not had sufficient time to apply my mind to the consequences of the proposed change, i.e., the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because 'begar' is also something which is imposed by the State. So far as I know, in Bombay, 'begar' is demanded by the State for certain public purposes, and if the State is prohibited from having 'begar' it is perfectly possible for anybody to argue that even compulsory military service is begar. I am. therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my
duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. MY suggestion would be that at this state we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered the Provincial Constitution and he Federal Constitution are when drafted in their final form.

Shrimati Dakshayani Velayudan (Madras: General) Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even nowadays we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social 'structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. it is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places- will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of 'begar' in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation economical and in all sorts of ways. The underdogs of this land are deprived of the facilities that make life happy. This System ought to have been, abolished even before the Provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes into existence will give great relief' to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their selfrespect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

Mr. B. Das (Orissa: General): I have great pleasure in supporting Mr. Munshi's amendment to Clause 11. I accept the new draft of the clause. Sir, I have studied a good deal of forced
labour problems since 1929. I was a member of the Forced Labour Convention in Geneva in 1929. India accepted the Forced Labour Convention in 1930, but the Indian States, with certain exceptions, did not accept it. That practice does not exist among the major States whose representatives I find today in this House. Sir, in my part of the country forced labour has been taken advantage of by most of the small Indian States. They receive grants from the Government of India for the construction of roads and utilise the money for their own purposes and by means of forced labour they construct roads and other civil works. Therefore, Sir, I do not apprehend the trouble which my friend Dr. Ambedkar has just now voiced. In case of national emergency the State must come forward and everybody must compulsorily work for the country, be it war or famine or drought. But I do not want any lacuna left over which will allow some of the Indian Princes to use forced labour for their own gains.

Sir, one point I am not satisfied with is whether traffic in human beings includes women traffic. Sir, some of us have studied this problem about women's traffic for the last ten years or more. Unfortunately, every year thousands of women of Orissa and the Province of Bengal, where there are surplus women, are carried away to other parts of India.

There is a regular traffic going on by crooks and gangsters who carry away these women to some outside Provinces. I do not know whether they are regular house-wives or whether they lead the life of shame. We do know that in provinces like the Punjab and the Frontier the number of women is less than the population of men.

Sir, we had the painful experience during the Bengal famine when lakhs of women were spirited away. Whether these women were taken to the provinces where there are less women or whether they were used to supply women to the huge British army that was then in the eastern part of India, that is a problem that social workers must work out, But I would have been happy to see "traffic in women" being specifically mentioned in the clause. Those of us who belong to the eastern part of India still apprehend that in spite of this provision in the Fundamental Rights, traffic in women will be carried on by unscrupulous moneymakers. I, therefore, want Sardar Patel to assure me whether he has in contemplation some kind of legislation by which this traffic in women may be stopped for ever.

Sir, I want a further assurance from the representatives of the Indian States here whether they will persuade their colleagues in the less advanced States to abolish forced labour which is a source of profit and gain to many small principalities in India.

Dr. P. K. Sen (Bihar: General): Sir, might I be permitted to point out some of the difficulties that would present themselves if we put the clause in the truncated form suggested? First of
all, there can be no question, nobody can doubt for a moment that forced labour in any form
must go. But there were certain qualifying explanations in the original form of the clause
which have now been omitted. Those are- "involuntary servitude except as punishment for
crime whereof the party shall have been duly convicted."

Now, it is well known that it is not only from children in the reformatory schools or from
adolescents in the Borstal institutions, but also from adults.-grown up people who may be
regarded as under State tutelage, during their incarceration-it is right and legitimate, , in fact,
necessary, to exact labour according to the rules of the prisons. All that may really become
very difficult if we put the clause in the form, that begar or forced labour shall be prohibited
and any contravention of this rule would be regarded as an offence. I quite agree with my
friend, Dr. Ambedkar, that the only way of getting out of this difficulty would be to retain the
Explanation and then such cases would come under the expression ‘for public purposes’,
because even in jails and prisons or any other organisations where people are under State
tutelage, forced labour can legitimately be exacted for the good of the inmates and also for the
good of the State. If there is still any doubt, we can add the words "in the case of those under
the State tutelage" or some such expression as that. But the amendment as it has been put, i.e.,
Traffic in human beings, and begar and forced labour in any form are hereby prohibited

Mr. K. M. Munshi There are also the words "other similar forms".

Dr. P. K. Sen: 'Similar' is a very vague word. I really cannot imagine what difficulty or
objection there can be in the way of retaining the Explanation. The Explanation is quite
innocuous, and it only says that for certain public purposes as in all civilized countries, it is
necessary to get compulsory service from the citizens, for their own good and for the good of
the State. I, therefore, submit that the Explanation either in the form as it stands or with any
requisite modification may be accepted. Otherwise, all sorts of complications might arise.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Mr. President, going into
the question as to whether there is necessity for the retention of the Explanation or not, I am
quite clear in ray mind. So far as the first sub-clause is concerned, it will not preclude military
conscription. In the

Committee, there was a special clause inserted by Mr. Masani to the effect that there shall not
be military conscription; but that has been omitted. In spite of the existence of the slavery
and. anti-slavery clause in the United States Constitution, the Supreme Court of the United
States has held that there is nothing to prevent military conscription being introduced. The
learned Judges referred to various writers on international law and they pointed out that the
very existence of the State depends upon military force, and the slavery and antislavery or
servitude clause cannot be construed as precluding the United States of America from
introducing conscription. Therefore, the words 'begar and similar forms of forced labour'
cannot possibly be interpreted as excluding conscription. That is my view and I do not think
that the future legislatures will be precluded from introducing conscription by reason of a
clause like this. The word "similar" occurring in the clause makes it quite clear that it cannot
have in view a military conscription law. Therefore, under those circumstances, there need
not be any apprehension. That does not, however, mean that I am opposed to the retention of
the Explanation. The retention, it was pointed out yesterday in the Committee, might give rise
to considerable difficulties is the working of the village economy and village institutions, and
no harm would result by the omission of the Explanation, and therefore, yesterday, in the
course of the discussions in the Committee, it was omitted. I do not think there is any danger
of military conscription being ruled out as a power inherent in the Union by reason of the
forced labour clause as it stands.

Sri M. Ananthasayanam Ayyangar: I was also of the same opinion as Sir Alladi
Krishnaswami Ayyar, when in the party meeting I consented to the change of the present
clause, but I find on reconsideration that the original clause might stand. I shall presently give
the reasons. The reasons are these. Two points referred to in the clause are, one, traffic in
human beings is prohibited, and, secondly, forced labour ought not to be allowed. Both these
are already provided for in the Penal Code. Section 370 of the Indian Penal Code prohibits
traffic in human beings, and section 374 makes it an offence to compel any person to labour
against his will, but the word "unlawful" is used there. "Unlawful" means, it is lawful for any
legislature to pass a law that for particular purposes labour may be enforced, as when a person
is convicted of a crime and he is sentenced to penal servitude. Or in the interests of village
administration when there are floods, the villagers may be obliged or forced to repair breaches
in tanks, etc. it also allows compulsory military service. Now, that these two provisions which
are already in the general law under sections 370 and 374 of the Indian Penal Code are raised
to the status of fundamental rights, we have to be a little careful. When we are giving the
status of fundamental rights, unless we add other explanations allowing the State to make an
exception to these two fundamental rights which are now being given, it might appear, and
courts may also interpret that by taking these out of the ordinary law and placing them in the
Statute Book as fundamental rights-that the States' jurisdiction to legislate for such purposes,
for forced labour even under an emergency has been taken away. If Mr. Munshi who has
moved this amendment has at the back of his mind that the State Ought not to be prevented
from introducing conscription whenever or wherever necessary, let the matter be cleared here
and now. I do not see any objection to having an Explanation or even having the original
clause as it stands. There is no need to make the amendment. Let us be clear in our minds. Otherwise, it will mean that we have given up, irrespective of any considerations requiring conscription, or irrespective of other considerations requiring any local legislature or any particular unit to compel persons to come and help by

way of forced labour irrespective of all these considerations the fundamental right has been given, and that means that the right of the State has been abrogated once and for all. There is much force in the argument of Dr. Ambedkar, and I am not in favour of this amendment. The original clause as it stands may stand. Let us be clear in our minds whether we want conscription here and now or not. Let us not leave it to the judges to decide. Sir Alladi Krishnaswami Ayyar said that it has been interpreted by the American Court. The American Law was framed so long ago, and therefore, it is necessary to interpret it from time to time to enlarge its scope. We know too well that the Justinian Code running into 150 volumes has been developed by interpretation of the Twelve Tables. People are not in favour of modifying the statute from time to time, but lawyers have introduced various things as interpretations and have been evolving new law out of that. Now, that we are making a statute, why should we rely upon the future interpretation and leave it to the judges to decide? I oppose the amendment and I am in favour of retaining the original clause.

Dr. B. R. Ambedkar: May I make a suggestion? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political Organisation the free citizen has a duty to support. the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small committee to have it further examined. It will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee.
which should report to this House. It will then be possible for the House to take a correct
decision in the matter.

Mr. President: I think it is not necessary to have any further discussion if the suggestion
which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R.K. Sidhwa (C.P. and Berar: General): The question regarding compulsory military
service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The
question is whether under fundamental rights conscription is prohibited. I think it is best to
refer it to the game committee to which the other clause has been remitted.

An Hon'ble Member: The whole clause 11.

Mr. President: Yes, the whole clause 11.

The clause was remitted.

Clause 12

RIGHTS or FREEDOM.

Mr. President: Clause 12.

The Hon'ble Sardar Vallabhbhai Patel: I move clause 12. Clause 12 says:

"No child below the age of 14 years shall be engaged to work in any factory, mine or any
other hazardous employment."

It is proposed to delete the Explanation. But I move the clause as it is, and deletion of the,
Explanation may be moved as an amendment.

Mr. K. M. Munshi: I move that the Explanation be deleted. The Explanation says:

"Nothing in this shall prejudice any educational programme or activity involving compulsory
labour."

That has nothing to do with sub-clause and I submit it should be deleted

Mr. President: Amendment No. 37-Mr. Kamath.
No Child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation: Nothing in this shall prejudice any educational programme or activity involving compulsory, labour.

Mr. H. V. Kamath: I am told that this clause deals only with children below 14, and that, therefore, expectant mothers and old people are out of place. I shall reserve my right to move my amendment at a later stage. I do not move it now.

Mr. B. K Sidhwa: As regards amendment No. 43, they are all new clauses, and as decided by the Honourable House yesterday, I will take them at the end of all these clauses.

Mr. President: These are the amendments. I will put the amendment of Mr. Munshi for deletion of the Explanation, to the House.

The amendment was adopted. Clause 12, as amended, was adopted.

CLAUSE 13—RIGHTS RELATING TO RELIGION.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move the adoption of clause 13, viz.,

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3-The freedome of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept.
Mr. K. M. Munshi: Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:

"and for throwing open Hindu religious institutions of a public character to any class of section of Hindus."

After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any, such construction of clause, it was decided that the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindi religion.

Mr. President: I shall now call upon Members who have given notice of amendments to this clause, to move them (after a pause) As I find that there is no amendment moved to the clause I shall put it to the vote of the House.

Mr. H. J. Khandekar (C. P. and Berar): Sir, in case Mr. Munshi's amendment to this clause is accepted, it may be necessary to have a definition for "places of public worship". Unless this is done it may be difficult for people to know which is a place of public worship. Even where admission to people of all classes is given, depressed classes are not allowed. Even when there is a written record that a certain temple is open to worship by depressed classes, the pujaris obstruct and say that that temple is a private one and, therefore, not open to depressed classes. So, Sir, if there is definition of "places of public worship” there will be no difficulty. I suggest, therefore, that there should be a definition for "places of public worship”.

Mr. President: May I know in which clause that expression occurs?

Mr. H. J. Khandekar: Explanation 3.

Mr. President: I do not find this expression there.

There is no mention of any place of public worship there.

Mr. H. J. Khandekar: I want a definition for "religious institutions of a public character".

Mr. President: Mr. Khandekar wants some explanation of the term "religious institutions of a public character" so that it may be clear what religious institutions are referred to.
Shri L. Krishnaswami Bharathi: Sir, the clause reads: "other provisions of this Chapter". It should read "other provisions of this Part".

The Hon'ble Sardar Vallabhbhai Patel: The word "Chapter" has been substituted by the word "Part".

I accept Mr. Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed.

Mr. President: I am putting to the vote first the amendment to Explanation No. 3. The amendment is:

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus be added at the end of- Explanation No. 3'"

The amendment was adopted. Mr. President: Now I put the clause as amended to the House.

Clause 13, as amended, was adopted.

Mr. President: Now we go to clause A

CLAUSE 14.

The Hon'ble Sardar Vallabhbhai Patel: Now I move clause 14.

"Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

There is a little addition by way of an amendment which Mr. Munshi will move. I move this clause for the acceptance of the House.

Mr. K. M. Munshi: Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected.
Sri K. Santhanam: What is meant by "general law".

Mr. K. M. Munshi: There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is Union law. If it is a Unit subject, it is Unit law.

Mr. President: Has the word "general" any special significance here, Law is law.

Mr. K. M. Munshi: The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be 'law', I have no objection.

Some Hon'ble Members: "subject to "law"."

Mr. President: Mr. Santhanam, there is an amendment to be moved by you, amendment No. 63.

Sri K. Santhanam: No, Sir. I am not moving it.

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

The Hon'ble Sri C. Rajagopalachariar: No, Sir. I am not moving it.

Mr. President: The clause and the amendment are now open for discussion.

Sri M. Ananthasayanam Ayyangar: I oppose the omission of the word 'general' which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word 'general'. I think the framers of the clause were right in including it.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed.
Mr. H. V. Kamath: I could not hear a word of what Sir Alladi said.

Mr. President: Sir Alladi's view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, we need not attach any importance to them.

Mr. D. N. Datta (Bengal: General): If the words "existing Indian law" are there, the General Clauses Act will apply.

Mr. President: You are at liberty to differ from Sir Alladi.

The Hon'ble Sri C. Rajagopalachariar: Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only 'law' and not any particular portion of the law.

Sri M. Ananthasayanam Ayyangar: We are trying to get these on the statute book. What is the meaning of taking these technical objections?

Mr. President: As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them.

Now I will put the various amendments. The first amendment I will put is that the words "or a section thereof" be added between "denomination" and "shall". That part of the clause will read as follows:

"Every religious denomination or a section thereof shall have the right to manage its own affairs, and so on.

The amendment was adopted.

Mr. President: The next amendment is that the be omitted.

The amendment was adopted.

Mr. President: The clause as amended will read:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."
I put the clause, as amended, to the House.

Clause 14, as amended, was adopted.

CLAUSE 15

The Hon'ble Sardar Vallabhbhai Patel: Clause 15.

"No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination."

I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House.

Mr. President: As there is no amendment to this clause, I put it to the vote of the House.

Clause 15 was adopted.

CLAUSE 16

The Hon'ble Sardar Vallabhbhai Patel: Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the Advisory Committee.

Mr. President: Then you formally move it.

The Hon'ble Sardar Vallabhbhai Patel: I formally move:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

Mr. President: On the vote of the House this clause is referred back to the Advisory Committee.

CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move Clause 17.
"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi: Sir, I beg to move the following amendment,

'That for clause 17 substitute the following clause:

'Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.'

The additions that are made to the clause as it is originally moved are there. First of all, the word

'fraud' is added to the words, 'coercion,' and undue influence'. The second matter is with regard to the conversion words "the general" of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other-, and it is the general feeling that this clause should be restored in this form,--any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of nonrecognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion.

If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form.

"Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law."

Srijut Rohini Kumar Chaudhury (Assam: General): May I ask you to explain as to what is meant by the words "undue influence"? Is it used in the sense laid down in the Contract Act or in the general sense?

Mr. K. M. Munshi: It is difficult for me to say, but I am sure "fraud" is fraud all the world over and in all systems of jurisprudence. There is no difference between the two words coercion and undue influence as understood in India and in other countries. There may be
little shades of difference but the free India will form its definitions and it may not be different from the Oxford dictionary meaning so far as I can see.

Shri Phool Singh (United Provinces: General): In view of the amendment moved by Mr. Munshi, my amendment will not fit in. But I suggest. Sir, that conversion by coercion should be made an offence. I would suggest he might move an amendment to this effect.

The Hon'ble Mr. Jagjivan Ram: I am not moving my amendment (No. 72 of the Supplementary List II).

Mr. President: Amendment No. 73 of the Supplementary List II

Mr. B. K. Sidhwa: This is a new clause. It may be taken up later.

Mr. F. B. Anthony (Bengal: General): Mr. President, my amendment, is with specific reference to Mr. Munshi's amendment, "or of a minor under the age of 18". To this part of the clause I want to add these words: " except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith". This was more or less the form in which the particular clause was accepted by the Minorities Sub-Committee. We discussed it at length and it was felt that in the form, I have sought to re-introduce, it would best serve the interests that we were considering there.

I agree that conversion under undue influence, conversion by coercion or conversion by fraud should not be recognised by law. I am only interested in this question, Sir, on principle. My community does not propagate. We do not convert, nor are we converted. But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion. I want to congratulate the major party for having, in spite of its contentious character, retained the words "right to practise and propagate their religion". Having done that, I say that after giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, "or of a minor under the age of 18". I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor,

you will place an embargo absolutely on the right of conversion. You will virtually take away the right to convert. Because, what will happen? Not a single adult who is a parent, however deeply he may feel, however deeply he may be convinced, will ever adopt Christianity, because, by this clause you will be cutting off that parent from his children. By this clause you will say, although the parents may be converted to Christianity, the children shall not be
brought up by these parents in the faith of the parents. You win be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life. This is a right which is conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. You have your safeguards. You have provided that conversion by undue influence, conversion by fraud, conversion by coercion shall not be recognised by law. I have gone further, and unlike the position in other parts of the world, I have even given discretion to the child provided it has attained the age of discretion, to adhere to its original faith. The wording is "and the child does not choose to adhere to its original faith". If both the parents are converted and if they want their children to be brought up as Christians, if these children have reached the age of discretion and say that in spite of the conversion of their parents, they do not want to be brought up as Christians, under the restriction which I have introduced, they will not be brought up in the Christian faith.

I have also added the word "surviving parent". for this reason, I say that if you restrict it to both the parents,-What will happen? If a widow, let us assume, adopts Christianity, do you mean to say that if she wants to bring up her children in the Christian faith, and if those children themselves want to be brought up in the Christian faith, you are placing an embargo on this? If you do not use the word "surviving parents", if the father who happens to be a widower adopts the Christian faith, and the children wish to be brought up as Christians, it may be said that since both the parents are not alive, the father cannot bring up the children in his faith. He will automatically be cut off from his children.

I realise how deeply certain sections of this House feel on this question of conversion. But I do ask you, having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and Justice.

Mr. P. R. Thakur: Sir, I am a member of the Depressed Clauses. This clause of the Fundamental Rights is very important from the standpoint of my community. You know well, Sir, that the victims of these religious conversions are ordinarily from the Depressed Classes. The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Mr. Munshi whether "fraud" covers all these things. If it does not cover, I should ask Mr. Munshi to re-draft this clause so that fraud of this nature might not be practised on these depressed classes. I should certainly call these "fraud".
The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, it appears to me that the clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question

must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another I or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on 'earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that. This part of the amendment about minors is absolutely wrong when we consider it from the spiritual standpoint. From the standpoint of conscience I consider that it is altogether wrong not to allow a youth from the age of twelve to eighteen to exercise his own conscience before God. It will oppress the consciences of the youths who want to exercise their religious faiths before God. Therefore, I am against this amendment as it is. The clause should be left as it was before. The legal and other aspects have been discussed by Mr. Anthony regarding the conversion of the children of the converted parents. Certain minors should be allowed to follow their own conviction if they have any, and should not be forced to do anything against their own conviction. Why should the law not allow them if they themselves do not care for their former legal status? Why should they one Prevented from changing their religion?
should their consciences be oppressed? That is a very important point, Sir, to be considered by this House. This freedom I consider to be a Fundamental Right of the Youths. No law should be made which will work against good spiritual forces. India, especially, is a country of religions, a country where there is religious freedom. If this amendment is carried in this House, it will only mean that in making a law to prevent the evil forces our minds lose sight of the real religious freedom which the youths of this land ought to have. Therefore, I am against this very principle of forcing the youths by not allowing them to exercise their religious conviction according to their consciences. I would suggest, Sir, that if in the amendment moved by Mr. Anthony the words 'or save when the minor himself wants to change his religion' are included, then I do not object to this amendment. I am against any conversion by undue influence or by fraud or coercion. When we make a law against all these evils we should be careful to see that that law does not oppress the consciences of the youths who also need freedom.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General) : [Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren. Some of them have said that in this Assembly we have admitted the right of every one to propagate his religion and to convert from one religion to another. We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accepted this. Now it is said that they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. if a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed to formally change his religion only when he attains maturity.

One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents they would have been justified in their statement. What we gave them with our right hand, is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words,
'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can the young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why should it be necessary that their children should also change their religion? If they are under the influence of their parents they can change their religion on maturity. This is my submission.

With your permission, Mr. President, I would like to address a few words in English that such of my friends who do not know Hindi may follow me.[

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English translation of Hindustani speech begins.

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Sir, I am astonished at the manner in which some Christian friends have advanced the claim to convert minors. We have agreed to the right of conversion. Generally, we, Congressmen do not think it at all right I say so frankly—that people should strenuously go about trying to convert peoples of other faith into their own, but we want to carry our Christian friends with us—friends who feel that they should have the right to make conversions—and we have agreed on their insistence to retain this formula about "propagation". They know that we are opposed to it, yet we have agreed.

Mr. C. E. Gibbon (C.P. & Berar: General): It is quite wrong.

The Hon'ble Shri Purushottamdas Tandon: I am speaking, Sir, as a Congressman. I say that the majority of Congressmen do not like this process of making converts (interruption), but in order to carry our Christian friends with us....

Mr. C. E._ Gibbon: On a point of order, Sir.

The Hon'ble Shri Purushottamdas, Tandon: There can be no point of Order. There may be a point of opinion.
Mr. C. E. Gibbon: I do not think, Sir, that the Speaker is competent to speak for all Congressmen.

Some Hon'ble Members: Why not?

Mr. President: That is no point of order.

Shri Balkrishna Sharma (United Provinces: General): The Speaker has every right to speak on behalf of most of the Congressmen. He is most certainly entitled to do so.

The Hon'ble Shri Purushottamdas Tandon: I know Congressmen more than my friend over there. I know their feelings more intimately than probably he has ever had an opportunity of doing, and I know that most Congressmen are opposed to this idea of "propagation". But We agreed to keep the word "propagate" out of regard for our Christian friends. But now to ask us to agree to minors also being converted is, I thing, Sir, going too far. It is possible that parents having a number of children are converted into some other faith but why should it be necessary that all these children who do not understand religion should be treated as converts? I submit it is not at all necessary. The law of guardianship will see about it. Guardians can be appointed to look after these children, and when they grow up, if they feel that Christianity is a form of religion which appeals to their minds they will be at liberty to embrace it. That much to my Christian friends.

I understand, Sir, that it is possible that difficulties may be raised by some lawyers. What is the legal difficulty about this matter? The ordinary law of guardianship will see about this. When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Mr. Munshi has proposed being accepted. I heartily support Mr. Munshi's amendment.

(Mr. Dhirendra Nath Datta rose to speak).

Sri Ramnath Goenka (Madras: General): Mr. President, I rise on a point of order.

Mr. President: But Mr. Datta has risen before you on a point of Order.
Mr. P. N. Datta: Mr. President, I would not have risen but for the speech of the previous
speaker......

Mr. President: I thought you were raising a point of order.

Mr. D. N. Datta: No, Sir. I do not raise a point of order.

Mr, President: Then, please wait. Yes, Mr. Goenka.

Sri Ramnath Goenka: My point of order is, Sir, that under clause 13 which we have passed,
all persons are equally entitled to freedom of conscience. "All persons" must necessarily
include at least those persons who have attained the age of discretion. It is not necessary that
they must attain the age of 18 before developing conscience, it may be at the age of twelve,
fifteen, sixteen or seventeen. If we pass clause 17 and prescribe the age of 18, then it will be
inconsistent with clause 13. We have said in clause 13 "all persons". They must, I think, attain
freedom of conscience any time before 18. So if we pass this clause 17 and prescribe the age
of 18, it will be inconsistent with clause 13 which we have just now passed.

Mr. President: But what is the point of order ? (Laughter)

Sri Ramnath Goenka: It is that it will be inconsistent with clause 13 which we have passed.

Mr. President: That is on the merits of the thing. You do not say that the House cannot take it
up because it is inconsistent.

Sri Ramnath Goenka: I say the amendment is out of order.

Mr. President: Which amendment?

Sri Ramnath Goenka: The amendment moved by Mr. Munshi. It is out of order if you agree
with me that the age of discretion will be any time before eighteen years. Sir, my point of
order is that the amendment of Mr. Munshi will be out of order.

Shri Mahavir Tyagi (United Provinces: General): But Mr. Munshi is above that age.

Sri Ramnath Goenka: It is not a question of Mr. Munshi being over eighteen. (Laughter).

Mr. President: I take it
that the point of order raised by Mr. Goenka is that we have already taken a decision with regard to clause 13 and, therefore, the House is not entitled to take-up this amendment moved by Mr. Munshi. But I believe the House is always free to revise its own decision.

Sri Ramnath Goenka. Certain, Sir. But as long as clause 13 stands as it is, this amendment will be out of order.

Mr. K. M. Munshi: May I reply to this, Sir?

Mr. President: Yes.

Mr. K. M. Munshi: Sir, my friend, Mr. Goenka, I think should not have ventured in the region of construction. If you look at clause 13, you will see that it says-

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health and to the other provisions of this Part."

This provision is generally subject to the other provisions of this Part and if the House passes this clause, that freedom will be subject to this particular clause. The matter is as plain as a pikestaff.

Sri Ananthasayanam Ayyangar. Sir, I want to pose this point of order raised by Mr. Goenka in a different way. The mover of this point of order said he has no objection to persons who are of the age of discretion being converted. But the age of discretion has not been defined anywhere. It is open to this Assembly to say that the age of discretion is eighteen. Therefore, there is really no point of order, or there is no point in this point of order.

Mr. President: I think this amendment is in order. Now we can discuss the motion as well as the amendment.

Mr. D. N. Datta: Mr. President, Sir, I feel that the whole of this clause 17 should go into the Fundamental Rights Committee and I would be glad if the whole clause could be deleted. I know the reasons for enumerating this under Fundamental Rights, because we are now working under the present setting. But as it is going to be enumerated in the fundamental rights, it has to be seen, Sir, whether the amendment of Mr. Munshi is to be accepted or the amendment of Mr. Anthony should be accented. Mr. Anthony wants that the option of the minors to join the religion they like on attaining majority, should be retained, just as the choice is given to Mohammadan children given in marriage during minority to repudiate the
marriage on attaining majority. What we call the option of puberty. A similar right he intends to be given to the children of the parents who have been converted. On attaining majority the child shall have the right of declaring whether he adheres to his original faith or whether he will join the faith of his parents who were converted. I for myself, do not see any reason, why that right should not be given to the child on attaining majority. On attaining, he may declare, if he was a Hindu, that he will adhere to Hinduism or if his parents have taken to Christianity, whether he will become a Christian. I think this right should not be taken away. It should be given and how it is to be given, it is for the Drafting Committee to determine. For that, Sir, I suggest that the whole clause should go to the drafting Committee, or, better still, that it should go to the Fundamental Rights Committee to determine whether this clause should remain or how it should remain.

And before I go, I must say that the remark of Mr. Tandon that the majority of the Congress members are not in favour of introducing the word 'propagate' in clause 13 is not correct. This matter was discussed yesterday and the majority were in favour of keeping the word 'propagate'. Therefore, the contention of Mr. Tandon is not correct.

Sri Lakshminarayan Sahu. (Orissa: General): Mr. President; Sir, I welcome this clause in the Fundamental Rights, but I have a little doubt to start with, as to what should be called a minority. I think that doubt may be cleared afterwards. As the conditions are today, I would like to point out to the House how in the Midnapore District, half of which is Oriya speaking, the language has been killed there from 1891 to 1931. I will give the census figures for that. In 1891, the number of Oriyas in the District of Midnapore was 6 lakhs. Ten years after, in 1901 it was less than 3 lakhs. From 6 lakhs it went down to about 3 lakhs. And in 1911

Mr. President: Mr. Sahu we are not on the question of language now, we are dealing with clause 17, about religion, and not clause 18.

Sri Lakshminarayan Sahu: I am sorry.

Rev. Jerome D'Souza (Madras: General): Mr. President; I regret, Sir., that this discussion should have taken a turn which makes it look as if it is almost exclusively a minority problem, and as a result of that, a degree of heat has been imported into it which most of us regret very much indeed. Sir, when this matter was discussed at the committee stage, quite independently from the question of minorities, legal difficulties with which this question bristles were brought home to us by men of the highest authority like Sir Alladi. As far as the minority rights, are concerned, I can only say this, that the way in which clause 13 has been handled by
this House is so reassuring and so encouraging to the minorities that we have no reason at all
to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the
minorities an equally trustful attitude which I hope will inspire future relations and future
discussions. I appreciate Mr. Anthony's stand that this is a question of a wider nature of
principle and family authority. I assure you I am speaking from that point of view. This
question of conversion of minors may affect not only majorities in relation to minorities but
the minorities among themselves,—one Christian group in relation to another Christian group,
as Catholics and Protestants, and so on. But among all sections, in regard to the authority of a
man over his family, I think certain rights should be assured and must be part of fundamental
rights. We have nothing in these fundamental rights that safeguards or encourages or
strengthens the family in an explicit way, and indeed I do not think this is necessary at this
stage, because that is not a justiciable right. There are certain constitutions where the wish of
the State to protect and encourage the family is explicitly declared. I hope in the second part,
among these fundamental rights which are not justiciable, some such declaration or
approbation of the institution and rights and privileges associated with family We will be
introduced. It may perhaps be thought that in our country such a declaration is not necessary
because among us the strongest family feeling is universal; we have not merely individual or
unitary families but we have also joint families. I believe the discussion on this point has
been partly influenced by that background of the joint family system. I am sure that Tandonji,
if I may be permitted to refer to him by name, when he was speaking of the minor child of
converted parents, was thinking really in terms of the joint family where there are people
ready to take over and bring up such children. But we are legislating for all sections of our
people, for those also who are not in joint families but in unitary families. We are legislating
for them, and, therefore, some provisions must be made which, in the last analysis, will
safeguard the authority of the parent, both parents or the surviving parent, in particular, as Mr.
Anthony has said in regard to babies in the arms of their mothers. To take them away from the
mother or father who are one with them, practically identified physically and juridically with
them, is to introduce into our legislation an element which certainly weakens the concept of
the authority and sanctity of the family. On this ground, as well as on the legal implications to
which attention has been drawn. I mean difficulties in connection with the death, the
marriage, the succession rights, of these minors, I oppose Mr. Munshi's amendment as it,
stands. Take the question of marriage. Marriage is permitted before

18 years. Now Mr. Munshi has carefully explained that his amendment does not prevent the
minor children from going with the parents. But it they are to be married, under what law, by
the ceremonies of which religion will they be married? If they follow their conscience and
the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question
of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth. While I want to support Mr. Anthony's motion, I am more inclined to support the suggestion of the speaker who immediately preceded me, and ask the House to refer the entire clause back to the Advisory Committee so that the wording of it may be most carefully weighed. It can be brought back to this House just as we have decided, to bring back three or four other controversial matters. That is my suggestion and I would request......

The Hon'ble Mr. B. G. Kher (Bombay: General): You may refer it to the other Committee which the President has appointed.

Rev Jerome D'Souza: I accept it. I want it to be discussed in a very much calmer manner. I suggest that it may go back to the Committee which the President has already appointed.

Mr. R. K. Sidhwa: I do not want it to be sent back to the Committee.

Mr. President: I have got a list of a number of names of members who wish to speak on this amendment. I take it that my eye catches members in the order in which I have received the requests. So, I call upon Shri Algu Rai Shastri.

Shri Algu Rai Shastri (U.P.: General): [Mr. President I stand here to support the amendment moved by Mr. Munshi. I believe that by accepting the amendment we shall be doing justice to those minors who have perforce to enter the fold of the religion which their parents embrace out of their greed. This practice is like the one prevailing in the transactions of transfer of land and which is that 'trees go with the land'. It is on some such basis that the minor children who do not understand what change of religion or coercion or religious practices mean, have to leave their old faith along with their parents. This evil practice has a very bad effect, on the strength of our population. It is proper for US that we, who are framing the charts of Fundamental Rights, should safeguard their interests and save them from such automatic conversion. The dynamic conditions of our society make it more important than ever that we should incorporate such a provision in our Constitution as will prevent such practices. Such minors on attaining majority often regret that they were made to change their religion, improperly. Where ever the Europeans or the white races of Europe, who rule practically over the whole world, have gone, they have, as Missionaries. A study of the 'Prosperous India' by Dig by shows that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and
political pressure on the indigenous tribes. and consolidated the foundations of their dominion. We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example it is only when I am convinced that Sikkism is preferable to Hinduism, that I should be able to change my religion

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This right I believe we have. But no one should change religion out of greed and temptation. When the followers of one religion employ, sword and guns to attack a family consisting of a few members, the latter have no option but to accept the religion of the aggressors in order to save their lives. Such a conversion should be considered void and ineffective because it has been brought about through coercion and undue influence. In view of such conditions which exist today, conversion brought about through temptation and allurement is, in fact, not a conversion in the real sense of the term. I have a personal experience extending over a period of 24 years as to how the elders of the family are induced through prospects of financial gain to change their religion and also with them the children are taken over to the fold of the new religion. It appears as if some are taking the land physically in his possession and the helpless trees go with it to the new master.

One particular part of the country has been declared as an "Excluded Area" so that a particular sect alone may carry on its propaganda therein. Another area has been reserved for the "Criminal tribes". Similarly, other areas have also been reserved wherein missionaries alone can carry on their activities. In Chattisgarh and other similar forest areas there are tribes which follow primitive faiths. There the Hindu missionaries cannot carry on their activities. These are called "Excluded and partially Excluded Areas", and no religious propaganda can be carried on in these areas except by the missionaries. This was the baneful policy of the Government. We should now be delivered from this policy of religious discrimination In his book "Census of India-1930" Dewton writes that the Christian population of Assam has increased 300 times and attributes this increase to certain evils in Hindu Society. It is these evils which gave other missionaries opportunities to make conversions. In his book "Census of India-1911" Mr. S. Kamath has said that the missionaries of one particular religion are reducing the numbers of another by exploiting the evils of that group. They convert some influential persons by inducement and persuasion. The bitterness of the present is due to such
activities. I am conversant with what Christian missions have done for the backward classes and I have also seen their work among such classes of people. I bow to them with respect for the way in which they (missionaries), have done their work. How gracious it would have been had they done it only for social service I found that the dispute, if and when it occurs, between members of such castes as the sweepers or the chamars on one side and the landlords or some other influential persons on the other have been exploited to create bitterness between them. No effort has been made to effect a compromise. This crooked policy has been adopted to bring about the conversion of the former. Similarly, people of other faiths have intensified and exploited our differences in order to increase their own numbers. The consequence is that the grown-up people in such castes as Bhangies and chamars are converted, and with them their children also go into the fold of the new religion. They should be affectionately asked to live as brothers. This is what has been taught by prophets, angels and leaders. But this is not being practised, today. We are in search of opportunities to indulge in underhand dealings. We go to people and tell them "you are in darkness; this is not the way for your salvation". Thus everybody can realise how all possible unfair means have been adopted to trample the majority community under feet. It is in this way that the Foreign bureaucracy has been working here, and has been creating vested interests in order to maintain its political strangle-hold over the people. If we cannot remove this foundation whom are we going to give the Fundamental Rights? To these minors who are in the lap of their parents? If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realise tomorrow that God is a farce and an aberration of human mind then I can become an atheist. If I think that the Hindu faith is false, I, with my gray hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age)? Revered Purushottam Das Tandon has said in a very appealing manner that if a child transfers his immovable property worth Rs. 100 the transaction is void. How unjust it is that if a minor changes his religion when his parents do so, his act is not void? It has an adverse effect on innocent children. This attempt to increase population has increased religious bitterness. The communal proportion has been changed so that the British bureaucracy may retain its hold by a variation in the numbers of the different communities. I am saying all these things deliberately but I am not attacking any one community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the
communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Mr. Munshi is directed against such motives. Nothing can be better than that, and, therefore, I support it.

In my opinion this majority community should not oppress the minority. We respect and honour all and we give an opportunity to everybody to propagate his religion. Those who agree with you may be converted. But convert only those who can be legitimately converted. Improper conversions would not be right. You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice. I, myself, am prepared to change my religion. But some one should argue with me and change my views and then convert me. Surely, I should have no right to change the religion of my children with me--specially children below a certain age. Those children are considered to be minors who are under teens, i.e., below eighteen.

Mr. H. V. Kamath: [Under teens includes nineteen.]

Shri Algu Rai Shastri: (However if it is nineteen, it is all the better. Even if it is not possible they should extend minority by a year of grace. The age limit fixed for minors and majors should be adopted in religious matter as well. They say that there would be no incentive for conversion if people have to forego their children. I hear that in Japan the father has one religion and the child another. What does religion mean? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census and any other government records, till he attains majority and declares his (new) religion. We give him things right in this amendment. Parents need the company of their children. If they have changed their religion discreetly, let them educate their children. But the change in the religion of the children may be considered (only) on their declaration at reaching majority.

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This is the purpose of this amendment and I support it, and I strongly oppose the view that this right should not be given to children.)

Mr. Jagat Narain Lal (Bihar: General): [Mr. President, I was expecting that after the acceptance of clause 13, no representative of any minority in this House will have any ground for any objection. Clause 13 lays down that-

"All persons are equally entitled to freedom of conscious, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the other provisions of this Chapter."

This goes to the "farthest limit". If you look to any of the best of modern world" Constitutions, you will find that nowhere has this right to propagate been conceded. If you look at Article 50 of the Swiss Confederation, it lays down that "the free exercise of religion is guaranteed within limits compatible with public order and morality." It ends there. If you, look at Article 44 sub-clause (2) 1 of the Irish Free State, you will find there-

"Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen."

If you refer to Article 124 of the Constitution of the Union of the Soviet Socialist Republics you will find-

"In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens."

If I place before you all the clauses pertaining to "Freedom of professing religion," it will tax your patience. I do not want to waste more of your time in this connection. My submission is that this House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry, on propaganda extends to the point of creating various difficulties. I do not want to go into its details. The previous speaker had referred to certain things in this connection. I submit that that should be sufficient. Hon'ble Tandonji by his observation that on reading the mind of most of the Congress members of this House he did not want to keep "right to do propaganda" (on the statute), has rightly interpreted the mind of most of us. The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail
them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. They must be satisfied with this much. It will be too much to press for more. That would be taking undue advantage of the generosity of the majority. That will be very regrettable. It is difficult, rather impossible, for us to go to that limit. I think that the amendment tabled by Mr. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it. Various arguments have been advanced in the House, and so

[English translation of Hindustani speech ends.]

[English translation of Hindustani speech begins.]

I do not want to comment upon them again. With these words I support Mr. Munshi.

Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans? Are they not going to have any kind of religion? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them? It seems to me that, if the clause as worded by Mr. Munshi was adopted, viz., that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious
instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, viz., children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful Guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, viz., where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage? What is to be the effect of that marriage? Is that marriage legal or not legal?
If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (Hear, hear). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have, legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

The Hon'ble Sardar Vallabhbhai Patel: Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted. Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,--we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances ? There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar has said,'this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion,
which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.

Mr. President: Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration?

The clause was referred back to the Advisory Committee.

CLAUSE 18-

CULTURAL Am EDUCATIONAL RIGHTS

The Hon'ble Sardar Vallabhbhai Patel: I move clause 18 now.

"(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces: General): Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole “clause be

referred to the Advisory Committee for their reconsideration.

Mr. President: Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.
Mr. D. N. Datta: Mr. President, with regard to sub-clause (1) of clause 18, it has been stated that-

"Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or Prejudicially in this respect." I want to illustrate my point. If in a particular Unit....

Mr. President: You are going into the merits of the clause.

Mr. D. N. Datta: I am not going into the merits. I want clarification.

Mr. K. M. Munshi: I have got an amendment to move

Mr. President: There is a motion by Mr. Mohanlal Saksena. He wants that the clause be referred back to the Committee. If that is accepted, no amendment need be moved.

Mr. D. N. Datta: I do not know if my request for clarification will be fulfilled even if the clause be referred back to the Committee. If you would allow me to speak....

Mr. President: If the House wants to refer back the Clause to the Committee the discussion will not be of much help.

Mr. D. N. Datta: If the House intends that this clause shall be referred back, I need not speak. I am not moving any amendment.

Mr. K. M. Munshi: Is it worth while moving any amendment if Mr. Mohanlal Saksena's suggestion is carried ? If that is accepted no amendment need be moved.

Archarya J. B. Kripalani (United Provinces: General): If after discussing we find there are any serious difficulties, then we may send the clause back to the Advisory Committee. If there are no serious difficulties and the House is practically united, then we may proceed with this.

Many Hon'ble Members: That is right.

Mr. President: I take it that the House wishes to discuss this clause. The amendments will be moved. We may take up the suggestion of Mr. Mohanlal Saksena at a later stage.

Mr. K. M. Munshi: I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.
Mr. President: There are other amendments of which I have got notice. I shall ask the Hon'ble members to move the amendments.

Sri V. C. Kesava Rao (Madras: General): I, do not move my amendment. (No. 76 of the Supplementary List No. II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the amendment that sub-clause (2) be referred back to the Advisory Committee, I do not see any object in moving my amendment, and I do not propose to move it.

Sri R. Santhanam: I am not moving my amendment. (No. 78 of the Supplementary List No. II).

Shri Phool Singh: I am not moving amendment. (No. 80 of the Supplementary List No. II).

Shri Algu Rai Shastri: [I do not want to move my amendment]

Dr. Suresh Chandra Banerjee: In view of the assurance given by Mr. Munshi, I am not moving amendment No. 72 in the List.

The Hon'ble Shri Jagjivan Ram: I am not moving my amendment (No. 83 of the Supplementary List No. II).

Mr. R. K. Sidhwa: My amendment, i.e., No. 84, is a new clause. It may be taken afterwards.

Mr. D. N. Datta: Amendment No. 85 seeks to introduce new clauses. It may be taken up later.

Mr. President: All the amendments of which I have got notice have been disposed of; they are not moved.

Mr. Munshi's amendment and the clause are now both open for discussion. There is a suggestion that the whole clause be referred back and the amendment is that only sub-clause (2) be referred back-

[ ] English translation of Hindustani speech.

Shri Mahavir Tyagi: Sir, I rise to support the motion of Air. Mohanlal Saksena. He has only proposed that this clause be referred back to the Advisory
Committee. I think, Sir, we are taking this document lightly. It may be that in matters like these, i.e., cultural and educational rights, they could be defined only as far as they appertain to individuals and the question of minorities had better be left for the future Governments. I think we are binding the hands of our future Governments too much. We should leave them free to do according to the times and the situations they face.

Now, Sir, the question of guaranteeing the rights of minorities with regard to culture and education privileges, I would suggest that in future occasions may arise when the Governments belonging to the Union may have to negotiate with other units and may have to know from them as to what is happening to the minorities that reside in the areas which have not chosen to join the Union. Now, supposing the Governments of the Units which belong to the Union are committed by means of this clause 18 to a certain policy towards the minorities, the people here may feel the necessity of knowing as to what is happening to the minorities who reside in those units which have refused to join the Union and belong to Pakistan or any other parts of India which may organise themselves separately., My suggestion is that on the question of minorities we may not be committed here and this question be left over for the time when we may definitely know as to whether the whole of India is going to be one Unit or is going to be partitioned into two. if there is to be a partition, we must know what is happening to the minorities on the other side, in the other units. Therefore, the question is not so easy to solve just now. I submit that the whole House Will support me when I say that this question had better be hanging fire till we definitely know as to what is going to be the final shape of India and how the Units are going to treat the minorities. I therefore support the motion of Mr. Mohanlal Saksena that the consideration of this clause be put off.

Seth Govind Das (C.P. & Berar: General): [Sir, I think the motion before us contains no such clause which can be considered controversial. Mr. Mahavir Tyagi has said that we do not know till now whether India is to remain one or is to be Partitioned. For reasons which lead him to think that this should be sent to the Advisory Committee, I feel that it should be passed by us today. Whether there is one Hindustan or Pakistan, undivided or divided India-the phantom of this thought sticks to us and we look at all problems when they come up, obsessed with that view.

While supporting the resolution of Pandit Jawaharlal Nehru I said that we should not care whether our Muslim League brothers enter the to say that we Assembly or not. On the same grounds I again wish should not care whether India is to remain undivided or is to be divided. We want one India. We want that India should remain one. We are not to stop any of our efforts. I am even against Mr. Munshi's amendment, for I cannot see anything in this whole
clause against any caste or community. As I have said that without looking-to what is going to happen to India in future, we should pass this resolution keeping in view as to what our duties are and what should be done in this Assembly.-]

English translation of Hindustani speech.

Mr. D. N. Datta: Mr. President, Sir, clause 18, sub-clause (1) says-

"Minorities in every unit shall be protected in respect of their language, script, and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."

I shall illustrate my point. Suppose in a certain unit there are different communities residing, using different scripts, and that unit intends to make a law that there should be one script instead of different scripts now prevailing. I feel that there may be necessity for the unit to promulgate a law that there should be one script for that particular unit for the benefit of the unit itself, and if that is not allowed by the Fundamental Rights, I think the interests of the Unit will suffer. I cannot suggest what should be the language of the clause under which such laws can be promulgated so that there should be one script for the benefit of the whole Unit. I suggest that this matter may also be referred to the Drafting Committee of the Fundamental Rights Sub-Committee because it is a very fundamental matter. The minority must have a right, but at the same time the Unit itself should also have a right to promulgate such a law-that there should be one script for the whole Unit or province. So, I consider that this matter should be considered by the Fundamental Rights Sub Committee or by Sardarji.

Srijut Rohini Kumar Chaudhury: Mr. President, Sir, I wish to draw attention to sub-clause (2) of clause 18:-

"No minority whether based on religion community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

It refers to the compulsory imparting of religious instruction Clause 16 which also refers to compulsory participation in religious instruction in school has already been referred by this
Hon'ble House to the Advisory Committee. So it is only reasonable that we should agree to refer this clause to the same Advisory Committee which will consider clause 1.

I submit, Sir, that other sub-clause of this clause are not inoffensive or free from difficulty as they may seem on surface.

Take for instance, sub-clause (1) which speaks of scripts. Most of the tribal people in our Province have lost their original script. Some have taken to Assamese language and script, but Roman scripts have been recently imposed on them and now most of them are willing to take Hindi scripts which they would not be able to adopt if the subclause stands as it is.

Then turning to sub-clause (3) (b), if the clause stands as it is, it will seriously interfere with proper distribution of grants. So, on the whole, I think, instead of remitting sub-clauses piece-meal, it will be wise to refer the whole clause 18 to the Advisory Committee.

Shri Rajkrushna Bose (Orissa: General): I suggest, Sir, that clause 18 as moved by Sardar Patel and the amendment of Mr. Munshi, should be taken up for consideration now and the House should come to a decision in the matter. It seems that there is a move to refer clauses like this back to the Advisory Committee and it has become a little too catching and therefore we are not in a position to do anything here but refer back to the Advisory Committee. Let us not forget that before these clauses passed through the Committee, they had passed through two other Committees, viz., the Minorities Rights Sub-Committee and the Fundamental Rights Sub-Committee. Clause 18 which we are now considering is so very simple and innocent that it really needs no referring back to the Advisory Committee again. Three sub-clauses are attached to it, one is that the language, script and culture should be preserved and no laws or regulation may be enacted that may operate oppressively or prejudicially in this respect. If we are going to have one script in India as was suggested by Mr. Datta, it may create difficulties and any unit which wants to have a common script for the whole unit will have difficulties if this sub-clause is kept.

Well, my contention is that the sub-clause should be retained as it is, just because, if today we raise the question of wiping out languages or scripts when we are framing our first independent constitution, there may be any number of complications and difficulties and misunderstandings and at a time when we are having a lot of other difficulties we should not invite any more now. Therefore, we ought, to keep the first sub-clause as it has been kept in the original. Then sub-clause (3) (a) reads:
"All minorities whether based on religion, community or language, shall be free in any Unit to establish and administer educational institutions of their choice."

This is a right, Sir, which I think no country can take away and ought to take away and all constitutions should concede this right to the minorities. It is such a simple thing that it needs no reference back to the Advisory Committee again. Now, sub-clause (3) (b) reads:

The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language."

This again is such a simple question. If any minority wants to start a school of its own in any unit or in any part of the Union, certainly you are not going to forbid them from doing so, or pass laws whereby they cannot have this ordinary right. If you are going to do that, all your claim to give protection to the minorities will be reduced to a farce. Therefore, I do not see why this simple clause, namely clause 18, with all its sub-clauses should be referred back to the Advisory Committee. Of course, a point has been raised by one of the members that the consideration of matters relating to minorities should be put off till we know the mind of the Pakistanists in the matter and the rights they are going to concede to the minorities in their areas. Well, Sir, if, knowing fully well that those who oppose India's independence today like the Muslim League are adopting dilatory tactics to delay our freedom we put off our business till Doomsday or wait till they have made some decisions, we shall have to wait indefinitely. If, say for instance, they go beyond June 1948 to reach a decision with regard to these matters, are we to postpone our decisions on matters so simple and ordinary. I think, Sir, that it will be foolish on our part to delay decisions on matters like these, and therefore clause 18 as moved by Sardar Patel and amended by Mr. Munshi should be adopted by the House.

Dr. B. R. Ambedkar: Mr. President, Sir, I confess that I am considerably surprised at these amendments both by Mr. Munshi as well as Mr. Tyagi. They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal one can sense is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we
have given to minorities in our territory, it would be open, for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgment and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion

that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

Shri Lakshminarayan Sahu: Mr. President, Sir, while I was speaking some time before, I was just telling that I welcomed this clause 18 in the Fundamental Rights, because this is the first time that minorities will feel happy that they have got some definite rights. I was referring to the question of who should be called a minority about which I have my doubts. But I hope they will be cleared by further discussions. But as it is, I welcome this clause. I want to show that in Midnapore district the population of Oriyas has been mutilated to a very great extent so much so that today we do not find in the census figures any Oriya as such. In 1891 the
census number of Oriyas was 6 lakhs. In 1901 it was reduced to 3 lakhs and in 1911 it was reduced to less than 2 lakhs. In 1921 it was 1,40,000 and in 1931 the figure is only 45,000.

Now, the same thing has happened in the southern portion of Orissa. The Utkal Union Conference for over 40 years agitated to get a separate province for Orissa only in order to get their minority rights, because as minorities they were not safe in any of the provinces, and when they got a separate province they were very happy. Now the question has come about the language. Referring to 'only one district there, out of the six districts of Orissa,-to Ganjam,-there is great language difficulty there. The Vizagapatnam, District Gazetteer of 1906 writes:

"The language of the district forms a veritable babble. In Gunjam 940 out a 1,000 speak Telugu in their houses, 14 talk Oriya, 9 Khond. 7 Gadaba, 5 Hindusthani. But among the same number in the Agency, 451 speak Orya, 204 Khond, 180 Telugu, 56 Savara, 30 Poroja. 23 Gadaba, 11 Koya 3 Hindustani, 3 Gondi and 5 other vernaculars such as Labadi, Bastari, Hindi, Chhatiskari, etc.

This difficulty about language has been felt in our province because a section of the people are Andhras and they are claiming that their children should be educated right up to the college stage through the medium of their own mother-tongue. And this should be decided clearly. I hope that by a clause like this these difficulties will be removed and our culture will be intact in those places where the Oriyas will be left outside their province; and so also the culture of other people who will be left in the province of Orissa will be properly safeguarded., But I would like to know what should be the language of the province and also the language of the different aboriginal people who are in the province of Orissa. As I have already said, there are any number of aboriginals speaking any number of different languages. Some of the aboriginal workers who are coming up claim that their language must be respected. In Orissa, if we respect every language it will be very difficult for the provincial Government to run the administration.

Quite apart from all the above difficulties which may be solved by the Units, I welcome this clause 18 which safeguards our cultural and educational rights.

Mr. President: We have two amendments. One is from Mr. Mohanlal Saksena.

Shri Mohanlal Saksena: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.
Mr. President: Then the other is from Mr. Munshi to refer back subclause (2) to the Committee.

The Hon'ble Sardar Vallabhbhai Patel: I accept it.

The amendment of Mr. Munshi was adopted.

Mr. President: Then I put the amended clause to the House now leaving out sub-clause (2) and retaining sub-clause (1) and sub-clause (3) (a) and (b) Clause 18, as amended, was accepted.

Mr. President: I think we have just come nearly to 12-30. So we shall stop to-day and take up the work again at 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 2nd May, 1947.
Friday, the 2nd May, 1947

The Constituent Assembly of India met in the Constitution Hall, Now Delhi, at Nine of the Clock, Mr. President (The Hon’ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall resume further discussion on the remaining clauses of the Fundamental Rights. Clause 19.

Clause 19.-Miscellaneous Rights. The Hon’ble Sardar Vallabhbhai Patel (Bombay: General): I beg to move clause 19. The clause runs thus:

"No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined." - I do not expect any amendments to this motion, but if there are any, we shall consider them in time.

(Amendments Nos. 86 and 87 were not moved.)

Raja Jagannath Bakhsh Singh (United Provinces: General): I do not move amendment No. 88. Sir, I shall, with your permission, move amendment No. 89. I move:

"That in clause 19, after the words 'the payment of' the word Just be inserted."

I congratulate the Advisory Committee on the labour they have devoted to the difficult and complicated question of framing the fundamental rights. Clause 19 provides:

"No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial Undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation."
I have no doubt that the Advisory Committee had in their mind that, whenever an occasion arises to take property, movable or immovable, it should be after payment of compensation which is just compensation. But I think that without the insertion of the word "just" which I am moving, the meaning of the clause may be left a little vague.

Then, Sir, there are a number of precedents in support of my contention. I believe the Advisory Committee had in their view the American constitution in framing the fundamental rights. In paragraph 3 of the Report of the Advisory Committee it is stated:

"We attach great importance to the constitution making these rights justiciable. The right of the citizen to the protection in certain matters is a special feature of the American Constitution and the more recent democratic constitutions." If you look at Article V of the American Constitution, 1791, the last two lines read thus:

".... nor shall private property be taken for public use without just compensation."

This makes it clear that the American Constitution lays particular emphasis on this word "just" in qualifying the word "compensation". Next, Sir, if we look at the Constitution of Danzig-I am referring to the Third Series of Constitutional Precedents, page 69, you will find:

"The right., may only be effected in accordance with the provisions of the law and for the benefit of the Whole, community, and in return for due compensation, in case of dispute with regard to the amount of compensation recourse may be had to the law-courts."

Further, if I have your permission to quote one more constitution, namely, that of Australia-, it will be found that in section 51 of the Constitution of the Commonwealth of Australia the following provision is incorporated:

"The acquisition of property on just terms from any State or person in respect of which the Parliament has, power to make laws."

I do not wish to take the time of the House in reading the Constitutions of other countries, but I may add that the House will find in the Constitutions of Belgium, Bulgaria, Denmark, Finland, Albania, and Yugoslavia-in a number of these countries’ the word "just" qualifies "compensation", in others a similar expression has been used. I, therefore, submit that so far as precedents are concerned, I am well supported in my motion. I think it is unnecessary for me to put before the House all the arguments in support of this amendment.
as I know the House is pressed for time. Therefore, Sir, with these words I commend my amendment for the acceptance of the House.

Prof. K. T. Shah (Bihar: General): Mr. President, I have given notice of an amendment to add the following proviso to clause 19:

"Provided that-no rights of individual private property shall be recognised in forms of natural wealth,- like rivers or flowing waters, coastal waters, mines and minerals, or forests."

But as this raises many complicated issues, I do not move it but suggest that this should go back to the Advisory Committee.

Mr. President: Do you move the amendment? Prof. K. T. Shah: No, Sir.

Mr. President: There is only one amendment to this clause. The clause and the amendment are both for discussion.

Shri S. Nagappa (Madras: General): Mr. President, I rise to offer my support to this clause proposed by the Hon'ble Mover of this Report. This is a clause that gives some hope to the poor tiller of the soil. This clause gives a promise to the people of the country that the Union Government or the Unit Governments are going to acquire property, landed or other sort of property, from either individual or corporations or from industrialists or commercial, concern, in the public interest and that, when they do so, they are going, to compensate them.' Now Sir, what sort of compensation is to paid? There are difficulties in the way of settling this matter. I want that in paying compensation we must be reasonably. Now the question arises as to what is reasonable compensation. It seems, to sir, Sir, that when we are acquiring landed property from a zamindar, we need not pay as much as he wants. We need pay only what is reasonably required to enable him to maintain himself and his family for one or two generations. That is the only thing necessary to do to fulfil the kind of assurance which the Congress has given to these zamindars and jagirdars in their election manifesto. that the Government should accept my interpretation of what reasonable compensation is. For instance, if a poor man's property is acquired for a particular purpose, then, in giving him compensation, care must be taken to see that it is reasonable in the particular case. In such a case the Government must pay him the cost of the land and something more even. But when the Government acquire lands from a zamindar, they need not pay the actual market rate or the local rate to make the compensation paid reasonable. You have to fix the compensation keeping in view the manner in which the zamindar acquired that property. That is my contention, Sir.
Then, Sir, I submit that when once you acquire land, you must see that the tiller of the soil is made the owner of the soil. Then alone we will be able to give a kind of encouragement to the toilers and make them increase the produce and the national wealth for the maintenance of the country. I hope this clause will not stand in the way of, the provinces pushing forward land legislation which they have in some cases already undertaken. For instance, my respected leader of Andhradesa, Sri T. Prakasam, has already done a lot for the abolition of the zamindari system in Madras, and the Madras Government are pushing forward legislation for the abolition of zamindaris. Once the zamindaris are abolished and the Government acquire their properties, it must be their endeavour to make the best use of such properties. The Government must see to it that collective farms are formed and that, through them, the maximum is produced and the tiller is given sufficient for what he does. These are the hopes which the particular clause gives to the poor tillers of the soil.

Now, Sir, so far as the industries are concerned, I have been day in and day out asking in the Madras Legislative Assembly, for their nationalisation. That does not mean that we need not encourage private bodies to take to industrialisation. We have to go forward in this respect. Our country is very backward industrially. If we are to move quickly forward, we must go to the extent of granting subsidies to our industries and nationalise them as soon as possible. When private enterprise has fully developed and when the country thinks that particular industries should be taken over by the Government for public benefit, reasonable compensation must be paid. In these cases it would be reasonable compensation if we offer the persons who started those industries ample funds to fall back upon. That is my interpretation of the word 'reasonable' in this respect.

Sir, these are two main points that should be borne in mind when legislation is undertaken for the abolition of zamindaris and nationalisation of industries.

Once again, I offer my thanks to the Hon'ble Mover for bearing in mind this particular class of tillers of the soil who would be getting their due share of the results of their labours. I also thank you, Mr. President, for giving me this opportunity to speak on this motion.

Dr. Suresh Chandra Banerjee (Bengal: General) Mr. President, Sir, I had naturally hoped that we would make some progress towards socialisation at least when we gained our independence within a few months, but in these fundamental rights nothing has been put in regard to socialisation. I would have been really happy, had the amendment of Prof. K. T. Shah been accepted, because there is an element of socialisation there. I feel that in a country like India where poverty is so acute, where general condition of the workers and peasants is so miserable, nothing but socialisation can give some hope of improvement in the future. So, I
would have been happy if the House had accepted the amendment of Prof. Shah. But I know, Sir, the difficulties with which we are faced at present. We know, Sir, how many interests are represented here. Here, we have to consider the case of the Indian Princes, we have to consider the case of the Anglo-Indians, of the Christians and so many other people. As a matter of fact, it is a matter of great consolation to us that we have been able to find out a solution for reconciling so many interests. So, in the present context, we cannot press for any amendment like this, but still I do hope that in the near future when India gets her independence, it will be possible to have some kind of socialisation. With these words, Sir, I support the clause as it stands.

Shri Ajit Prasad Jain (United Provinces: General): I rise to make a few observations on this clause. I had given an amendment for the total deletion of this clause, but it became unnecessary to move that amendment for I could express my ideas during the course of general discussion. This clause reproduces a part of Section 299 of the Government of India Act, 1935, with a certain amount of amplitude. It says that no property, whether movable or immovable, shall be acquired for public use unless the law provides for the payment of compensation. We have some experience of the working of Section 299 of the Government of India Act. The House must be aware that in several Congress Provinces measures for the abolition of zamindari system are under consideration. In the United Provinces we passed a resolution for the abolition of zamindari system on payment of equitable compensation. That resolution follows the line laid down in the Congress Election Manifesto. In working out how the compensation should be calculated, we were faced with great difficulties. There was the question of the financial capacity of the State. If we fix compensation at a figure which the State could not pay, it would mean that the zamindari should continue to exist. We had also to see how much profits the landlords have made in the past from the zamindari. The question of the origin of zamindari also became relevant. Some of the zamindaris in our provinces have been acquired for helping the British by acts of treachery during the first war of independence in 1857. We could not ignore the market price of the zamindari either. After a careful consideration of these various factors we are trying to fix compensation for the zamindaris. On the other hand the landlords have been interpreting the word 'compensation' to mean full compensation, i.e., the market price of the land. Some of them have threatened that they will go to the Federal Court for interpretation of the word 'compensation'. We have no manner of doubt that it is impossible for the State to pay full compensation. Then the choice before us is to leave the zamindari as it is. Sir, land acquisition may take either of two shapes. It may be acquisition of a specified for a specified purpose. In that case the State may pay not only its full value but something more for the compulsory
acquisition as is provided in the Land Acquisition Act. There may be other cases in which
property may not be acquired as a solitary thing. It may take the shape of a measure of social
or economic reform for the welfare of the society. For instance, we may have to acquire
factories, mines and industries for nationalisation. In such cases the acquisition of the
property will be for social use for the upliftment and betterment of the society. The property is
being acquired in the interest of the large masses of the people. And in such cases
considerations which may prevail in the cases of isolated acquisition will not apply.. The
State may not be in a position to pay full compensation. In fact, there may be only a nominal
compensation, or no compensation at all. This clause, if accepted as it stands, will stand

In the way of large scale social and economic reforms, It will cover all the cases where
property, is being acquired for social or economic improvements. It is none of my intentions
that the State should act as a robber or a bandit and arbitrarily seize properties of the people,
but measures of social reforms stand on quite a different level. That is the reason why a
number of amendments, which were not moved, had been tabled in the direction pointed out
by me. Fundamental Rights in my opinion are embodied in the Constitution with a view to
protect the weak and the helpless. The present clause will have just the contrary effect. It will
protect the microscopic minority of propertied class and deny rights of social justice to the
masses. I am, therefore, totally opposed to this clause and I do hope that the Hon'ble Mover
will keep this in mind and refer the clause back to the Advisory Committee so that any
provision which we pass today may not stand in the way of social and economic reforms
which are necessary to bring prosperity and plenty to the country. With these few remarks, I
commend my point of view for the consideration of the House.

Mr. R. K. Sidhwa (C.P. 2nd Berar: General): Mr. President, Sir, one would have expected that
under the present economic conditions prevailing in the country, there would be a clause for
acquiring property

in a different manner. It is very deplorable that at the present moment when various
legislatures are out to abolish the jagirdari and zamindari systems by payment of a small
compensation or no compensation under this clause we are asked to pay compensation for any
property that is ping to be acquired. In free India where we should expect the property clause
to be more liberal and beneficial to the people, we find that we are helping the upper class
people by passing this clause.

Sir, the word 'property' is very vague. "Property" includes public utility concerns like electric
corporations, transport organisations. etc. We are well aware that in many provinces these
public utility concerns are being nationalised and I am sure that in a very short time to come
almost as, the public utility concerns will be nationalised. In fact, under the bureaucratic system of Government, all the railways have been nationalised by payment of any 'goodwill' that may have been specified under the agreement. I know, Sir,

that the agreements with local bodies under which some electric concerns are working, provide for acquiring such concerns without any compensation being given. If you pass this clause, it would mean that although the agreements do not provide for it, we have to pay compensation, to these public utility concerns when we acquire them. Is it fair, may I ask, that the public utility concerns which are for the benefit of consumers and the people, and which in all countries eventually may become the property of the people, are to be taken over by paying the actual invested capital plus compensation even if there is no clause as to the payment of compensation? I do feel, Sir, that this clause requires amendment at least as far as the public utility concerns are concerned. But, Sir, I am helpless as I could not move an amendment I would have been desired that this clause should have been amended or have gone back to the Advisory Committee under the circumstances I mentioned. If it is not going, I hope that this will receive the consideration of the Mover, because it will be really doing great injustice to the consumers,—that though in the agreement there is no clause of compensation we shall be bound to give it and in a small province they would have to take over concerns by paying them the actual amount invested plus compensation.

Mr., President: Do you mean to say that an agreement will be affected by this clause?

Mr. R. K. Sidhwa: Yes, Sir, No property shall be taken or acquired for public use unless the law provides for the payment of compensation, says the clause. Now, Sir, the law will be made certainly in accordance with this clause and a demand for compensation will be made 'even if there is nothing in the agreement.

Mr., President: The acquisition itself will be provided for in the agreement.

Mr. R. K. Sidhwa: If the law provides that a compensation is to be paid and if in the agreement there is no clause, then, we will be bound down. I, as a common sense man, feel of course, the legal luminaries may say, if they enlighten me I shall welcome it, but, as a common sense man, I feel that, if there is an agreement in which there is no clause for compensation and if you are enacting an Act for giving the compensation, they will claim from us the compensation. And owner of the property in that event will go to the Supreme Court and get his demand fulfilled under the clause.
Shri Vishwambhar Dayal Tripathi: [Mr. President, I stand here to oppose the amendment moved by my friend, Raja Jagannath Bakhsh Singh. His amendment says that the word "just" should be added before the word 'compensation' here. I oppose this most emphatically. So far as this clause is concerned, not only I but most of my friends apprehend, that its wordings are such that their effect, particularly the legal effect, would not be to the good of the country to the same extent as it ought to be. I want that the words in the clause be changed so that it may not go against the interests of the country as apprehended by us. I would appeal to the gentlemen who drafted this clause to reconsider it and put before us a new "formula".

It is proper and I accept it that when we acquire property of any one it is necessary to give compensation for it. This too I accept that in most cases compensation should correspond to the value of the property. But at the same time I also believe that we must also see as to how the property was originally acquired by the person concerned. If it was acquired justly, compensation ought to be given according to its value. If the property was not acquired justly or if the holder has earned sufficient profit from the same it is wrong to give him full compensation or to pay its full price. If we want to change the existing-social order, if we want to change the present order of zamindari and capitalism and at the same time say that full compensation should be given for the property taken by the State, it would mean that we would not be able completely to do, away with the present social order. If we have really to change this order, if we really want to implement the resolution passed by A.I.C.C. on 8th August, 1942, which promised to frame a constitution wherein the real power is vested in the workers in farms and factories, we have to reconsider these clauses. If this clause is left as it is, undoubtedly various obstacles will come up in our way of fulfilling the promises and declarations made by us before the country from time to time. Therefore, I again request the framers of this clause to reconsider it.

We have before us the question of ending zamindari in several provinces. We have also before us the question of payment of compensation to the Zamindars. There are all kinds of difficulties before us. I am a member of the U.P. Zamindari Abolition Committee which has to deal with such questions. I can say with all the authority at my command that if we have to pay the compensation for zamindari according to its market value, I have no doubt that it will be almost impossible for us to

[English translation of Hindustani speech beings.]
end zamindari: and even if it could be made possible, it would result in the peasantry remaining burdened for another 20 or 25 years to the same extent as they are today. After all from what source the compensation will be paid? It will be taken from the pockets of the poor. Under these circumstances for another 20 or 25 years the peasants will have to remain under the same financial burden which they have to bear today. They will not benefit in any way for this period of 20 or 25 years. Besides the statement of Raja Sahib that "just" compensation should be paid is rather extremely odd. Is Raja Sahib prepared that a general examination of the titles of the Zamindars in respect of their landed property be undertaken to verify as to how many of these titles can be termed just? If he agrees to this his amendment may be considered. There are many estates in the country and particularly in Oudh, to which province Raja Sahib belongs, which were acquired by the present holders as rewards for their traitorous support to the English during the Mutiny of 1857. The recipients of these estates had no estate previously. The Englishmen gave them these estates for their treachery against India. Raja Jagannath Bakhsh Singh claims that the Zamindar participated in the war of liberation of 1857. I welcome those who had fought for freedom and I do recommend that they should be given the maximum concessions. Raja Sahib knows that there are instances of many who betrayed their countrymen and in return for their treachery received big estates. Such people have no right to demand compensation. Many of them enjoy exemption from payment of revenue, and have been continuously enjoying the profits of these estates for the last 90 years. They have been realising rent from the tenants for the last 90 years without having had to pay even a pie of land revenue. If any body had even paid the-price for it, he has already received five times its value. Those who acquired these estates as a reward for their betrayal of the country now demand compensation. The question of 'just' compensation does not arise so long as we have not examined the validity of the titles to these estates. Even if the word 'just' is not added here the clause as it stands, can be widely interpreted to include compensation to those who were never entitled to receive these estates, who have been receiving the profits of the estates for nearly 90 years and many of whom had not even to pay any land revenue to the Government. It would be improper to pay any compensation to these people. There is a 'saving grace' in this clause that the Government would consider the principles and basis on which compensation should be given.

It is my frank opinion that they should be given something as maintenance allowance for some years so that they may be able to live in, and adjust themselves to, the new and changed circumstances. I have no objection to this. I do not like, and nobody would like, that many of these people should be reduced to destitution and starvation. Therefore, if compensation can be supported it can be only on the basis that zamindars and capitalists should be given some
amount for maintenance for a few years so that they may keep themselves alive without difficulties in the new economic set-up. If we want that the existing order of zamindari and capitalism should be done away with, it is desirable that compensation should be given on the basis of maintenance for a few years. But what I fear and suspect is that the clause in question may be legally so interpreted that our economic progress may be retarded, and the Congress and other important public organisations may not freely advance in the direction they intend to. Therefore, I oppose the amendment moved by Raja Sahib and at the same time request my respected friends, who have framed this clause, to reconsider it. If it is accepted as it is, disastrous consequences may follow. Therefore I beg to put these two requests of mine before you and hope that the Hon'ble President and my other friends would accept them.

Shri V. C. Kesava Rao (Madras: General): Mr. President, Sir, I stand to support the clause, but I want to make some observations on that.

This clause provides compensation to the citizen whose property will be acquired for the use of the public. When the State acquires any person's property, it is only for the benefit of the public and not of any individual. If such acquiring deprives a citizen of his livelihood, it is necessary to pay compensation equivalent to the property one loses. And I think nobody disputes such a compensation.

We are framing a constitution for free India. We are asking the British to quit India though they came here 200 years ago. We know that the British acquired India by foul means and not by hard labour. As the owners of this country, we have the right to ask them to leave the country, and in response to our demand, they are quitting India by June, 1948. In free India nobody wishes to be exploited by another. The big landlords and the Zamindars, did not get their land and property by hard labour. In this respect there is no difference between the Zamindar and the British imperialist. The British acquired Empires and the Zamindars acquired large fortunes—both by means of exploitation.

In Free India it is necessary to keep all the citizens on the same footing. This may not be possible for some time to come due to the system prevalent in this country. The common cry of the tenant is that he whole produce collected by him is taken away by the landlord even though he requires some of it for the maintenance of his family. There is no other way for him except starvation. Is the State prepared to give him any livelihood or a compensation for the loss of his energy and for his labour? But if a Zamindar who exploits the Door and amasses wealth is deprived of a portion of his property for the benefit of the public, the State thinks of giving compensation for the loss, though it is not a loss to him actually. Vile present day request of a tenant is the reduction of rent for his land. But this request will lead to the
snatching away of the little land he has been cultivating and maintaining his family with. The Zamindar is prepared to keep the land waste and not to reduce the rent. Thus he allows his tenant to starve.

Lastly, I wish to point out that the Indian National Congress has been fighting for the abolition of the system of Zamindari and even in the last election, it gave an undertaking to the masses that the Zamindari system will be abolished as soon as the Congress comes into power. And accordingly, the Congress' Provincial Governments have prepared their Bills for the abolition of it. Now, when we are asked to frame the Constitution for Free India, we want to compensate them in the manner in which the law fixes. The law will be always in their favour and they get more than what is necessary. In view of the above facts, I request the House to consider and amend the clause in such a way that only a nominal compensation may be payable for acquisition of the property of a citizen or a Corporation.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a few submissions in connection with the amendment which has been moved by my hon'ble friend, Raja Jagannath Bakhsh Singh. His amendment only suggests the addition of the word "just" before the word "compensation". I have been anxiously and carefully listening to the debate and I must say, I have heard nothing so far that there should be no justice exercised in the matter of the payment of compensation. No one has suggested, and I dare say, no one will suggest, that once we accede to the principle that acquisition of private property must be preceded by the payment of compensation, such compensation should be an unjust one. This, I submit, cannot be the contention of anybody in an august assembly like this. After all, the future of this country depends on the justice and fair-play that we exercise in dealing with the different problems confronting us here and in the tact and ability that we display in dealing with the affairs of inter-national policy. I submit, Sir, whatever may be said about those who own lands at present, it cannot be denied that at one time they were the pioneers in building up the economic structure of this country a couple of centuries ago. They have earned and they have made money, but is that a ground for now taking away the property from them and paying them no compensation and even going to the extent of incorporating in the fundamental rights that they should get compensation and then arguing that it should be an unjust compensation. I do not think that any such proposition can
be placed before this House, and even if it is placed, I do not think it will find acceptance in this House.

Well, Sir, what is the demand that the amendment puts forward? It says the word "compensation" should be qualified. The Hon'ble Mover has referred to other constitutions in the world where the word "compensation" has been qualified by the word "just". This is not the only word which has been used. If we refer to the constitutional series on Fundamental Rights which was circulated to us by Sir B. N. Rau, it will be found that even in the German Constitution the words used are "due compensation". It is said there:

"Expropriation may be effected only for the benefit of the general community and upon "he basis of law. It shall be accompanied by due compensation."

I therefore submit, Sir, that the use of the word "just" could only indicate, the real purpose behind what is embodied in the Report of the Fundamental Rights Sub-Committee, unless some members are prepared to argue that you might as well put the word "compensation" there but be prepared to face the fact that it might be unjust compensation in certain circumstances. I contend, Sir, that that cannot be a correct and a proper approach to the problem nor a valid argument.

Then, Sir, the whole argument of all those who have opposed the amendment has centred round the question of the acquisition of the Zamindari. These friends unfortunately have either ignored knowingly or failed to appreciate that this compensation clause does not cover Zamindari alone. It covers the whole field of movable and immovable property in the country,--in the Union or in the Units. It. may be necessary in the larger interest of the country at a later stage even to acquire "Kashtakari", i.e., tenants' lands. If you want to introduce cooperative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them a just compensation? A proposition therefore like this which covers such a wide field-not merely Zamindari but even commercial interests and so many other interests, must, I submit, be placed beyond all doubts and suspicions. If I may submit, Sir, the right to private property and the protection of private property are the acceptance of the principle of right over might. You may choose to do away with it if you like, but we shall then all slowly drift towards jungle laws rather than good laws meant to keep society together. Some friends have also referred to the fact that certain zamindars got all their property for anti-national work during 1857 Revolution. The Hon'ble Mover of the amendment has questioned this remark. I will go a little further and submit that these hon'ble friends have probably incomplete knowledge of the Zamindari system and therefore it is that they have come to the conclusions that many or most of the Zamindars acquired their property
as a gift after the 1857 Revolution. They forget that in certain parts of the country the
Permanent Settlement Act was enacted as early as 1793 much before the 1857 Revolution. It
cannot be said of them that they got their Zamindari because of certain anti-national work.
There may have been some people, whose conduct may not have been such as one would like,
but you are dealing with a community and not individuals. You are dealing with the whole
land problem, and when you are doing that, it is essential that the whole question and the
entire picture must be within your consideration. There are also a large number of people who
have paid good money and purchased Zamindari—not a hundred years before as some think.
Zamindaris have been bought and sold every day. People have bought Zamindari only this
year by paying good money, earned money which they have accumulated as their life's
savings. Who does not know that until only a few years ago our main investment out of our
savings was only in lands? It will certainly be unfair not to give them compensation—and a
compensation which is just and fair. My suggestion, Sir, to the Hon'ble the Mover of the main
clause and to the Mover of the amendment will be that the word "compensation" itself means
"just and fair, compensation". Compensation cannot be, in my opinion, unjust and unfair, and
I submit that if the Hon'ble Mover of the main clause feels precisely as I do, that
compensation means just and fair compensation, then my advice to the Hon'ble the Mover of
the amendment would be that he need not press his amendment.

Raja Jagannath Bakhsh Singh: In view of the discussion that has taken place, Sir, I would not
like to press my amendment. I beg leave to withdraw my amendment.

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

Mr. President: Now, the discussion will only be about the whole clause.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, while I approve of the clause
as it stands now, I want to make certain observations especially with regard to Orissa
Zamindaris. In Orissa the state of tenants is very bad and that is due to the people of Orissa
receiving English education a little latter than the people of Bengal and elsewhere. What
happened was the Zamindaris that were in Orissa were transferred to the hands of absentee
landlords in Bengal and the result has been that two-thirds of North Orissa—as it is called now—
i.e., the districts of Balasore, Cuttack, Puri and Sambalpur—two-thirds of the land—in these
districts are in the hands of absentee landlords and the result has been extremely disastrous.
When they bought these Zamindaris they did not purchase them for a fair price. In fact, the
Government records say that there was broad day-light robbery and that is how these
Zamindaris were purchased, I, therefore do not see why we should give any compensation to
such Zamindars who bought these lands by a fluke or acquired them by broad day-light robbery.

Secondly, I want to draw the attention of the House to another Zamindar, the Zamindar of Jeypore. Now Jeypore Zamindari constitutes the whole of the Koraput District, which is one of the six districts of Orissa. It is a great pity that the Zamindari gives 16,000 rupees per annum to the Government but enjoys an income of Rs. 16 lakhs per annum. This state of things is extremely bad and it must be cured. It is very difficult to run the administration in the presence of such Zamindars. I, therefore, say that while giving compensation—and I also say while giving just compensation—we should be very just to these absentee landlords of Bengal and also to such landlords as the landlord of Jeypore Zamindari in Orissa. These are the things that I wanted to say, in particular, about Orissa.

Another thing I want to say is that in future when trying to build up a democratic State, we cannot bear that such a state of things as the existence of these Zamindars, which is very galling, should be allowed to continue for some time more to come. The sooner the Zamindars are paid off the better. I have nothing more to say except to add that out of 100 zamindars at least 99 today have a very bad name and the duties that have been imposed on them are not performed by them. Take, for instance, one duty of the Zamindar. It is a part of their duty laid down by Government that they should look after the interests of the cultivators. They never look to the interests of the cultivators. On the other hand, the cultivators are rack-rented too much. There are so many illegal cesses which they take. If I were to narrate them one after another, it would make a very long list. In fact, there has been great agitation 'in one of the Zamindaris in Orissa-i.e., the estate of Kanika-where 64 different kinds of illegal cesses, were taken. Now, in spite of agitation the same situation exists even today.' The tenants are harassed in many ways. Therefore, when we are promised a democratic republic and that too very soon, I say we cannot bear the oppression of Zamindars. The sooner the Zamindars are paid off the better.

Mr. Satyanarayan Sinha (Bihar: General): I move: Sir, that the question be now put. The matter has been sufficiently discussed.

Mr. President: I have got some more names. Mr. Phool Singh.

Shri Phool Singh (United Provinces: General): [Mr. President, Sir, several speeches have been made from the floor of the House, which go to show that some compensation is proposed to be given in lieu of the abolition of Zamindari. It is true, as Bishwambhar Dayal Tripathi has
said, that many people acquired their zamindari by being traitors to the country. In reply to
that a Raja Sahib has said that some of them have also helped in the freedom-struggle of the
country. I submit that no reward has been given to men who helped the country. In that war,
lands were forfeited. It would be an unusual case if one was granted an estate for fighting
against the Government. Anyway, the question just now is one of compensation. One of the
reasons that is constantly advanced in favour of granting compensation is the Government of
India Act of 1935, and whenever any person raises the point that no compensation should be
paid then he is told that it can only be done after the repeal of the Government of India Act of
1935. **But today the very same clause is being passed by the Constituent Assembly, and I
think, by putting it, not in the country's Constitution but in the list of its Fundamental Rights, the question is being closed once for all.** Many people have spoken on the question of
zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not
know that during

[English translation of Hindustani speech begins

the last five or six years of the war, many Mill-owners have earned profits several times more
than their invested capital? Take the Textile Industry in which, on the paid-up capital of
nearly fifty crore rupees; some hundred crores of rupees have accrued as profits. It would not
be very proper to compare this country with others. During this war capitalists of no other
country have reaped as much profits as Indian capitalists. Therefore, what want to say is that
by passing the clause in its present form we would be running the risk of permanently
obstructing the possibility of reform in this country for ever. I appeal to my elders and others,
who guide the thinking of this House, to ponder again over this clause and to re-shape it in a
way so as not to make it impossible for the coming generations to introduce reforms if they
choose. Section 16 in its present form, as it has been placed before the House, if passed, will
make nationalisation of industry very difficult, if not impossible. I do not want to take any
more time of this House, but I request you to refer this clause back for further consideration.]

Sri Rajkrushna Rose (Orissa: General): Sir, I move that the question be now put.

Mr. President: There is a motion that the question be now put. I think we have had enough
discussion and I would like to take the sense of the House. The question is:

"That the question be now put."
The motion was adopted.

Mr. President: Sardar Patel will give his reply.

The Hon'ble Sardar Vallabhbhai Patel: Sir, the discussion on this question has gone on a wrong track. An amendment was moved by somebody, which has been subsequently withdrawn, but those who took part in the debate assumed that this clause was intended for the purpose of acquiring Zamindaris. That is, to say the least, not understanding the real meaning of the clause. Land will be required for many public purposes, not only and but so many other things may have to be acquired And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or some of their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard these interests in this way. They must recognise the times and move with the times. This clause here will not become the law tomorrow or the day after; it will take at least a year more, and before that, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. Therefore, it is wrong to think that this clause is Intended really for them. It is not so. The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris. Therefore, we must not or need not go into the question whether the Zamindars have in the past been patriotic or a nuisance or anything of that kind. It is all irrelevant and we need not go into the past.

There is no amendment to this clause and, therefore, I do not have to say anything by way of answer. I move that the clause as moved by me be passed.

Mr. President: I put clause No. 19 to the House.

Clause 19 was adopted.

[English translation of Hindustani speech ends.]

Mr. President: We now come to Clause 20.

CLAUSE 20
The Hon'ble Sardar Vallabhbhai Patel: I move clause No. 20.

"(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself."

I do not suppose there will be any amendment to this clause, and I move that this clause be accepted.

Mr. President: I have got notice of several amendments to this clause also. I will ask the movers if they want to move them. Mr. Kamath.

Mr. H. V. Kamath (C.P. & Berar: General): Sir, as regards amendment No. 95 subsequent scrutiny shows that my point comes under clause 9 and therefore there is no necessity to move my amendment. As regards my amendment No. 96, I would like to reserve my right to move it later.

Mr. President: Shri Rohini Kumar Chaudhury, No. 97.

Srijut Rohini Kumar Chaudhury (Assam: General): I may move my amendment now if you would permit. This relates to the important question of possession of fire-arms and abolition of death sentences. But if this is treated as a new clause, it would be better to move it with other new clauses.

Mr. President: It will be a new clause.

Srijut Rohini Kumar Chaudhury: Then I do not move.

Mr. President: That means there are no amendments to this clause. I put the clause to the House.

Clause 20 was adopted.

Mr. President: Then we come to clause 21.

CLAUSE 21
The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 21:

"(1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union."

I move this formally for consideration of the House.

Mr. President: I have got no notice of any amendments to this clause. So I shall put the clause.

Clause 21 was adopted.

Mr. President: Clause 22.

CLAUSE 22-RIGHT To CONSTITUTIONAL REMEDIES

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 22:

"(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions; in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency, the public safety may require it."

There may be some amendments to this clause, Sir.

Mr. President: There are several amendments of which I have got notice. There is one from Sir B. L. Mitter.

Sir B. L. Mitter (Baroda): I am assured that this matter will be considered when the Judiciary Report comes up. In view of this assurance I do not move my amendment.
Sri K. Santhanam (Madras: General): I move:

"That in sub-clause (3) of clause 22, after the word 'emergency', the following words be inserted:

'declared to be such by the Government of the Union or of the unit concerned'."

This is an obvious slip and I think it is acceptable to the mover. I do not want to say anything more. I move the amendment.

Mr. President: There is only one amendment which has been moved.

Mr. K. M. Munshi (Bombay: General): There is one amendment of which I have given notice this morning. That is a purely verbal amendment, just re-arranging the wording. The amendment that I am moving is only to remove a little inelegance of language in sub-clause (1) of clause 22. The sub-clause says:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

The word "guaranteed" appears twice, and it is felt that it is not an elegant phraseology. I therefore move the following amendment:

"In clause 22(1), for the words 'any of the rights guaranteed by this part is hereby guaranteed substitute the words 'any of the rights provided for in this part is hereby guaranteed.'"

Mr. President: The two amendments and the clause are open now for discussion.

Sri K. Santhanam: I am afraid that the clause, as has been framed, is very defective, and it is one of those clauses which require careful consideration and revision. I understand that this is one of those things which will be considered by the Committee which is dealing with the judiciary. I wish this clause had also been left to them. As it stands, it is liable to serious misinterpretation. For instance, sub-clause (1) says:
"The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

It might possibly imply that the Supreme Court is to be vested with exclusive original jurisdiction on all the matters governed by the fundamental rights, or it may mean that it is invested with concurrent original jurisdiction with another court. I would like to ask Dr. Ambedkar what it means-"the right to move the Supreme Court is guaranteed". I can come at any time to the Supreme Court and move the Court on any of the matters connected with this. It may be by way of original jurisdiction, it may be by way of appellate jurisdiction. The matter is not clear, and therefore it is one of those things which ought to be made clear. Then in paragraph (2) of the clause, we have:

"Without prejudice to the powers that may be vested in this behalf in other courts."

Which is the authority to vest it? Is it the Union legislature or the Unit' legislature? I think in matters of interpretation of the Constitution or enforcement of fundamental rights the vesting of powers in the courts should be purely a Union matter and it ought not to be given to the units, because the units may particular defeat the exercise of these fundamental rights in two may different ways. For instance, if they a”, all original jurisdiction shall be in the Supreme Court, the ordinary citizen will not be able to go up every time to the Supreme Court. Or if they vest it in the magistracy, then he will have to get redress only by way of appeal, which is always dilatory and inconvenient. Therefore, the vesting of jurisdiction is an important matter for the citizen. I think all original jurisdiction in the matter of enforcement of fundamental rights should be vested only in the High Court of the Unit. It should not be given either to inferior courts, or to the Supreme Court except in matters concerning the Unit and the Union of inter-Unit matters. Therefore the High Courts in. the Units should be the lynch-pin for the enforcement of these rights: I think this matter must have been made clear. I hope it will be made clear. As it stands, it is very defective and I reserve my right to ask for a review of this clause when the matter comes up again.

The Hon'ble Sardar Vallabhbhai Patel: This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for a remedy. But it does not mean that this excludes or appropriates the jurisdiction of other courts or High Courts. It has nothing to do with that. When the whole judicial set-up will be considered, everything will be considered in proper order and in an appropriate manner, and, therefore, Mr. Santhanam's apprehensions are unnecessary. He reserves his right; everybody has reserved his own right, but reservations are unnecessary because the whole thing will have to be incorporated in the Constitution, and the final clause will have been considered several
times before they are inserted in the Constitution. There is no reason to apprehend anything of that kind. I, therefore, move that the clause be accepted with the amendments which have been moved. I accept the two amendments.

Mr. President: The Mover is prepared to accept the two amendments—one moved by Mr. Santhanam and the other by Mr. Munshi.

The two amendments were separately put and adopted.

Clause 22, as amended, was adopted.

Mr. President:

Clause 23.

CLAUSE 23 The Hon'ble Sardar Vallabhbhai Patel: I move clause 23:

"The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline."

This is a clause on which there can be no controversy and I hope there will be no amendment. I move.

Clause 23 was adopted.

Mr. President: Clause 24.

CLAUSE 24 The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 24:

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

This is a consequential clause and therefore there will be no amendments to it. I commend it for the acceptance of the House.

Clause 24 was adopted.
Mr. President: Now there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Mr. K. M. Munshi: I move that the following clause be substituted for the original clause:

"Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

The reasons have already been given fully in the Report of the Ad Hoc Committee. I have nothing to add to it.

Sri K. Santhanam; Sir, I move that the following be added at the end of the first paragraph of this clause:

"Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union."

The necessity for this amendment is simply this: You are conferring citizenship on people who are to be born hereafter and on those who are born citizens on the date the Union comes into existence. That means that unless any of us are born within the territories of the Union, we shall not be citizens. I have consulted Sir Alladi Krishnaswami Ayyar. This clause only covers the cases of persons who are born citizens on the day the Union comes into existence. Under the Cabinet Mission Plans, Union territories were expected to be co-extensive with the territories within the frontiers of India. In that case my amendment may not be necessary. But there is the possibility that the Union territory will be much smaller than the present territories. Supposing there is a man in the Union born in Sind. According to this definition he will not be a Union citizen. He will become an alien. Do you want that consequence to happen? I want to say that, at the beginning of the Union, anybody who has been born in India and who is subject to the jurisdiction of the Union, shall be a Union citizen. After the Union has come into existence I have no objection to this clause. Therefore it is a fundamental point. I hope it will be fully considered and, either in this form or in some other form, provision will be made to see that those who are citizens of India at the time of the commencement of the Union are treated as citizens and not deprived of citizenship simply because they are born outside territories of the proposed Union.
The Hon'ble Sardar Vallabhbhai Patel: It is not necessary to consider such questions at this stage. We are at present providing for citizenship for people residing in the Union. Nobody can now say what will be the situation when the Constitution is finally drafted. Nobody can now say whether any part of India is going to be separated from the rest. When finality is reached in regard to these matters we can consider what should be the adjustment to be made between the parts if there are to be parts. It is unnecessary to consider it at this stage. I hope the Mover will withdraw his amendment.

Sri M. Ananthasayanam Ayyangar (Madras: General): What about persons born in the Union?

The Hon'ble Sardar Vallabhbhai Patel: You will be considered to have been born in the Union when the Constitution is passed.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): The point to be covered is not a ridiculous or simple thing as has been imagined.

The Union will consist of defined areas. It may not consist of the whole of India, but of certain parts of India only. Let us admit that. Now I will cite a concrete case. Suppose I am born in Mysore. I am a man who was born in Mysore. Mysore does not join the Union. Let us take it like that. Then, I shall not have been born in the Union according to the clause by any process of legal construction which is to be provided for legally. Therefore it is that it is suggested that any person who is born in any part of India at the time of the commencement of the Union shall be deemed, when by long previous residence he becomes subject to the jurisdiction of the Union, to be a citizen.

This is a very substantial question. Probably under this category will come a considerable section of the present population who should automatically be taken to be citizens of the Union so soon as it is formed. It does not depend merely on a process of interpretation or explanation. It has to be definitely provided for. This has to be considered and included.

Mr. R. K. Sidhwa: Sir, as stated by Mr. Santhanam., if the position is left as it is, this clause will deprive many persons who are born in the Union, which is going to be defined later on.--I hope it will comprise all parts of India--of their rights of citizenship of the Union. What will be their position? I am born in Sind. Supposing Sind is not going to be part of the Union, what will be my position? Am I to lose my citizenship of the Union? That is a point which has to be considered later on. As I said the other day, citizenship right is a fundamental right.
Why should a law hereafter provide for that? The right of citizenship has a first place in the Fundamental Rights. Foreigners who come to India for their own personal interest and gain can make an application for citizenship and can get it immediately, whereas those who are born in India will be under a disadvantage. For the foreigners a period of ten years must be mentioned. If the State is satisfied that after ten years they have their stake in India they can have the right of citizenship. This matter was discussed for a number of hours in this Chamber yesterday. We did not like to treat this matter lightly. We wanted to give this matter very serious consideration and you, Sir, were good enough to impress upon those who differed from us the need for giving this matter sufficient consideration and warned us against ignoring it in view of the fact that every person should have the right to become a citizen of this country. After all, we want to be in the Union. We cannot forget that we are Indians, that we were born here. If India is to be divided into parts, what kind of rules are we going to make for citizenship? I consider, Sir, that those who were born here before the Union should be given full guarantee that they are citizens of the Union and that they would not be deprived of their citizenship.

Then, about naturalisation. Any man who comes here from a foreign country for his personal gain, for his personal benefit, has only to say, "I want to be naturalised" to become a citizen of the Union. I am born in India but I am to be deprived of my citizenship. A foreigner by simply giving a declaration that he wants to become naturalised, gets all the rights of citizenship.

With due deference to the framers of this clause, I do not think this matter has been given due consideration although it has been stated that:

"Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

I do not want any law to provide for my citizenship. Therefore, this matter should be discussed here, Sir.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar: (Madras: General): I think, Sir, there is some force in Mr. Santhanam's argument. We did not, it must be admitted, consider in the Committee this particular question now before the House, but it may not be wise to put in an amendment on the spur of the moment. If a person was a resident of India, and makes the Union his home after the Union comes into existence, in such a case he might get citizenship. The mere accident that he was born in India or British India but not in the Union cannot give
him the right of citizenship. We might have to add a further condition to this clause saying that they must make the Union of India their permanent residence.

So far as the term "born in the Union" is concerned, I do not think there need be any difficulty. Union: there is a geographical concept. It is not a political concept. No man can be born in a political concept. "Born in the Union" only means "born in the territories comprising the Union".

There is certainly some force in the objection raised by Mr. Santhanam. We do not want suddenly to disenfranchise any persons, possibly very distinguished people born in a Native State but today permanent residents of British India. Therefore, so far as that particular class is concerned, we might consider an appropriate formula. We may not be in a position to give the right of citizenship to every person born in any part of India. Suppose some of the States keep out of the Union, we may have to consider whether we should give the rights of citizenship to the people of those States. Therefore, we will carefully consider this aspect and put in an appropriate clause. In the Committee-I am a member of the Committee and Dr. Ambedkar is a member-we did not consider this particular complication that might arise. I think we should not push through an amendment on the spur of the moment.

But so far as the general principle is concerned, there cannot be any exception. "Every person born in the Union and subject to the jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union", so far as that part is concerned, there can be no exception. That was considered by the Committee in all its aspects. This particular class of people which Mr. Santhanam mentioned will have to be separately dealt with and provided for. On the understanding that this class of people will be provided for, this clause should be passed, or the whole clause might stand over, I have no objection. But so far as the main principle is concerned, we are all agreed and there is, absolutely no difference of opinion. It was discussed threadbare by the Committee which was appointed by this House and we unanimously came to the conclusion that this should be adopted.

Shri M. Ananthasayanam Ayyangar: I do not agree with Sir Alladi. He says that Union means Union territory. The clause says, "subject to the jurisdiction thereof". Is it subject to the jurisdiction of the territory or the Government of the territory? Mere territory is not enough. I therefore urge upon the House to remit this clause for the reconsideration of the Expert Committee.
Diwan Bahadur Sir Alladi Krishnaswami Ayyar: We may have remittance or re-remittance but I do not think that that Committee can throw any additional light on this. If there is any other class to be provided for, we will provide for them. I am merely answering the suggestion of remittal and all that. I was stating that it was not fair to that Committee to remit. This is a political question and not a legal question. We must come to a conclusion on that point. We were only anxious to get the help of that Committee for the purpose of determining the question whether 'birth' shall be the foundation of a nationality or not, and that Committee has given its opinion. We may have any number of committals and re-committals, so far as the Committee of this House is concerned. The Committee which considered this consisted of Members of this House and also persons who are not members of this House. Under these circumstances, I would suggest that we have had all the help from people who are not members of this House and from the gentleman who was the President of that Committee. I do not think it will be fair to that Committee to remit it as if they had not considered any particular aspect of the question. It is a new question that has cropped up before the Committee and let us deal with it squarely. And before we next meet, there will be no difficulty in providing so far as that particular class of cases is concerned. This general principle may be passed and the other clause may be brought in later on or the whole thing may stand over. I am not wedded to either one theory or another, but let it be clearly understood that so far as the main principle is concerned, we accept the recommendation of the Committee presided over by a very distinguished lawyer.

The Hon'ble Sri C. Rajagopalachariar: I am sorry Sir, the discussion has proceeded on lines which create a certain amount of confusion. I wish that attention should be bestowed on one important and entirely non-controversial matter, namely, that there are numerous persons in India today, who will be within the jurisdiction of the Union, however restricted it may be, however small it may be, who were born in other parts of India and who are now resident within the territories which are going to be in the Union. The formula as it stands today will exclude those large classes of people, not intentionally, but unintentionally. Therefore, the formula has to be corrected. It has to be corrected so as to give automatic citizenship to those large numbers of people who are born in various parts of India, as we today understand it, and who will-be old and permanent residents of the areas which will be comprised within the Union. That exclusion would be wholly unintended and wrong. Therefore, the formula has to be revised. I myself believe that it can be revised, if Sir Alladi and Dr. Ambedkar sit at it, in the course of 15 minutes; but if it is considered difficult, the whole thing should be remitted, because if we pass a clause like this solemnly in the Constituent Assembly, it cannot be added to afterwards without much ceremonial. I would suggest that it be deferred. Sir Alladi and Dr.
Ambedkar may meet today, discuss and finish it in a few minutes. If they do not think so, let them take their own time, but it cannot be simply ignored on the ground that it is a small matter. It is too large a matter to be put aside.

Mr. K. M. Munshi: Nobody suggests for a moment that this is not an important matter. The Committee did not consider it, but when the original draft was placed this difficulty was present in my mind. But this, as Sir Alladi very rightly said, is not a question of fundamental rights only. It is a question which will have to be decided in future in the setting of the political situation at the time when we finally draft the Constitution. Of course, it is very easy to move an amendment, but we do not know today what is going to be the position of the Union with regard to its territory, whether it is going to be the whole of India, or part of it, or whether some portions are going to be hostile. The second question that has to be considered is whether People born in the Union, who are residing in other parts of India, will have rights as regards citizenship in those territories. An instance was given of Mysore. I will restrict myself to that case. Suppose Mysore stays out of the Union and makes a law like this, that any Indian born in any other part of India, though residing in Mysore for a whole life-time shall not be a citizen. This House will be in a position to consider those intricate problems not merely as a matter of fundamental right but as a question dependent upon the political situation at the time we pass it finally. This fundamental right, as drawn up, is the minimum right, the basic right. The fluctuating situation today is such that you cannot possibly draft any amendment to this clause. Let us, therefore, see the political situation between now and the day when the situation is going to be finally considered. At that time it will be possible to produce a proper formula which will find a Place either in the Fundamental Rights or in some other convenient place. It has been said that several fundamental rights are going to be considered hereafter. It has also been said that this is a preliminary draft and any situation arising hereafter will be considered. I, therefore, submit that we should take the clause as it is, and with regard to the amendment of Mr. Santhanam, it should be referred to the Advisory Committee together with the other amendments which are going to be referred, so that a proper aspect of the question may be brought before the House again.

Dr. B. R. Ambedkar (Bombay: General): Mr. President. Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, "every person born in the Union' Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being ? In my Judgment, in order
to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an idea. The new clause shall have to be something like this:

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President: A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. Sidhwa: This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President: The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

Do I take it that the House agrees that this clause be held over for further consideration?

Many Hon'ble Members: Yes.

Mr. President: It is held over. Now we take up clause 11.

CLAUSE 11

Mr. R. M. Munshi: The clause which has emanated from the Committee to which it was referred runs in thus.

"Traffic in human beings, and begar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence."

The Explanation which was dropped is in the view of the Committee necessary in order that the wording "forced labour" may not have a controversial interpretation. Sir, there was a conflict of opinion in several sections of the House as regards the Explanation and this Report was placed before the House only this morning. I, therefore, submit that it will be fair that this clause also should stand over till we meet again, because, I believe, certain Members would
like to move amendments. I, therefore, feel it will not be proper that this clause should be considered today. It should stand over.

Mr. President: Instead of moving it, do you suggest that it should be held over?

Mr. K. M.

Munshi: Yes.

Mr. President: Is it the wish of the House that this clause also should be held over?

Many Hon'ble Members: Yes.

Mr. President: It stands over.

We had a number of new propositions which were sought to be put forward in the form of amendments by certain Members, and it was decided by the House that they should be taken up after the clauses were disposed of. We have got a large number of such clauses which have not been considered. I do not know in what form the House would like to take up these.

Seth Govind Das (C.P. and Berar: General): I move, Sir, that all these new clauses be referred to the Advisory Committee so that the Advisory Committee may first consider them and then they may be brought before this House.

Mr. President: Seth Govind Das has made a suggestion that these clauses be referred to the Advisory Committee for consideration and that they may be brought up here with the Report of the Advisory Committee. May I take it that it is the sense of the House that all these clauses be referred to the Advisory Committee?

Hon'ble Members: Yes.

Mr. President: All these clauses are referred to the Advisory Committee.

Mr. B. K. Sidhwa: Sir, paragraph 9 of the Report of the Chairman of the Advisory Committee states:

"The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights:

every citizen not below 21 years' of age shall have the right to vote at any election........
"While agreeing in principle with this clause, we recommend that instead of being included in
the list of fundamental rights it should find a place in some other part of the Constitution."

The opinion of the House has to be taken whether it is in favour of putting this clause in the
Fundamental Rights or whether it should form part of the Constitution. That question has to
be decided and discussed here. Otherwise, what would be the effect of paragraph 9 of the
Report of the Chairman of the Advisory Committee which has been submitted to you? Does
it automatically go into the Constitution? the Chairman of the Advisory Committee by this
para. desires to know the view of the House.

Mr. President: What is your suggestion? Do you move any proposition?

Mr. R. K. Sidhwa: I have no objection to this clause forming part of the Constitution.

Mr. President: What is your suggestion, whether this should form or should not form part of
the Constitution?

Mr. R. K. Sidhwa: It should form part of the Constitution.

The Hon'ble Sardar Vallabhbhai Patel: We have stated in the Report while agreeing in
principle with this clause, we recommend that instead of being included in the list of
fundamental rights, it should find a place in some other part of the Constitution."

Mr. President: This is the Report of the Committee and the House has to express itself on this
part of the Report. That is why I asked Mr. Sidhwa whether this should be accepted and it
should find a place in some other part of the Constitution.

Mr. R. H. Sidhwa: I said it should form part of the Constitution.

Mr. President: Mr. Sidhwa's proposition is that that paragraph should be adopted. Does any
one wish to speak on this?

(No). I put it to the House that paragraph 9 of the Report be adopted. Paragraph 9 of the
Report was adopted. CLAUSE 2 Sri Biswanath Das (Orissa: General): I propose to invite the
serious attention of the House to the implications of clause 2. It has been laid down:

"All existing laws, notifications, regulations, customs or usages in force within the territories
of the Union inconsistent with the rights guaranteed under this part of the Constitution shall
stand abrogated."
In this connection, I wish to refer to paragraph 7 of the Report wherein they have stated that they had not sufficient time to examine in detail the effect of this clause on the mass of existing legislation.

Mr. President: We have already considered clause 2 of the Fundamental Rights.

Sri Biswanath Das: I am not proposing to revise the clause. I am only referring to something which arises out of the acceptance of clause 2. I am going to suggest what further action is necessary as a result of the acceptance of clause 2. A thorough examination of its implications is necessary in the sense that we have got local laws and Indian laws and the extent to which these laws and regulations, etc., are going to be abrogated as a result of the acceptance of these fundamental rights, will have to be examined. This could be examined either by the Government of India and the Provincial Governments or by a committee of this House. It is rather unfortunate that we members; of the Agenda Committee could not go into this question because it was not before us. In these circumstances, I beg to suggest that it is necessary for us to take note of this question and to examine the implications in full before we again assemble in this House. Unless we fully examine the extent of abrogations, it will not be possible for this House to realise the full implications and to make any interim arrangements in the Constitution. I am only referring to certain circumstances flowing from the acceptance of clause 2 and offering certain suggestions.

Mr. President: I take it you are referring to the last sentence of paragraph 7 of the Report which says:

"We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

It has been accepted. We are going to have an examination as suggested.

Mr. H. V. Kamath: My suggestion is that it should be undertaken immediately so that we may have a report as to the implications before us.

Mr. President: When the House has accepted it, that means that action will be taken.

Mr. H. V. Kamath: How will these clauses go to the Committee?

Mr. President. They will go as they are. The Secretariat will refer them to the Advisory Committee
PRESIDENT'S REMARKS REGARDING THE RESOLUTIONS RELATING TO
LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE
CONSTITUTION TO BE FRAMED.

Mr. President: There are one or two matters to which I should like to make a reference. Hon'ble Members will recollect that notice was given of Resolutions regarding the formation of linguistic and cultural provinces by several Members in the last Session of the Assembly and those Resolutions were held over and it was expected that they would be taken up in this Session. But as we have already under Resolution of this House decided to constitute two Committees, one for drawing up the principles of the Union Constitution and another for drawing up a model Constitution for the provinces, I announced the other day that those Committees would take into consideration those Resolutions also. I take it that that would be done and nothing further need be done now regarding those Resolutions.

Then there is one other matter about which I have been feeling bit worried and I wish to share that worry with the House—not that expect any answer to it just now but I would like the Members to take that into consideration. All our proceedings are being conducted in English because there are many Members who are not acquainted with the national language and so the drafts also are being prepared in the English language. In the drafts there are many expressions used which may be called terms of art, that is to say, technical language, taken from some constitution or other. Some of these constitutions have been subjected to legal interpretations, and by using that language we are in a way attracting the operation of those interpretations also to our constitution. In future—I do not say immediately, but in the future—a time may come when we shall probably cease to depend upon English as our language, and if the Constitution is passed today in the English language, then that remains the original constitution and any question of interpretation will have to be with reference to the language used in that constitution as it is passed today. The question arises whether we shall, continue for ever in future to interpret our Constitution in English language and whether we shall expect our judges in future always to be acquainted with English language so that they might interpret our Constitution in the future. If the Constitution is passed in the English language, I suppose that will be the natural consequence. It is difficult at the present moment to make a suggestion which will resolve this difficulty. I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original Constitution. (Cheers). In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main
language and not in English language, (Loud Cheers), so that our future judges may have to depend upon our own language and not on a foreign language. (Cheers).

As I said, I do not expect an answer to a question like this, but I would like Members to take this matter into consideration, and in the meantime, if I have your permission, I shall try to get the Constitution as it is drafted translated into our language as soon as possible. I realize the difficulty of putting it in a form in which it will have the same interpretation, because appropriate terms of art will not be found in our language and we have naturally to add clauses which will explain those expressions of art. But if I have your permission, we might make an attempt. I am afraid our present staff the staff we have got for translating these things, is not adequate for this purpose and we shall have to take the help of persons who are really persons of a very high order and who can do that. I do not know if it will be possible for me to do it, but if I have your leave, I might attempt it. I thought I might bring this to your notice for your consideration because, if this Constitution is going to be a Constitution which is expected to last, at any rate, for some time, then we cannot expect to have it in a language which is not our language. We must provide for a time when we shall have to depend on our own language, and that, at a not very distant date. Therefore I have brought this to the notice of the House so that Members might also take this into consideration and offer their suggestions, if not today, at least at a later stage before we have actually finalized our Constitution.

(Some Members at this stage rose to speak.)

Mr. President: I did not expect any discussion on this. I simply expressed what I was feeling and I expect this thing would be taken into consideration at a later stage.

There is one other matter.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): [In this connection I have to .... ]

The Hon'ble Mr. B. G. Kher (Bombay: General): On a point of order, Sir. This is discussing.

Mr. President: Anyway, let him finish.

Shri Vishwambhar Dayal Tripathi: [I do not wish to say any thing in this connection. But rules provide that all the proceedings of the Assembly e.g., agenda, etc., will be supplied to Members in Hindustani. True, there are difficulties. Nevertheless it is very important. I would request that some arrangements should positively be made for this in future.]
Mr. President: [Yes. I tell you why this could not be done. Our Hindustani Staff was not yet complete but arrangements are being made and I think it should be possible to arrange for it at an early date.]

Shri Balkrishna Sharma (United Provinces: General): Without in any way going against the orders which have already been given in regard

[ ] English translation of Hindustani speech.

to the subject, may I just know whether the arrangement that is going to be made for the translation of

the Constitution in our language will be in Hindi, Urdu or will be in a language which will be a conglomeration of both ?

Mr. President: It will be in a language which will be intelligible. (Laughter).

Mr. President: Then, one other matter which I think we have to decide, i.e., the next session of the Assembly. At the last session the House passed a Resolution fixing the month of April for this meeting. I would suggest that instead of fixing any date or even a month the House should leave it to me to fix the time of the next meeting.

Hon'ble Members: Yes.

Mr. President: I can give this undertaking that I shall do it as soon as I feel that we have got material ready for the meeting.

Sri K. Santhanam: I suggest, Sir, that a formal motion to this effect may be moved.

Mr. President: That is what I am also suggesting. A formal motion may be moved.

Shri Vishwambhar Dayal Tripathi: [In this connection, I would like to add....]

Mr. President: [Let this be over.]

Mr. Satyanarayan Sinha: Mr. President, Sir, I move that this Constituent Assembly do adjourn till such date as the President may fix.
Mr. President: The motion is that the Constituent Assembly do adjourn till such date as the President may fix. Do I take it that the House accepts the proposition?

The motion was adopted. Mr. R. K. Sidhwa: I wish to make one request. That is, now that the date has been left to you, Sir, will you kindly see that the agenda is supplied to us in sufficient time at our residence, so that we may study it?

Mr. President: I have told you at the very beginning that I will fix the time when I have got the material ready for discussion.

(To Mr. Tripathi), You wanted to say something.

Shri Vishwambhar Dayal Tripathi: [I have only to repeat what Mr. Sidhwa has said before you and nothing else.]

Mr. President: I think we have now finished our work. So the House now stands adjourned till such time as I may fix.

The Constituent Assembly then adjourned till such time as the President might fix.

"[ ] English translation of Hindustani speech."
Monday, the 14th July, 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

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

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

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

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

I want your ruling, Sir.

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

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

Madras

1. Haji Abdul Sathar Haji Ishaq Sait

2. B. Pocker Sahib Bahadur

3. Mahboob Ali Baig Sahib Bahadur
4. K. T. M. Ahmed Ibrahim Sahib Bahadur
Bombay

5. The Honourable Mr. Ismail Ibrahim Chundrigar

6. Dr. B. R. Ambedkar

7. Mr. Abdul Kadar Mohammad Shaikh
West Bengal

8. Pandit Lakshmi Kanta Maitra

9. Mr. Debi Prosad Khaitan

10. Mrs. Renuka Ray

11. Mr. Damber Singh Gurung

12. Mr. R. E. Platel,

13. Mr. Prafulla Chandra Sen

14. Mr. Upendranath Barman

15. Mr. Raghib Ahsan

16. Mr. Nazirudin Ahmad

17. Mr. Abdul Hamid

18. Mr. Satish Chandra Samanta

19. Mr. Suresh Chandra Majumdar

20. Mr. Basanta Kumar Das

21. Mr. Surendra Mohan Ghose,

22. Mr. Arun Chandra Guha
United Provinces

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

East Punjab

28. The Honourable Sardar Baldev Singh
29. Diwan Charnan Lall
30. Maulana Daud Ghaznavi
31. Gyani Gurmukh Singh Musafir
32. Sheikh Mahoob Elahi
33. Sufi Abdul Hamid Khan
34. Chaudhuri Ranbir Singh
35. Chaudhuri Mohd. Hassan
36. Shri Bikramlal Sondhi
37. Prof. Yashwant Rai Bihar
38. Mr. Tajamul Hussain
39. Mr. Saiyid Jafar Imam
40. Mr. Latifur Rahman
41. Mr. Mohd. Tahir C.P. & Berar
42. Kazi Syed Karimuddin Assam

43. Saiyid Muhammad Saadulla.

STATES

Mysore

44. Dewan Bahadur Sir A. Ramaswamy Mudaliar

45. Mr. K. Chengalarya Reddy

46. Mr. H. R. Guruv Reddy

47. Mr. S. V. Krishnamurthi Rao.

48. Mr. H. Chandrasekharaiya.

49. Mr. Mahomed Sheriff.

50. Mr. T. Channiah.

Gwalior

51. Mr. M. A. Sreenivasan.

52. Lt. Col. Brijraj Narain,

53. Shri Gopikrishna Vijavargiya

54. Shri Ram Sahai

Baroda

55. Mr. Chunnilal Purshottamdas.-, Shah.

Udaipur

56. Dr. Mohan Sinha Mehta.

56-A. Mr. A. Manikyalal Varma.
Jaipur

57. Raja Sardar Singhji Bahadur of Khetri

Alwar

58. Dr. N. B. Khare.

Kotah


Patiala

60. Sardar Jaidev Singh.

Sikkim & Cooch Behar

61. Mr. Himmat Singh K. Maheshwari.

Tripura, Manipur and Khasi States

62. Mr. G. S. Guha.

Rampur and Benares

63. Mr. B. H. Zaidi.

Eastern Rajputana States

64. Maharaja Mandhata Singh.

65. Maharaj Nagendra Singh.

66. Mr. Gokul Bhai Bhatt.

Western India & Gujarat States

Mr. A. P. Pattani.

Mr. Gaganvihari Lalubhai Mehta.

Mr. Bhawanjee Arian Khimjee.

Khan Bahadur Pheroze Kothawala.

Mr. Vinayakrao B. Vaidya.

Deccan States

Mr. M. S. Aney.

Mr. B. Munavalli.

Eastern States

Rai Sahab Raghuraj Singh.

Rai Bahadur Lala Rajkanwar.

Mr. Sarangdhar Das.

Mr. Yudhisthir Misra.

Residuary Group

Mr. Balwant Rai Gopalji Mehta.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADDRESS BY PRESIDENT

Mr. President: *Hon'ble Members, we are meeting today after an interval of two and a half months. During this period many important events have occurred to which I believe I should refer. The most important of these was the statement of His Majesty's Government made on June, the 3rd. This statement has profoundly affected Indian politics. One of its results has been the division of India, and it has also been decided to partition two provinces. Further, as a consequence of this, discussions are taking place, so far as I know, in the Government of India and the Provinces, concerned regarding the details of the Partition, and actual work relating to Partition is also proceeding. Besides this, changes in

*English translation of Hindustani speech begins.

the membership of this Constituent Assembly have occurred. In Place of the members who formerly represented Bengal and Punjab some new and some former members have been
returned in the new elections held in these two (which have now become four) provinces. Many States which had so far kept aloof from this Assembly have now sent in their representatives. The members belonging to the Muslim League who had so far remained absent are also attending the Assembly now.

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

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

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

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

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

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

ELECTION CHANGES FROM BENGAL AND PUNJAB

Shri Sri Prakasa (U.P. General): *[Mr. President, so far as I know it was said at the time the elections to this Constituent Assembly were held that no outside authority had any control over it. I would like to be informed whether you were consulted about the changes that have taken place in Bengal and Punjab. Have these changes taken place according to the rules made by this Assembly? So far as I am aware members of this Assembly lose their membership when they submit their resignation. I would like to know if the members for Bengal and Punjab, who are no more members, lost their membership by submitting their resignation or as a result of the Viceroy's statement which led to new elections being held. If this is what has happened, and this appears to be the actual case, I would like to know your opinion and this matter and whether you consider all this proper and regular or not. We were told that once the Constituent Assembly was elected, neither any changes would be made in its constitution nor could any outsider have any authority or control over it. It appears to me that all these changes have taken place according to the statement of the Viceroy—a proceeding which is improper, unjust, illegal and contrary to the rules.]*
Mr. President: *[Your statement that these changes are the result of the Viceroy's statement and the consequential action taken by him on it is correct. But I believe that everyone has consented to these changes being made and so also have we done. The question of invalidity, therefore, does not arise. Moreover, now no one from among the members who had been formerly elected and have now lost their membership has submitted any petition against the termination of his membership. The newly elected members are members of this Assembly and shall continue to take part in its proceedings.]*

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

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

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

*[English translation of Hindustani Speech ends.]*

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

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

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

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

Shri Balkrishna Sharma: *[Have you been given the assurance that those who have been elected on the basis of the two-nation theory, will associate in your work after renouncing the two-nation theory and cooperate in furthering the common task?]*
Mr. President: "[A similar point was raised by Shri Deshbandhu Gupta. I then said in reply that I had no authority to forbid the members who had been duly elected from attending. I have therefore asked for no assurance and no assurance has been given to me. I have accepted all those who have been duly elected as members and on this we are acting. What all of you do here will show the intentions of each and all.]*

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

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

Pandit Govind Malaviya (United Provinces: General): Sir, I would like to ask a question in order to clarify a point. My Honourable friend Mr. Sri Prakas has raised a question, viz., that this Constituent Assembly being a sovereign body and in view of the fact that members who had been previously elected had not resigned, how have other's taken their places. You, Sir, were good enough to say that everybody Seemed ' to have acquiesced in this position and ' therefore it was right. I want to ask you, Sir, whether the position is not this that if any parts of the country decide to go out of the country, or secede from it, as,-happily or unhappily, parts of two provinces have by their own vote decided to, the members from those parts of the country no longer have the right to continue as members of this Assembly? I want to get this point clarified, for, in future, it will be very important. I submit that the moment any part of the country decides not to remain part of India, automatically it loses all rights with regard to this Assembly.

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

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

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

MESSAGE FROM THE CHAIRMAN OF THE BURMA CONSTITUENT ASSEMBLY

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

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

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

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

REPORT OF THE ORDER OF BUSINESS COMMITTEE

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

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

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

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

Sir, I may take the liberty of pointing out that the May 16 Plan has now gone for all practical purposes and that we as a sovereign body are moving towards reconstruction the constitution of the future in an atmosphere of complete freedom. I will take the liberty of mentioning in greater detail the change which has been referred to in a paragraph of the Report. The plan of May 16 had one motive—to maintain the unity of the country at all costs. A strong Central Government was sacrificed by the May 16 plan at the altar of preserving the unity which many of us, after close examination of the Plan found to be an attenuated unity which would not have lasted longer than the making of it. There were two stages envisaged in the Plan of May 16. The stages were the preliminary stage and the Union Constituent Assembly stage. A number of committees, which the House was pleased to set up, struggled 'to get some 'kind of a strong Government of India, a Government worth the name, out of these difficulties, but, the struggle, I am, free to confess, was, not very

*Appendix

successful. As a matter of fact, very often if I may express my own sentiment, while examining the plan of May 16 over and over again the plan looked to me more like the parricide's bag which was invented by ancient Roman law. As you know, under the ancient criminal law of Rome, when a man committed a very heinous crime he was tied up in a bag with a monkey, a snake and a cock, and the bag was thrown into the Tiber till it sank.

The more we saw the plan the more we found the minority struggling to get loose, the sections gnawing at the vitals and we had the double majority clause poisoning the very existence. Whatever other Members may feel. I feel—thank God—that we have got out of this bag at last. We have no sections and groups to go into, no elaborate procedure as was envisaged by it, no double majority clause, nor more provinces with residuary powers, no opting out, no revision after ten years and no longer only four categories of powers for the
centre. We therefore feel free to form a federation of our choice, a federation with a Centre as strong as we can make it, subject of course to this that the Indian States have to be associated in this great task on a footing of the four categories powers and such further powers as they choose by agreement to cede to the centre. Therefore, Sir I personally am not at all sorry that this change has taken place. We have now a homogeneous country, though our frontiers have shrunk-let us hope only for the moment-and we can now look forward to going on unhesitatingly towards our cherished goal of strength and independence. And therefore the report that was submitted to the House had to be revised.

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

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

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

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

Paragraph 4 of the Report suggests that the Assembly should complete its work by the end of October of this year. It is highly necessary, Sir, as you were pleased to point out that the work of Constitution making should be completed at the earliest possible moment and that if possible by November we should complete our Constitution-making work. At one time the rules were framed on the footing that we may take longer. They dealt with the question of sections and groups and various other things. At the time the rule was framed-old Rule 63 it was intended that after the general lines of the Constitution were approved by this House they should be circulated to the members of the legislature. It is not necessary to indulge in that elaborate procedure, first because

the office of the Constituent Assembly has circularised a set of questionnaire's to which replies have been given by members of the several Legislatures in this country and the opinions are therefore before the Committees. Secondly, things are moving so fast that we cannot, go, on at the pace at which we intended to go before-. By the, 15th August India will be a free and independent Dominion. We want to attain that stage as early as possible and to secure a constitution of our own which will give us the necessary strength. We must not forget the fact that in the Dominion Constitution which comes into existence on the 15th August the States' representatives have no place. We want that the Constitution of the Union therefore must come into existence at the earliest possible time. If that is so we shall have to eliminate this unnecessary procedure of circulating the decision to the members of this, House. This House is sufficiently representative of all interests and there is no reason why we should unnecessary lengthen out the proceedings. Further, we know that this House is working under high pressure and within a limited time. For that purpose Members will find that in the Report of the Union Constitution Committee a provision has been made to this effect that within the first period of three years the constitution could be amended easily. In framing a Constitution as we are doing under great pressure, there are likely to be left several defects; and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions, in the first three years. Therefore, the point that is placed before
the House by the Report is that on the one side the Advisory committee will continue to complete its task, on the other hand the Drafting Committee will take up the Constitution Bill and by the middle or the end of October next will be ready with the Bill for being placed before the House. It is of great importance that this Constitution should be framed as early as we possibly can do it.

One other point. We have today with us the representatives of the, Muslim League. I have no doubt that they an here as loyal and law abiding citizens of India and that they will co-operate with us wholly in framing as speedily as we can a Constitution for the Union in which hope I they will get and honoured place as a minority. Secondly, I may refer to the representatives, of the States who have come here and I will make only one appeal to them. The time is very short. The report envisages the formation of the Union by the end of October or at least by the 'end of November. The House naturally expects the co-operation of Members and the representatives from the States as to partners in this argent work of framing a Constitution. As regards the manner of the States coming into the Union, I am sure, with ever doubts they felt in the beginning, must have been dispelled by the way the Assembly has been working and by the statement issued a few days ago by the Honourable Sardar Vallabhbhai Patel which gives the fullest assurance to the States.

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

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

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

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

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

"Add the 'following at the end of the motion:

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

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

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

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

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

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

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

*[English Translation of Hindustani speech begins.]*

Provincial Assemblies, who have come here, will be requested to go back............]*

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

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

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

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

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

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

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

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

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

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

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): May I request you, Mr.
President, to talk a little louder?
[*English translation of Hindustani Speech ends.*]

[*[ ]*English translation of Hindustani speech.

We could not hear you even when you were speaking through the microphone.

Mr. President: I am very sorry, but

nobody complained before.

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

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

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

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

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

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

The Hon'ble Mr. Jaipal Singh: (Bihar: General): Mr. President, I have great pleasure in supporting the amendment moved by Mr. Santhanam. While we all fully appreciate the urgency of expedition in the carrying on of our business here. I feel that it is quite impossible for the Report of the Excluded Areas Sub-Committee to be presented during this session. It has been suggested that big principles right be decided during this session. But, as it is, the Sub-Committee on Excluded Areas has yet to visit the Excluded and Partially Excluded areas of the provinces of Bihar and the United Provinces. While these two Provinces cannot possibly be visited during the rainy season, I do not see how the Adibasi problem and the big things that are going to affect them can possibly be decided during this session, as Mr. Munshi suggests. I think as Mr. Pratar has pointed out, it is very necessary that no 'section'-I regret I have to use the word 'section'-no portion of people of this Union should be left out when matters which vitally affect them are being considered. I wish only to point out that the Report of the Tribal Sub-Committee cannot possibly be ready till the end of August.

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* [English translation of Hindustani Speech begins.

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

"We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the, early part of this month, for the purpose of considering the Draft Constitution."
Sir, so far as Fundamental Rights are concerned, we ought to get an opportunity to express, our opinion after careful consideration and then to hand over suggestions to the framers of the Constitution.]*

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

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

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

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

The Honourable Pandit Jawaharlal Nehru: * {Mr. President, I have listened attentively to all the speeches that have been made hitherto, but I fail to understand why so many speeches have been made an this subject, Unfortunately, I could not follow even Mr. Munshi's speech. In any case, it is a simple matter that we must determine our programme and the principles involved therein. We are not concerned with whether the work is finished in this session or the next. But we must have a concrete plan before us. Mr. Munshi has now put a plan

*English translation of Hindustani speech.

*English Translation of Hindustani speech begins.
before us, and we have to take a decision on it. After all what is the debate about? We will try to finish as much work as we can during this session and take up the remainder in October or November.]*

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

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

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

"Resolved further that with the exception of para, 3 the Report be adopted and the Advisory Committee on

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

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

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

Many Honourable Members: No. No.

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

*English translation of Hindustani speech ends.*

*[ ]*English translation of Hindustani speech-

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

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

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

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

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

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

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

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

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

Many Honourable Members: The question be now put.

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

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

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

The amendment was adopted.

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

The motion, as amended, was adopted.

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

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

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

'Rule 2:-In clause (b), delete the words 'Sections or' Delete clause (f) 5-55.

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

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

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

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

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Sir, I would like to support the suggestion that the Rules may be taken up tomorrow for consideration. Mr. President: The amendments are of a formal character. But if members want it tomorrow, I am afraid I shall have to adjourn the House We can take up the Resolutions. As there is some objection on the part of some members that they have not got copies of the Rules of the Assembly and they would like to have them before the amendments are moved, I am afraid there is no option but to adjourn discussion of the Rules till tomorrow. There are certain other motions that we can take up.

ELECTION OF MEMBERS TO COMMITTEES

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

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

Mr. President: He can take that up later.

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

"Resolved that this Assembly do proceed to elect, in the manner required under Rule 41(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee."

You know, Sir, last time we had elected the Staff and Finance Committee by this House. Since then some of the members who were originally elected cease to be members of this House and under the Rules, when they cease to be members of the House, they cease to be members of the Committee. Therefore, there are

vacancies on this Committee and the manner in which the vacancies are to be filled up is to be determined by the President. I therefore commend to this motion for your acceptance.

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

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

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

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

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

An Honourable Member: We have not got the Rules.
Mr. President: The motion is only that certain members have to be elected according to rules to certain Committees. If we adopt the motion, then we will elect them according to the rules and before we elect them you will get the rules, I suppose (Laughter.)

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

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

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

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

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

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

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

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

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

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

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

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

The motion was adopted.

ELECTION OF VICE-PRESIDENTS

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

Honourable Members: There is no objection.

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

Mr. Satyanarayan Sinha: Sir, I move:

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

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

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

Honourable Members: Mike, please.

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

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

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

Mr. President: I put the motion to vote.

The motion was adopted. Mr. President: I would now make some announcements. Now that we have decided that all these elections should take place I have to fix a time for putting in nominations and also for voting if it becomes necessary. I am fixing the times as follows'
Nominations will be received by the Secretary up to 1 p.m. on the 16th. I have given 48 hours from now for the nominations. The elections, if necessary, will be held in accordance with the principle of proportional representation by means of single transferable vote between 3 and 4 p.m. on the 17th in the Under Secretary’s room, No. 25 ground-floor. This relates to the various Sub-Committees with regard to which we have just passed Resolutions.

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

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

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

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

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

Mr. President: I do not know when Ramzan commences. We can consider the question again when Ramzan begins. We shall in any case be finishing of at 6 P.m. which is at least one hour before sun-set. Here the sun sets after 7 P.m. I take it that the House accepts my suggestion.
The House stands adjourned till 3 P.m. tomorrow.

The Assembly their adjourned till 3 P.m. on Tuesday, the 15th July, 1947.

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

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE ORDER OF BUSINESS COMMITTEE

COUNCIL HOUSE, New Delhi, 9th July, 1947-

From

THE CHAIRMAN,

ORDER OF BUSINESS COMMITTEE

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

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

It is against this background that we held a meeting on the 3rd of July. Pandit Nehru was present at the meeting at our request and we are grateful to him for the help he gave us.
2. We understand that during the next session, the Assembly will have before it three reports for consideration—those of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July Session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a Committee of members to scrutinise the draft before it is submitted to the Assembly and its subsequent session.

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

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

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

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

I have the honour to be,

Sir,

Your most obedient servant,

K.M. MUNSHI,

Chairman.
(on behalf of the Committee)-
Thursday, the 14th August 1947

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

SINGING OF VANDE MATARAM

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

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

PRESIDENT’S ADDRESS

Mr. President:

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

In this solemn hour, of our history when after many years of struggle we are taking over the governance of this country, let us offer humble thanks to the Almighty Power that shapes the destinies of men and nations and let us recall in grateful remembrance the services and sacrifices of all those men and women, known and unknown, who with smiles on their face walked to the gallows or faced bullets on their chests, who experience living death in the cells of the Andamans, or spent long years in the prisons of India, who preferred voluntary exile in foreign countries to a Me of humiliation in their own, who not only lost wealth and property but cut themselves off from near and dear ones to devote themselves to the achievement of the great objective which we are witnessing, today. Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher during the last thirty years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of our history. He it is who pulled us out of the slough of despond and despair and blew into us a spirit which enabled us to stand up for justice to claim our birth-right of freedom and placed in our hands the matchless and unfailing weapon of Truth and Non-violence which, without arms and armaments has won for us the invaluable prim of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population. We were indifferent-instruments that he had to Wok with but he led us with consummate skill, with unwavering determination, with an undying faith in our
future, with faith in his weapon and above all with faith in God. Let us prove true to that faith. Let us hope that India will not, in the hour of her triumph, give up or minimise the value of the weapon which served not only to rouse and inspire her, in her moments of depression but has also proved its efficacy. India has a great part to play in the shaping and moulding of, the future of a war distracted world. She can play that part not by mimicking, from a distance, what others are doing, or by joining in the race for armaments and competing with others in the discovery of the latest and most effective instruments of destruction. She has now the opportunity, and let us hope, she will have the courage and strength to place before the world for its acceptance her infallible substitute for war and bloodshed, death and destruction. The world needs it and will welcome it, unless it is prepared to reel back into barbarism from which it boasts to have emerged.

Let us then assure all countries of the world that we propose to stick to our historic tradition to be on terms of friendship and amity with all, that we have no designs against any one and hope that none will have any against us. We have only one ambition and desire, that is, to make our contribution to the building up of freedom for all and peace among mankind. The country, which was made by God and Nature to be one, stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow it this separation. But I wish to send on your behalf and my own our greetings and good wishes for success and the best of luck in the high endeavour of government in which the people of Pakistan, which till today has been a part and parcel of ourselves, will be engaged. To those who feel like us but are on the other side of the border we send a word of cheer. They should not give way to panic but should stick to their hearths and homes, their religion and culture, and cultivate the qualities of courage and forbearance. They have no reason to fear that they will, not get protection and just and fair treatment and they should not become victims of doubt and suspicion. They must accept the assurances publicly given and I their rightful place in the polity of the State, where they are placed, by their loyalty.

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

We are embarking on a great task. We hope that in this we shall have the unstinted service and co-operation of all our people and the sympathy and support of all the communities.
shall do our best to deserve it. Mr. President: After this I propose that we all stand in silence
to honour the memory of those who have died in the struggle for freedom in India and
elsewhere.
(The Assembly stood in silence for two minutes.)
MOTION RE. PLEDGE BY MEMBERS
Mr. President: Pandit Jawaharlal Nehru will now move the motion which stands in his name.
The Honourable Pandit Jawaharlal Nehru (U. P. : General): [Mr. President, many years ago
we had made a tryst with destiny itself. We had taken a pledge, a vow. Now the time has
come to redeem it. But perhaps the pledge has not yet been redeemed fully through stages
have been reached in that direction. We have almost attained independence. At such a
moment, it is only appropriate that we take a new pledge, a new vow to serve India and her
people. After a few moments, the Assembly will assume the status of a fully free and
independent body and it will represent an independent and free country. Therefore great
responsibilities are to devolve upon it. If we do not realise the importance of our
responsibilities, then we shall not be able to discharge our duties fully. Hence it "becomes
essential for us to take this pledge after fully understanding all its implications. The resolution
that I am presenting before you relates to that pledge. We have finished one phase, and for
that rejoicings are going on today. Our hearts are full of joy" and some pride and satisfaction.
But we know that there is no rejoicing in the whole of the country. There is enough of grief in
our hearts. Not far from Delhi, big cities are ablaze and its heat is reaching us here. Our
happiness cannot be completes At this hour we have to face all these things with a brave
heart. We are not to raise a hue and cry and get perturbed. When the reins of Government
have come to our hands, we have to do things in the right way. Generally, countries wrest
their freedom after great bloodshed, tears and toil. Much blood has been spilt in our land, and
in a way which is very painful. Notwithstanding that, we have achieved freedom by peaceful
methods. We have set a new example before the world. We are free now but along with
freedom, come responsibilities and burdens. We have to face them, and overcome them all.
Our dream is now about to be translated. into reality. The task of wresting freedom and
ousting the foreign government was before us till now and that task is now accomplished. But
uprooting the foreign domination is not all. unless and until each
and every Indian breathes the air of freedom and his miseries are banished and his hard lot is
improved. Our task remains unfinished. Therefore a large portion of our task remains to be
done, and we shall try to accomplish it. Big problems confront us and at their sight sometimes
our heart quivers, but, then again, the thought that in the past we have faced many a big,
problem and we shall do so again, gives us courage. Shall we be cowed down by these? It is not
the individual pride and strength that is comforting, rather it is the pride of the country and the
nation, and a confidence in people who have suffered a terribly for the cause that makes me feel bold to think we

*English translation of Hindustani speech.*

shall successfully shoulder the huge burden of hardships, and find a solution of these problems. After all, India, is now free. That is well and good. At a time when we are on the threshold of freedom, we should remember that India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. We have repeatedly defined the type of freedom we desire. In the first resolution, which I moved earlier, it has been said that our freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom. We shall proceed like that. and whosoever tries to be aggressive will be checked by us. If anyone is oppressed we shall stand by his side. If we follow this path then we shall be able to solve big problems, but if we become narrowminded we shall not be able to solve them.

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

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

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

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

That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so oft-en taken and the one we shall take today. The service of India means
the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to, wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over

*English translation of Hindustani speech.

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

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

I beg to move, Sir,

"That it be resolved that:

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

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

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

Chaudhari Khaliquzzaman (United Provinces: Muslim): [Mr. President, after midnight today a great revolution is to take place in the history of India a revolution, for which India had been working for the last one hundred years in her fight for freedom, an event for which many Indians have sacrificed their lives to achieve, is now approaching very near. Now that as a result of these sacrifices we have achieved this freedom, a new question confronts us, which is even more vital. That struggle is over but a fresh one of a different type is. to begin; this new struggle is not to be fought against any outsider but is to be settled among our own selves. It is evident that when a nation had to fight against another nation we were swayed by different emotions, we had to adopt different tactics, and different methods. Now the time has come when we shall have to shoulder great responsibilities when there will be no room for
clapping and for high-sounding slogans. After today the task before this House, before the leaders of the country, will not be a spectacular one but one that requires diligence, industry and service to the people. We know that great responsibility rests on this Assembly and that is of framing a Constitution, which would be acceptable not only to the minorities but also to all the people of the country, to the poor and to the common man and through which we may serve the people of India. This is the greatest task. Similarly, this House has to shoulder the responsibility of the administration of the country till such time as fresh elections are held. The administrative responsibility sometimes brings with it scoldings and one has to put up with abuses etc., and is even subjected to brickbats. But all this has to be endured. A reading of the pledge,

*English translation of Hindustani speech,

which is before us now. shows that it entails heavy responsibility. Ordinarily, I think that all the members, when they came here, had already taken the pledge of serving their country honestly and faithfully and as best as they could. But a pledge formally administered leaves some psychological effect on the mind of every person. Hence, I think that today, before we shoulder the responsibility, this is a most opportune moment for all of us to bind ourselves with this pledge that henceforth all our actions and deeds would primarily be directed towards the good of the State and no communal considerations would be allowed to prevail and we shall do our utmost to give everyone his due. After taking this pledge, when we step out of this Chamber, we shall give a message to the people of the country that we have taken a vow honestly to shoulder the responsibility, and in discharging our duties we shall show no favour to anyone.

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

Dr. S. Radhakrishnan (United Provinces: General) : Mr. President. Sir, it is not necessary for me to speak at any great length on this Resolution so impressively moved by Pandit Jawaharlal Nehru and seconded by Mr. khaliquzzaman. History and legend will grow round this day. It marks a milestone in the march of our democracy. A significant date it is in the drama of the Indian people who are trying to rebuild and transform themselves. Through a long night of waiting, a night full of fateful pertents and silent prayers for the dawn of freedom, of haunted spectres of hunger and death, our sentinels kept watch, the lights were burning bright till at last the dawn is breaking and we greet it with the utmost enthusiasm. When we are passing from a state of serfdom, a state of slavery and subjection to one of freedom and liberation, it is an occasion for rejoicing. That it is being effected in such an orderly and dignified way is a matter for gratification.
Mr. Attlee spoke with visible pride in the House of Commons when he said that this is the first great instance of a strong Imperialist power transferring its authority to a subject people whom it ruled with force and firmness for nearly two centuries. For a parallel he cited the British withdrawal from South Africa; but it is nothing comparable in scale and circumstances to the British withdrawal from this country. When we see what the Dutch are doing in Indonesia, when we see how the French are clinging to their possessions, we cannot but admire the political sagacity and courage of the British people. (Cheers.)

We on our side, have also added a chapter to the history of the World Look at the way in which subject peoples in history won their freedom Let us also consider the methods by which power was acquired. How, did men like Washington, Napoleon, Cromwell, Lenin, Hitler and Mussolini get into power? Look at the methods of blood and steel, of terrorism and assassination, of bloodshed and anarchy by which these so called great men of the world came into the possession of power. Hem in this land under the leadership of one who will go down in history

English translation of Hindustani speech—
perhaps the greatest man of our age (laud cheers) we have opposed patience to fury, quietness of spirit to bureaucratic tyranny and are acquiring power through peaceful and civilised methods. What is the result? The transition is being effected with the least bitterness, with utterly no kind of hatred at all. The very fact that we are appointing Lord Mountbatten as the Governor-General of India, shows the spirit of understanding and friendliness in which this whole transition is being effected. (Cheers.)

You, Mr. President, referred to the sadness in our hearts, to the sorrow which also clouds our rejoicings. May I say that we are in an essential sense responsible for it also though not entirely. From 1600, Englishmen have come to this country-priests and nuns, merchants and adventurers, diplomats and statesmen, missionaries and idealists. They bought and sold, marched and fought, plotted and profited, helped and healed. The greatest among them wished to modernise the country, to raise its intellectual and moral standards, its political status. They wished to regenerate the whole people. But the small among them worked with sinister objective. They tried to increase the disunion in the country, made the country poorer, weaker and more disunited. They also have had their chance now. The freedom we are attaining is the fulfilment of this dual tendency among British administrators. While India is attaining freedom, she is attaining it in a manner which does not produce joy in the hearts of people or a radiant smile on their faces. Some of those who were charged with the responsibility for the administration of this country, tried to accentuate communal consciousness and bring about the present result which is a logical outcome of the policies adopted by the lesser minds of Britain. But I would never
blame them. Were we not victims, ready victims, so to say, of the separatist tendencies foisted on us? Should we not now correct our national faults of character, our domestic despotism, our intolerance which has assumed the different forms of obscurantism, of narrow-mindedness, of superstitious bigotry? Others were able to play on our weakness because we had them. I would like therefore to take this opportunity to call for self-examination, for a searching of hearts. We have gained but we have not gained in the manner we wished to gain and if we have, not done so, the responsibility is our own. And when this pledge says that we have to serve our country, we can best serve our country by removing these fundamental defects which have prevented us from gaining the objective of a free and united India. Now that India is divided, it is our duty not to indulge in words of anger. They lead us nowhere. We must avoid pass-on Passion, and wisdom never go together. The body politic may be divided but the body historic lives on. (Hear, hear.) Political divisions, physical partitions, are external but the psychological divisions are deeper. The cultural cleavages are the more dangerous. We should not allow them to grow. What we should do is to preserve those cultural ties, those spiritual bonds which knit our peoples together into one organic whole. Patient consideration, slow process of education, adjustment to one another's needs, the discovery of points of view which are common to both the dominions in the matter of Communications, Defence, Foreign Affairs, these are the things which should be allowed to grow in the daily business of life and administration. It is by developing such attitudes that we can once again draw near and gain the lost unity of this country. That is the only way to it.

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

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

Sarvabhutdisahamatmanam Sarvabhutani catmani Sampasyam atmayajiva saarwjyam adhigachati

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

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

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

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

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

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

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

The motion was adopted.

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

As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge as below. Mr. President read" it out sentence by sentence and 'the Members repeating it after him in Hindustani and in English. "At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I........... a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare mankind."

INTIMATION TO THE VICEROY ABOUT THE ASSUMPTION OF POWER BY THE CONSTITUENT ASSEMBLY AND THE ASSEMBLY'S ENDORSEMENT OF LORD MOUNTBATTEN'S APPOINTMENT AS GOVERNOR-GENERAL OF INDIA
Mr. President: I propose that it should be intimated to the Viceroy that—(1) the Constituent Assembly of India has assumed power for the governance of India, and
(2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be Governor-General of India from the 15th August 1947.
and that this message be conveyed forthwith to Lord Mountbatten by the President and Pandit Jawaharlal Nehru. (Cheers.) I take it the House approves it.
The motion was adopted.

PRESENTATION OF THE NATIONAL FLAG
Mr. President: Shrimati Hansa Mehta will now present the National Flag on behalf of the women of India. (Cheers.)

Mrs. Hansa Mehta (Bombay: General): Mr. President, Sir, in the absence of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women of India, to present this flag to the Nation through you.
I have a list here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from, the women of India. (Cheers.) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the freedom that we have attained. We have great traditions to maintain, traditions that made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the bloom that threatens the world today. My It bring happiness to those who live under its protecting care. (Cheers.)

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

SINGING OF NATIONAL SONGS

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

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

Mr. President: The House will now ad adjourn for a few hours, till Ten of the Clock.
The Assembly then adjourned till Ten of the Clock on Friday, the 15th August 1947.
Friday, the 15th August 1947

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

MESSAGES

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

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

2. Message from His Grace the Archbishop of Canterbury.

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


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

4. Message from the Prime Minister of Canada.

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

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

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

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

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

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

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

On the eve of the establishment of the Dominion of India it is a great pleasure to the Republic of Indonesia to express her feelings of heartfelt joy, sympathy and friendship. The Republic of Indonesia looks upon India as her Comrade who in time of danger and distress has helped her and will always help her. She may-as both their nationalism is based upon humanity-hope that in the very near future still tighter bonds will be welded, bonds of comradeship in the struggle for Justice and Peace and for the Freedom and Prosperity of millions who for so long a time have lived in squalor amidst luxury and wealth.

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

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

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

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

9. Message from the Prime Minister and Acting Minister of Foreign Affairs, Oslo.
On this Great Day of National Rejoicing for the Peoples of India I have the honour to transmit to you my very best wishes for the prosperity of your country.

ADDRESS OF THE GOVERNOR-GENERAL

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

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

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

"On this historic day when India takes her place as a free and independent Dominion in the British Commonwealth of Nations, I send you all my greetings and heartfelt wishes. Freedom loving people everywhere will wish to share in your celebrations, for with this transfer of power by consent comes the fulfillment of a great democratic ideal to which the British and Indian peoples alike are firmly dedicated. It is inspiring to think that all this has been achieved by means of peaceful change.

Heavy responsibilities lie ahead of you, but when I consider the statesmanship you have already shown and the great sacrifices you have already made, I am confident that you will be worthy of your destiny.

I pray that the blessings of the Almighty may rest upon you and that your leaders may continue to be guided with wisdom in the tasks before them. May the blessings of friendship, tolerance and peace inspire you in your relations with the nations of the world. Be assured always of my sympathy in all your efforts to promote the prosperity of your people and the general welfare of mankind."

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

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

I entered into discussions with the leaders of all the parties at once and the result was the plan of June 3rd. Its acceptance has been hailed as an example of fine statesmanship throughout the world. The plan was evolved at every stage by a process of open diplomacy with the leaders. Its success is chiefly attributable to them.

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

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

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

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

Let me now pass to the Indian States. The plan of June 3rd dealt almost exclusively with the problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognised that on the transfer of power, all the Indian States—565 of them—would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department, it was possible for me as Crown Representative to tackle this great question. Thanks to that farsighted statesman Sardar Vallabhbhai Patel, Member in charge of States Department, a scheme, produced which appeared to me to be equally in the interests of the States as of the Dominion of India. The overwhelming majority of States are geographically linked with India, and therefore this Dominion had by far the bigger stake in the solution of this problem. It is a great triumph for the realism and sense of responsibility of the Rulens and
the Governments of the States, as well as for the Government of India, that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one, moreover, so simple and so straightforward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300, million people and the major part of this great sub-continent.

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

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

Nizam and I am hopeful that we shall reach a solution satisfactory to all.

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

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

The tasks before you are heavy. The war ended two years ago. In fact, it was, on this very day two years ago that I was with that great friend of India. Mr. Attlee in his Cabinet Room when
the news came through that ‘Japan had surrendered. That was a moment for thankfulness and rejoicing, for it marked the end of six bitter years of, destruction and slaughter. But in India we have achieved something greater what has been well described as ‘A treaty of Peace without a War’. Nevertheless, the ravages of the war are still apparent all over the world. India, which played such a valiant part, as I can personally testify from my experience in South-East Asia, has also had to pay her price in the dislocation of her economy and the casualties to her gallant fighting men With whom I was so proud to be associated. Preoccupations with the political problem retarded recovery. It is for you to ensure the happiness and ever-increasing prosperity of the people, to provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy. The solution of these problems requires immediate and wholehearted effort and far-sighted planning, but I feel confident that with your resources in men, material and leadership you will prove equal to the task.

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

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

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

In your first Prime Minister Pandit Jawaharlal Nehru, you have a world-renowned leader of courage and vision.

(Cheers.) His trust and friendship have helped me beyond measure in my task. Under his able guidance, assisted by the colleagues whom he has selected, and with the loyal Co-operation of the people, India will now attain a position of strength and influence and take her rightful place in the comity of nations. (Loud and prolonged cheers.)

Mr. President:- [Your Excellency and members of the Assembly, I request ‘you to communicate to His Majesty the gratitude of this Assembly for the message he has very kindly sent to us today. With the Knowledge that we will have his sympathy and kindness in the task that we are going to take it our hands today, we are confident that we will be able to accomplish it in a proper way.}
[Mr. President then delivered his speech in Hindustani, the full text of which is published in the Hindustani Edition of the Debates.]

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*English translation of Hindustani speech*

**ADDITIONAL MESSAGES**

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

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

10. Message from the French Minister of Foreign Affairs.

From: Mons. Georges Bidault,
Minister for Foreign Affairs,
Paris.
To Pandit Jawaharlal Nehru.

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

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

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

YOUR EXCELLENCY,
I have the honour to transmit to you the following message (from the President of the United States.

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

*English translation of Hindustani speech.

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

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

HENRY T. GRADY.

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

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

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

It is undoubtedly a day of rejoicing. But there is only one thought which mars and detracts from the fulness of this happy event. India, which was made by God and Nature to be one,
which culture and tradition and history of millenniums have made one, is divided today and many there are on the other side of the boundary who would much rather be on this side. To them we send a word of cheer and assurance and ask them not to give way to panic or despair but to live with faith and courage in peace with their neighbours and fulfil the duties of loyal citizenship and thus win their rightful place. We send our greetings to the new Dominion which is being established today there and wish it the best luck in its great work of governing that region and making all its citizens happy and prosperous. We feel assured that they all will be treated fairly and Justly without any distinction or discrimination. Let us hope and pray that the day will come when even those who have insisted upon and brought about this division will realise India's essential oneness and we shall, be united once again. We must realise however that this can be brought about not by force but by large heartedness and co-operation and by so managing Our affairs on this side as to attract those who have parted. It may appear to be a dream but it is no more fantastic a dream than that of those who wanted a division and may well be realised even sooner than we dare hope for today. More than a day of rejoicing it is a day of dedication for all of us to build the India of our dreams. Let us turn our eyes away from the past and fix our gaze on the future. We have no quarrel with other nations and countries and let us hope no one will pick a quarrel with us. By history and tradition we are a peaceful people and India wants to be at peace with the world. India's Empire outside her own borders has been of a different kind from all other Empires. India's conquests have been the conquests of spirit which did not impose heavy chains of slavery, whether of iron or of gold, on others but tied other lands and Other peoples to her with the more enduring ties of golden silk--of culture and Civilisation, of religion and knowledge (gyan).’ We shall follow that same tradition and shall have no ambition save that of contributing our little mite to the building of peace and freedom in a war-distracted world by holding aloft the banner under which we have marched to victory and placing in a practical manner in the hands of the world the great weapon of Non-violence which has achieved this unique result. India has a great part to play. There is something in her life and culture which has enabled her to survive the onslaughts of time and today we witness a new birth full of promise, if only we prove ourselves true to our 'deals, Let us resolve to create conditions in this country when every individual will be free and provided with the wherewithal to develop and rise to his fullest stature, when poverty and squalor and ignorance and ill-health will have vanished, when the distinction between high and low, between rich and poor, will have disappeared, when religion will not only be professed and preached and practised freely but will have become a cementing force for binding man to man and not serve as a disturbing and disrupting force dividing and separating, when untouchability will have been forgotten like an unpleasant night dream,
when exploitation of man by man-will have ceased, when facilities and special arrangements will have been provided for the adimjatis of India and for all others who are backward, to enable them to catch up to others and when this land will have not only enough food to feed its teeming millions but will Once again have become a land flowing with rivers of milk, when men and women will be laughing and working for all they are worth in fields and factories, when every cottage and hamlet will be humming with the sweet music of village handicrafts and maids will be busy with them and singing to their tune-when the sun and the moon will be shining on happy homes and loving faces.

To bring all this about we need all the idealism and sacrifice, all the intelligence and diligence, all the determination and the power of Organisation that we can muster. We have many parties and groups with differing ideals and ideologies. They are all trying to convert the country to their own ideologies and to mould the constitution and the administration to suit their own viewpoint. While they have the right to do so, the country and the nation have the right to demand loyalty from them. All must realise that what is needed most today is a great constructive effort-not strife, hard-solid work-not argumentation, and let US hope that all will be prepared to make their contribution We want the peasant to grow more food, we want the workers to produce more goods, we want our industrialists to use their intelligence, tact and resourcefulness for the common good. To all we must assure conditions of decent and healthy life and opportunities for self-improvement and self-realisation.

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

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

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

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

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

HOISTING OF THE NATIONAL FLAG

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

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

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

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

Honourable Members: Mahatma Gandhi ki jai.

Mahatma Gandhi ki jai.

Pandit Jawaharlal Nehru ki jai.

Lord Mountbatten ki jai.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 20th August 1947.
Saturday, the 30th August 1947

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

SUPPLEMENTARY REPORT ON FUNDAMENTAL RIGHTS(Contd.)

Mr. President: We have now to take up the consideration of the Supplementary Report of the Fundamental Rights Committee.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General) Sir, the House is already aware that my letter of 23rd April 1947, submitting the Report of the Advisory Committee on Fundamental Rights was considered and most of the main proposals were accepted. The report was to a certain extent incomplete because we had to consider several matters which were referred back to us, and some proposals were received direct, which had also to be considered. There were two parts of the report: one contained fundamental rights which were justifiable and the other of the report referred to fundamental rights which were not justiciable but were directives more or less which would be useful for the governance of the country. Now the Advisory Committee considered both these parts and completed its work; This report which I place before the House contains, first, two or three important matters regarding justiciable rights which were not finished and which were referred back to us: One is regarding clause 16 which reads-

"No person attending any school maintained or 'receiving aid out of public funds shall be compelled to take part in any religious instruction that may be given in the school or to attend religious workshop held in the school or in premises attached thereto,"
meaning thereby that there should be no compulsion in religious education in schools maintained by the State or receiving public aid; and the Committee has accepted this, and recommend that the House should accept it

Then there is clause 17, which refers to conversion. It reads-

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

The Committee came to the conclusion that this general clause is enough so far as fundamental rights are concerned. On further consideration this clause seemed to us to enunciate a rather obvious doctrine which it was unnecessary to include in the constitution, and we thought it better to leave it to the legislature.

Then about clause 18(2), which reads-

"No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

There was another paragraph in which it was recommended that the latter portion of the clause, namely, "nor shall any religious instruction be compulsorily imposed on them" be dropped because that is covered by clause 16.

Then we have examined the question as to whether the scope of the clause should be extended so as to include, State-aided educational institution also, and the Committee came to the conclusion that in the present circumstances we would not be justified in making any such recommendation.

Then the Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagri or the Persian script, as the national language of the Union, but subsequently' this question was held over because the matter was considered by the Union Constitution Committee: and as the Constituent Assembly is already seized of the subject, we thought it, better not to deal with the subject. So. we have not. said anything 'about it, and it will be considered separately. Several other
amendments were moved. We have considered them individually, and we have come to the conclusion that the fundamental rights should not be burdened with all such amendments that have be-en moved.

There is another part of the report which contains, in addition
to. justiciable rights, certain directives of State policy which, though not
cognizable by any court of law, should be regarded as fundamental in the
governance of the country. The provisions that the Committee have
considered are included in Appendix A which is added to the Report.

The appendix which has been circulated with the Report is also with you. So I suggest that the Report be taken into consideration.

Mr. President: The Resolution is that this Assembly do proceed to, take into
consideration the Supplementary Report on the subject of Fundamental
Rights submitted-by the Advisory Committee. If any Member wishes to say
anything, he may do so now.

Mr. R. K. Sidhwa (C. P. & Berar: General) : Mr. President. Sir, you will
remember this House passed a memorable Resolution in its first and second
sessions Which is popularly known as the Objectives Resolution. Out of the
several good measures that are indicated therein, one is in connection with
social and economic equality. While moving this Resolution the learned
Pandit Jawaharlal Nehru made a memorable, speech and placed before this
Rouse some ideas about which I would, like to remind members just to
refresh their memory. Among other. things, the Resolution states-

"Wherein shall be guaranteed and secured to all the people of India justice,
social, economic, and political; equality of status, of opportunity, and before
the law;......... "

And while moving that Resolution he said-

"I stand for Socialism and I hope, India will stand for Socialism and that
India will go towards the constitution of a Socialist State and I do believe that
the whole world will have to go that way."
Sir, after this clear statement of the objectives, when the justiciable rights came before us, I Was expecting to see that in our Constitution equality, social and economic, would play a prominent part. Not having found it in the justiciable rights I expected to see this in the non-justiciable rights. I searched and searched, but searched in vain. Sir, it is all very well to say that we want to give absolute power from the villages right up to the cities so that the economic conditions are so adjusted that the people, the average people may be happy and prosperous. But I may state, Sir that however much we may try and introduce measures like the Grama Udhar and village Panchayats and village uplift, unless economic conditions are considered equitably, these measures are not going to prove of any use or be successful. Sir, what are the conditions today? I can tell You from experience. I have the honour to be the President of the All India Local Bodies Association. These local bodies have been given the power, but they have not the money to spend. Therefore, they are quite helpless. Without money they cannot function. The powers that have been given to them are in no way useful to them. These are the conditions in which the Local Bodies suffer today.

While I was listening to the Union Powers Committee's Report and the items presented to the House the other day, we were making capital of strengthening the Centre with greater financial powers. But it must be admitted that the economic conditions of the Provinces are so poor that they are not in a position to give that help to the local Bodies that is necessary. The Local bodies suffer from insufficiency of money, and when they approach the Provincial Government, the Provincial Governments express their inability to help them on the ground that the Central does not contribute them the money that is due to them. Sir, in the Local Bodies, the electricity tax, the entertainment taxes, the betting taxes, these legitimately belong to the Local Bodies but they have been appropriated by the Provincial Governments. An enquiry was set up by the various governments and it has been laid down definitely that unless contributions are made by the Provincial Governments, Local Bodies will not function successfully.

Sir, the Local Bodies are the root, the basis of our economic conditions in India and unless the better financing of the
villages is properly considered and enough money is given to them. I can tell you with confidence, that we are not going to make our average citizen happy and prosperous. We may give them power. We are all anxious to give them authority; but if you do not give them money, what will they do? How can they proceed further? I expected, Sir, that at least in these non-justiciable rights—they are pious. I mean to say they are pious measures because they are non-justiciable—I expected that even in these pious measures there may be some mention about the equality of social rights. I do not for a moment suggest that our popular governments both in the Centre and in the Provinces do not care for them. They are as eager as some of us, or most of us here to do the right things. But they are also confronted with the difficulties of money and I may tell you that unless financial conditions improve, they will not be able to advance in any direction or do any good for the average man of the country, whom we have been telling—for ages that when we achieve freedom we shall see that the average man really gets real happiness. Sir, it is stated in the Resolution that all the citizens, men and women, have the right for an adequate means of livelihood. It is all very well to say "adequate means of livelihood" Where is that to come from. We have to make provision for that. Of course, I do admit that merely making a provision here will not achieve the end. But certainly if there is a provision to that effect it would be very difficult for the administration to overlook it.

Sir, the distribution of wealth in this country has been in such a miserable state of affairs that unless we bring them into a state of equality, conditions are not going to improve. I will give you two illustrations, real illustrations.

In a case when the head of the family died, he left nearly 11 crores of rupees for one issue to enjoy them. Fortunately or unfortunately, that issue also expired after about a year of the death of the father. The whole amount was distributed among the various members of the rich family who already possessed crores of rupees. If we had an equitable distribution of this wealth, this money would have come to the State.

I have known another family of a father with three children leaving Rs. 50 lakhs of rupees. Two sons within three years squandered their share and the third son was a miser and by speculation and other means made two crores out of his share. What kind of economy is this? In this country, Sir, there are
only a few hundreds or few thousands who roll in crores, while millions have no proper food. This is the state of affairs. How are we going to improve it, Unless this system of inequality of wealth which has been confined to a few people in the country is to be abolished? I am sure without imposing further burden upon the average person by various kinds of taxation, if this wealth is properly distributed the State will have ample money to put this nation-building programme into operation very successfully. I know, Sir, our popular Members of the Government are alert and they may be looking into the matter. I don't for a moment say they are unmindful of it or they are indifferent about it. But what I would state is that a place should have been found for this provision in some part of the constitution. These non-justiciable rights are merely to adorn the pages of the constitution and just give a little consolation, but I would prefer them to be a part and parcel of the constitution so that every citizen may be proud to state that 'Now my time has come to enjoy equality and wealth, so that I may not remain poor for all time'. That is my point. I tried to move a Resolution in the Fundamental Rights Committee and was told that it was not the proper place. So I waited. Now the proper place has come and I want to see provision made in the non-justiciable rights.

What I submit is that if you want to improve the socialist system of economy, then you have to nationalise your big industries, and if you want to provide proper wager, to your wage earners, and maternity and other benefits' do not think for a moment this is a stock argument which I am advancing. but I sincerely feel that the time has come for this argument to be fulfilled. We don't want the strikes. We don't like them. But every morning you get up from bed and go to the market and if you had paid 10 annas the previous day for an article, you have now to pay 12 annas or 14 annas. What will be the effect of this on the average serviceman, who depends entirely on his monthly budget? How can he adjust his budget? I submit, Sir, the whole economic structure has broken down to pieces. While we don't want these strikes, while we want more production, we should not find absolute fault with the labourers if they go on strike. The fact is they cannot make both ends meet. Prices have gone up. If you go to the bazar what is the conditions? Upper class people, wealthy class of people, send their servants to the bazar; they don't know the condition. But the man who is absolutely dependent an
the income he derives, he goes to the bazar himself and when he finds that he has got only Rs. 1-8-0 to spare and he has to pay Rs. 2-0-0 he becomes desperate. Conditions are getting worse and worse, and the popular Government, notwithstanding whatever difficulties might exist, have to face these facts. I know, Sir, in this very House there is a mixed variety of people—upper class people, wealthy people, lower class people and poor people, and it is not possible for us to bring in a measure of this sort in this Assembly. But as Pandit Jawaharlal has rightly said in the Resolution, the time has come when, whatever the position may be, we have to adjust according to the times and see that this wealth is evenly distributed.

Sir, I lay emphasis on this point, namely that whatsoever objectives you may put down, whatsoever provisions you may put down, unless you provide village panchayats, notified area committees and sanitary committees with sufficient money at their disposal, not within the power of the provinces to appropriate the same, you are not going to improve the social structure of this country, which has gone down. That is the main cause of all this trouble and it requires immediate attention.

Mr. President: Will the Honourable Member now come to the point? (Laughter).

Mr. R.K. Sidhwa: Mr. President, if these were not the points for insertion in the constitution, I don't know what are the points. My friends here clapped their hands when the Honourable President asks me to come to the point. I anticipated this and I said in a mixed House of this kind, it is not possible to have such a measure passed. If that is the desire of the House, that such a provision should not be made in the constitution, then let them please themselves. But I want to express my view. I feel strongly on this and state that the constitution ought to provide such a clause if you want this land to be happy. I shall state my view, no matter what the opinion of this House may be. Besides it is not only my own view. It is the view of the various important bodies in this country, of which I have the honour to be the President.

I therefore suggest, Sir, but I know it may be argued that these are some of the social adjustments that are borrowed from the Russian constitution.
know there are many irreligious things in the U.S.S.R. constitution which could not be made applicable to India, but there are many good, very good points which are quite suitable to India and it is certainly in our interests that we copy some of the good things from the U.S.S.R. constitution. I want to state that any good means which would bring good results to the country I shall certainly be in favour of borrowing them. With these worked, Sir, while I congratulate the Committee for bringing up this proposition, I would have preferred a clause of this nature to have been inserted. It has not been inserted but I do hope, Sir, that in the governance of this country and its administration, this view point will be borne in mind particularly that unless you change your economic conditions and improve them, you are not going to bring any kind of happiness and prosperity to this country.

Mr. B. Das (Orissa: General): Sir, when the first draft of the Fundamental Rights was discussed on the floor of this House I expressed gave doubts about Clause 3 regarding citizenship. After Ad hoc Committee redrafted it and it was presented to the House for acceptance by the Honourable Sardar Patel. At the time when the Ad hoc Committee's Report was presented I had my doubts as to whether that new draft would suit the requirements of the people of India. I accept the clause to-day. Some slight changes have also been made in the body of the text of clause 3. Sir, I would like to be assured by the Honourable Sardar Patel whether Government intend to change the laws of the Union as envisaged in the proviso of clause 3. Many things have happened since we discussed Fundamental Rights in April last. India has been divided up and Indian citizens who are born in both parts of India now can claim citizenship in either Pakistan or Hindustan. There may be families that may have a brother in Pakistan acquiring the citizenship of Pakistan while others may be citizens of India. Particularly, Sir, I find many officials and non-officials whom I always took as citizens of India, have gone to place their services, their best energies in the service of Pakistan. So it is natural that Government should legislate that everybody must declare whether he is a citizen of Pakistan or Hindustan. One would not like the best brains of India to go to Pakistan and when they come back to India will they be taken as Indians or only recognised as citizens of Pakistan because they have served after the separation in that country?
Sir, as to the other changes of the Fundamental Rights, I accept the recommendations on clause 16 and also accept that clause 17 and sub-clause (2) of clause 18 should be deleted.

Sir, while we are talking of Fundamental Rights of the people of India, I would like to state that certain citizens, particularly in the services of the Constituent Assembly, were so unnecessarily and deplorably criticised yesterday. They have no representation on the floor of this House—it is the office of the Constituent Assembly to reply to any charges that may be made on the floor of this House. I think it was wrong to make such statements on the floor of this House. If any member had any grievance, he ought to have approached the Staff and Finance Committee to make any enquiry about the efficiency or non-efficiency of the Constituent Assembly office. Personally I know they have discharged their onerous responsibilities with great intelligence, tact and loyalty to Independent India. They were part of the old bureaucracy and yet they came up to the high standard required of them and they have served India as faithfully and as loyally as any of us have served India. So far I record my grateful appreciation of their work and services.

Sir, I will then come to the next part of the Report which deals with the Fundamental principles of governance. My honourable friend Mr. Sidhwa had made some observation and I agree with him and regret that these pious recommendations should find no place in the Statute. I consider that the fundamental principles of governance means-Dharma of the Government—the path of duty of the Government. But we don’t lay down in the Constitution Act what the Government should do and what are the responsibilities of Government to the citizens and the people of India. We say that the Government may do this and it is expected that we, members of the Constituent Assembly should be treated like children in our homes, and shout and agitate for something from the Government and then the Government, whether they may be the present Government or successor Government will legislate for the betterment of the conditions of the people of India. I am not satisfied with the opinion of the legal servants and great authorities on law in this House who interpret the functions of Government as justiciable and non-justiciable. They have said that we cannot include in the Union Constitution of India what the Government has to do for the people. I think it is the primary duty of Government to remove hunger and render social justice to every
citizen and to secure social security. Sir, I am not satisfied, although portions of the Soviet Constitution or the Irish Constitution are somehow made into a jumble and included in these 12 paras, that they bring any hope to us. The teeming millions do not find any hope that the Union Constitution that will be passed two months hence will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health. In the principles of Constitution we have approved so far, be it the Provincial Constitution or be it the Union Constitution or be it the Union Powers I do not find anything that makes it obligatory on the Government, on the State, to discharge their obligatory duties to the people of India about common welfare and well being of the people. So better it is that these pious clauses find their way to the Appendix and not to the main Constitution Act! It is no consolation to the people of India that they elect the Constituent Assembly which elects the Dominion Government. The Government has a corresponding obligatory duty to the people to govern them properly, to look after their social welfare and their general well-being. We have appointed yesterday a body of draftsmen to draft the Union Constitution. I hope it is not too late for the legal talents of this House to find ways and means for making it obligatory on the part of the Government to function and to exist for the welfare and well being of the people of India. Too much is made of 'justiciable' and 'non-justiciable.' I do not understand how the Irish Constitution included some of these noble principles in the body of the Constitution. If the Irish Constitution can do it, the Indian Constitution must do it. But then, Sir, we are up against a brick wall of lawyers. Legal talents are there and they rule that these are justiciable and other are non-justiciable. The result is that this House is reduced to the status of children and made to function as children. The Government though it is democratic, must follow, they say, the precedents and the traditions of the bureaucratic Governments of the past. If it does so, it cannot effect any improvement in the social conditions of the people.

This is very alarming. We are framing our Free Sovereign Constitution. Perhaps ours is the last Constitution framed in the 20th century. One would have expected that we would have profited by the knowledge, by the suffering and by the experience of other countries. I do not want this Constitution to be drawn up to last only for a year or two. There are rumblings; there are signs of the times. And if we go by the precedents of...
the French Constitution Assemblies we may not achieve much. The people of France elected three successive Constituent Assemblies to draft their Sovereign Constitution and there were three successive Constitutions. The French Government, under the last Constitution, has not yet been a stable one. Our Government is expected to be stable and is stable today. But nobody can be a prophet and say that it will be stable for more than a year or two. And if I, a Gandhite, am not satisfied with this Draft, how can I expect the Socialists and the communists and the others to be satisfied with it. Let us make a more acceptable draft. Let us make the draft fit in with the conditions in India. Let us tell the world through our draft Constitution that Indians have a civilization and culture, ten thousands of years old. We should draw up a democratic Constitution whereby the State serves the people and the people, the State. Let our Constitution bear the Stamp of the culture and civilisation of India.

Dr. P.S. Deshmukh: (C.P.& Berar: General): Mr. President, Sir, before I speak on the motion itself I wish to suggest that, since this is the last day of the session, we might probably devote the whole day for the discussion of the principles which have been placed before us.

The House knows, Sir, that we have left many things incomplete. Many Reports have been presented to us and we have only dealt with parts of them. A good many sections or clauses for instance of the Union Constitution Committee, the Union Powers Committee etc., have been left over for further consideration. The same, I submit, should not happen to this particular Report. This Report, in my opinion, is the most important of all because it represents that part of the Constitution which the masses of India are looking forward to for the fulfilment of the promises made to them by their leaders. They are watching how far we are serious in our promises to ameliorate their condition and better the standard of living of the average man. From that point of view, Sir, I submit, this particular portion of the Constitution should be given more importance than the other parts and every opportunity should be given to the members to express themselves. I would further submit that the recommendations be not taken into consideration in this session if the criticism that I wish to level and many of my friends have levelled are going to have any effect on the sponsors of the measure. Only if this is done shall
we be able to go to the people and tell them that we are striving to protect their interests not only temporarily but permanently.

My first criticism against the present Report is that it is, like some other reports, exceptionally perfunctory. The framers of the Report will pardon me if I use somewhat strong words. The attitude of the Members of the Committee is, I think, very correctly reflected in one of the sentences to be found in a book that has been provided by the office to us. I will read that one sentence: "Great difficulty has been experienced in selecting provisions for inclusion" of course in the draft of Fundamental Rights in the Indian Constitution-as "there is no absolute standard as to what constitutes 'Fundamental Rights', and the basis of classification varies from country to country." This, it is clear has been the sole sheet-anchor of the Committee. They have delved into various books on Constitution of the world to select a section here and an item there so as to suit the Indian conditions and conform to their ideals. I submit to you and to the House, Sir, that this is not the correct attitude to take when dealing with fundamental rights. India, our country, is totally incomparable with Ireland. What is there in Ireland, that we should bodily adopt its fundamental rights for our country? What may be useful for them may not be worthy of consideration by us. The total population of Ireland is only 29 lakhs which is the same as, if not less than the population of the State of Baroda. And what is the character of this particular Constitution which has been considered worthy of imitation? I have not seen any important book on Constitutional History or Constitutional Law bestowing any special praise on the Irish Constitution and I fail to see what there is that makes it fit to be adopted whole-sale. In my opinion the Committee viewed the whole question from an utterly wrong stand-point. Our Constitution framers appear as if they merely studied the existing Constitutions and chose what they thought would probably serve as a sop to the socialists and communists. This I think summarises and properly expresses in a nutshell what has been presented to us. They did not want in any case to go very far; but none the less they were not in a position to leave out the social and economic aspects of the Constitution altogether untouched. In this half-hearted manner they have dealt with it. Therefore it is that we have something that cannot be accepted by a very large section of people either here or outside.
We expected, Sir, that the Indian society would in the future be regulated on definite principles. What are the principles that have been embodied here that people have a non-justiciable right to a means of livelihood, that the pay of man and woman would be equal, that youth and childhood will be protected etc.? All these things and everyone of the items that have been put down here are a matter of common knowledge and any modern Government would be ashamed not to own what has been embodied here. It is the absolute minimum that every modern Constitution and Government must avow. We do not want the hollow avowal of the minimum. We may not insist upon the maximum also and I am prepared for a compromise; but we do not want to depend upon mere platitudes and pious wishes, because that was not what we came here to achieve. At least since the year 1942 the character of the Congress has altogether changed. The change was due to the fact that there was a solemn promise that the Government of Independent India would be that of the peasants and workers of India and none others. That was what impelled so many rural people, so many youths from the rural population to sacrifice themselves in the "Revolution of 1942." If you analyse the figures you will be started, Sir, to find that none of the vested interests, none of the erstwhile patriots sacrificed themselves. They were the purely the backward and illiterate people from the rural communities who sacrificed themselves. Very few indeed of the people from towns who belonged to any of the higher and well-known families were ready to join them. That being so, it is our duty to look to the promises that we had held out, and in considering the Report we should have kept that ideal in view and not tried merely to make half-hearted recommendations so as to be able to say to the Socialists that we are also socialists of a sort and to try to say to the Communists that we also respect some of their theories. A friend of mine said, Sir, that there was an admixture of the Russian and the Irish Constitutions in these recommendations. I would like to inform my Honourable friend that he is labouring under a misapprehension. There is nothing of the Russian constitution in all these recommendations. Now what is the sanctity of these recommendations? They are supposed to be directives. Instead of having all these several items, let the framers of our Constitution give us a definite programme that they are determined to give effect to. The whole of india is thirsting for it. Instead of all that we are merely going to hold out some distant and indistinct hope without providing in our constitution any effective means as to when and how they are going to be
realized. Sir, I submit that it will be far better if the framers of the Report would kindly utilize the interval between this session and the next for reconsideration of their recommendations in the light of the criticism that may be levelled against the Report on the floor of this House. We may then hope to have something better than what we have here today unless the whole thing is to go to the drafting Committee whether the report is fully discussed here or not. If this happens we would be required to consider the draft. But if this comes up against for our consideration in the form of a report, we hope it will be in a different shape.

Actually, Sir, these are described as fundamental rights and fundamental rights, Sir, are in my opinion primarily intended for the protection of the life, liberty and comfort of an average man. The fundamental rights idea is actually something like the principles of the Magna Charta against possible oppression either by a monarch or by some body of people who can get into the Government. My view is that in the framing of our present constitution there was not much need of having fundamental rights as such. All the principles, the inclusion of which we thought necessary and especially this portion of the fundamental rights which are merely recommendatory, it not being incumbent upon any Government to carry out, could, I submit, Sir, have been either embodied as ordinary provisions in a constitution or radically altered. What are the difficulties that we the people of India suffer from? Our difficulties and impediments are diverse. The first is the poverty of our people, then ignorance and illiteracy, then lack of food, lack of vitality,, lack of morals, inhuman greed and consequent exploitation, ruthless profiteering and consequent oppression-moral, mental, social, spiritual and last but not least economic. To what extent are these fundamental rights going to protect us from this oppression, that is the question. And to what extent we can regard this as something on which we can go and remove these difficulties and reorganise our society, so that there is no poverty, there is no ignorance, no starvation, no unnecessary concentration of wealth in a few hands, etc. None of these things have been dealt with. In a word I say, Sir, they have been dealt in a deceitful manner. I understand the implication of the word 'deceitful' and yet I have no hesitation in using it. I say so, Sir, because once you have these as fundamental rights you will prohibit anybody going further than that. I wish it to be clearly understood that the intention is that no only should we not go further. That is the intention behind the
wording. I wish I could take the time of the House to read out and analyse the words used in every particular recommendation to prove the truth of my statement. But it is clear that the language used does not only not go for enough for the Indian situation, but the recommendations are so framed as not to permit anybody else coming after us to change the fundamentals and go ahead in a way that should be the only way that India should go. Our problems are huge, our population is big and we cannot merely sit and take portions from here and from there and especially from an Irish constitution. After all what is this Constitution? We have parts of the Irish Constitution copied out and we have three-fourths of the Government of India Act of 1935 copied out. If this is the Constitution which we are rushing through, I think there is no reason for any hurry at all. It should be remembered that we have got a very well considered adaption of the Government of India Act and that should suffice for our purpose. I am sure, Sir, the representatives who have come here are such that I do not expect any Indian Assembly would contain any better people than those we have here. Sir, we have the best talent in the land assembled in this Assembly. Why not take the opportunity of fashioning something original, something that is in keeping with the genius of our people and something that will be in perfect conformity with the historical background of the ancient civilization of this land? That is my submission, Sir, I hope Honourable members will confine themselves only to general criticism of the recommendations of the Committee that we have here and I think they will do a distinct service if they do not let these recommendations be passes hurriedly. In fact when I said that the decisions taken by the House should not be binding, this was at the back of my mind. I feel that when we have the whole constitution before us, we want ourselves to have the liberty if need be of changing the whole structure.

Yesterday I said that we had not even a skeleton. Even supposing we have a skeleton closer examination will show that the skeleton is in some parts human and in other beastly. It is skeleton which is not in keeping nor in harmony with the rest. This being the state of affairs, I submit to you, Sir, that since we are not going to meet hereafter and today is going to be the last day of our meeting, let us confine ourselves only to the general discussion of these recommendations. Passing of one or two items would not advance our cause in any way. If at all it will only damage it. And probably we may have to alter even those later on.
With these observations, Sir, I shall cut short my speech as I do not want to take too much of the time of the House especially because I spoke twice yesterday, I hope my observations will commend themselves to you and to the House.

Shri Vishwambhar Dayal Tripathi: (United Provinces: General):

*Mr. President, I welcome the report on fundamental rights, which has been presented before the House. Even though I am not satisfied with all that has been said in it, I warmly welcome some of its specific provisions. I want to invite the attention of the members of the Assembly particularly to Section 8. It has been said therein that within ten years our Swaraj Government will fully extend primary education to every poor man in every village. What it means is this that within ten or twelve or fifteen years, though every old and young man may not be educated, yet the Government will try to make full arrangements for the education of the children at least, and there shall not be any child in our country who shall not get an opportunity of education. I specially welcome this clause. Other clauses also are very important and they are appropriate as far as they go. I do not think that this report and its clauses are merely meant as a pious wish. I think that if we act fully according to them, there is no doubt that we will take the country a long way on the road to progress. But in spite of it all, there are some clauses in it which even though appropriate, are altogether inadequate. In this connection I want to invite your attention particularly to clauses 3 and 4. There are some other provisions also which should have been included in this report but they are not there.

On examining the amendments, I discover that they are coming before us in some form or other, and when we consider each clause separately the new principles involved in them will also come before us, and I hope that we will accept them only after full consideration. Once before also a report regarding fundamental rights was presented and we adopted it. It laid down justiciable fundamental rights. These principles which have been adopted in the second report are no doubts fundamental principles of administration but we cannot have them translated into action through the Courts. Our Constituent Assembly had a different status when the first report was presented. Even though we desired that it may have full power, there were
some restrictions, due to which we were unable to frame our constitution freely. But after the 15th August, although we got Dominion Status alone and not full freedom yet the Constituent Assembly is going to frame such constitution as will bring full freedom to our country. Now the situation is very different from what it was before 15th August. Therefore, it has become necessary that when the Constitution comes before us once again, we may think over the principles which we accepted earlier. The reason for this is that at that time we had several mental reservations, because of which we could not think freely. But now when the complete draft constitution comes before us, we will be able to consider it more freely. Sir, I am happy to know that yesterday you gave us permission to discuss the constitution when it comes before us and to make our suggestions. I want to draw your attention to clauses 3 and 4 in particular. Matters relating to economic rights have been mentioned there. Whatever has been said in them is appropriate but I wonder if in spite of it we will be able to accomplish the task which it is necessary for us to do. At the present juncture when we are taking over the reins of administration we have to give it serious thought. This is not merely my desire, but that of every Congressman. I think that it is the desire of every inhabitant of our country that the lot of our poor people be improved and the poor be no longer dependent on the rich. Nowadays, the rich dig wells, build Dharamshalas and Gaushalas for the poor and loudly proclaim that they are helping the poor in every day. This is a blow to the self-respect of the poor and in this manner they can never rise. The need is that the poor may realise and feel that they have also the strength to rise to the highest level and that they also have the same facilities for advancement as other have. This feeling can be roused in the poor only when we alter the fundamental principles substantially and mould our society on socialist line. There is some indication of it in clauses 3 and 4. But these clauses have a place in all the constitutions of the world. In spite of this the poor are denied the justice that should have been extended to them. Today practically in every country the poor are dependent on the rich. Therefore, I am unable to say what effect these principles will have in our country.

The leaders have made many sacrifices and led a very austere life for the liberation of the country during the last twenty five or thirty years. In our midst, we have our Honourable President who, during his life time, has set an example of sacrifice before the world. Many of our leaders have also done
the same and they are in our midst. We hope that in their presence justice will
be done to the poor. (But the Constitution that we are making today is not for
the present only but for centuries to come. Therefore, we should include in it
the principles on the basis of which justice may be done to the poor. (But the
Constitution that we are making today is not for the present only but for
centuries to come. Therefore we should include in it the principles on the
basis of which justice may be done to the poor and whether our present
leaders are living or not the basic principles of the constitution may be
brought in the action. We see today that even though the Government is in
our hands, and the Congress has made so many sacrifices, and in spite of our
efforts and desires, the influence of the capitalists, is continuously increasing.
Does not each one of us know that all the prominent newspapers are one by
one passing into the hands of the capitalists; the chains of newspapers are
coming under the control of the capitalists. If one wants to say something
against capitalism, it is impossible to get it published in leading newspapers.
Today the redeeming feature is that we have as our leaders those men who
have spent their lives in making sacrifices and in the service of the poor. But
after then or fifteen years when these people will be advanced in age and
when they will have no energy left to work, or when the ordinary people who
have not made sacrifices, will come up as leaders, then, it is difficult to
imagine as to what will be the condition of the country. Therefore, at this
time we must frame such a constitution as may prevent such a contingency.

In my opinion when we are framing a constitution for the coming
generations of India, it is necessary that we should include in it *inter alia* four
fundamental rights. Some of these four rights are already there in an indirect
form, some are coming in the form of amendments and some would probably
come at the time when the full draft of the constitution will be placed before
us. We will put forth our suggestions at that time, but I want to speak to you
here and now about the four fundamental rights which I have mentioned
before.

The first basic principle of our constitution should be that the poor man
should have full right to rise to the highest station in life, he should have the
facilities to do so, not out of somebody's compassion, but by his own strength
and the assistance of society. Very respectfully, I submit not by way of
criticism but because I feel that we included many things in our constitution,
laid down many principles and made an effort to solve many national and international questions, but we did not write even a word for removing the poverty of the poor. Except for goodwill, no other word is found in the whole constitution. Except for the right of vote, the poor man has not yet got any other right under the constitution. Being a representative of the poor I am grateful for this right to vote, but this is not enough. Therefore, I submit very humbly that we should make such rules and regulations as may make it clear and necessary that when our constitution will be ready an acted upon, it will not result in the rule of a few capitalists and vested interests and they alone will not dominate the administration and the people would not be dependent on them. There are a few friends of mine who feel irritated at the very word socialism. I do not want to irritate them and in fact there is no need of irritating them by making a mention of socialism. But I simply love this word. A time will come when socialism will reign supreme both in our country as well as in the world as was remarked by Pandit Jawaharlal Nehru while speaking on the Objectives’ Resolution. Even then, if there are some who feel irritated at I, I am not so petty as to use this word repeatedly to annoy my colleagues and friends. Therefore, if you dislike the word socialism, let it go, do not use it. But you must make such regulations as may prevent the domination of vested interests, capitalists and those who desire to keep the poor under subjugation. I would request you at least to prevent the capitalists and vested interests from standing for the membership of the legislature or from holding high posts or those in the Ministry. I am sorry to say so, but whatever I have said is not by way of criticism. When I go to old or New Delhi, I hear people wondering how such and such men have got into such and such committees. The public is suspecting as to whether the Constitution that is being framed is for the poor people or for vested interests. The names of those people generally appear for these committees who represent the vested interests and not of those who made tremendous sacrifices for their country during the last thirty years. I do not know what we should tell the people. We admit that up to a certain stage we may require the capitalists but it is not proper that they should wield influence under the Constitution. The country will never approve of it and I know that our leaders also who have suffered for our country do not approve of it. And if they also will not approve of it, some such provision should be included as may prevent these capitalists subsequently from gaining power. This is very necessary and it can be done in either of these two ways. You can either
provide that our constitution our future social structure will be on socialistic lines. If however, you do not wish to use the word socialism, you can provide that you are not prepared to retained, capitalism in any form, and so long as capitalism has to be retained, you may provide that no one who is engaged in profit-making can occupy high Governmental position. You can know who joins the Government with profit motive and how he takes unfair advantage of his position. You people understand the ways in which people take unfair advantage. I therefore respectfully submit that it is very necessary that we include some such provision in these fundamental rights as may be a safeguard against these dangers. Until we make such a provision, the poor people of this country will not be benefited by this constitution. Today we are engaged in fixing the salaries of Governors and Ministers and the allowances of members. But the greatest need at present is that of finding out ways and means to increase his income out of somebody's charity but we have to make such provision as may help him in making his life happy and in increasing his income. This is the foremost and the most important task facing us. Today when we go out we find people asking us as to what place we are giving to the poor in the Constitution and what we are doing for them, and they openly point out that unless some thing is done for them, this Constitution is useless for them.

The other thing that is necessary is that we have to make the nation strong and compact. Many things are needed to make a nation compact. The most important of them all is that there must be cultural unity amongst us. For cultural unity, among other things there should be one State language. I want to invite your attention to the speech of my learned friend Chaudhari Khaliq-uz-Zaman. When Pakistan was in the offing, he made the declaration that the language of Pakistan would be Urdu. I think that no one should have any objection to it. In one nation, there can be only one national language. it occurred to me on reading his statement that as a matter of principle it is very appropriate; and therefore it is necessary that in India too we may decide that in our country also there shall be one language. Until we decide this there is no doubt that we can strengthen neither our cultural unity nor our national unity. There has always been one culture in our country. By adopting one language we can strengthen it and thereby strengthen the Indian nation. We admit that ten to twenty thousand of our muslim brethren came from out side but undoubtedly it is difficult to say as to who are their progeny and where
they are. Nowadays about 99 per cent Muslims, 100 per cent Hindus, 100 per cent Christians and 100 per cent Sikhs are the descendants of common ancestors. Some of our muslim brethren, may under misguidance hurl abuses at Rama and Krishna. But there is no doubt, that in the near future when conditions stabilize and this virus of ill feeling and communalism is destroyed, every Muslim will consider Rama and Krishna as his ancestors just like Hindus. It has been a feature of the History of the World that in spite of change of religion cultural unity has remained intact. It was unfortunate that ill-will continued to grow amongst Hindus and Muslims in our country and its result was that we were continuously separated from each other. We have cultural unity and everyone has contributed towards it. Our culture has its roots in antiquity and every religious sect of our country has contributed towards it. Muslims have also made their own contribution. In the circumstances if we adopt one language as our State language we will be strengthening our culture and our nation. I am happy to know that very soon a resolution will come before you proposing that our State language be Hindi and that the script, be Devnagri. I think all members of this Assembly and every man, woman and child in the country will welcome this resolution.

The third thing, that is presently coming before you and which should also form part of fundamental rights, is very useful from the point of view of our culture and economy. Our country has all along been predominantly agricultural and no matter how much we may expand our trade so long as we do not become imperialistic which we should not be-our country will undoubtedly remain agricultural. Cow protection is very important for an agricultural country. I am happy to know that a resolution to this effect is coming before you in a very nice form, and I hope that this Assembly will adopt it unanimously. This matter too was hotly discussed. No only from financial point of view but from cultural point of view also, I think it is necessary to make adequate arrangements for cow-protection. From both the points of view, financial as well as cultural, it is necessary and proper that we should take steps for cow-protection, and I am happy that a resolution to that effect is coming before you.

The fourth important matter has not yet come before you, but I think, that when the draft constitution including the fundamental rights will be placed before you, this also will come before you. And that is, how to make
our nation strong and powerful in the shortest possible time. We do not want to attack any country of the world. We do not want that there should be any conflict in the world. But everything does not depend upon our wishes. If any country desires 50 per cent peace, we want 100 per cent peace and we will make all possible efforts to being about peace in the world. This we can accomplish only when we are strong. From the point of view of population our country is the largest in the world and therefore it is our duty that owe put an end to the tendencies of violence that we find in the world today. But we can stop them only when we ourselves are strong and for that it is necessary that every young man of our country should receive military training. I want that we should make a law that every young man of our country will receive military training unless he is physically unfit and the State should compel him to receive such training. To make the nation strong, and also to remove the indiscipline that has crept into us owing to our dependence for centuries it is necessary that physically fit men should be conscripted and given military training.

These four things are very necessary and I confidently hope that when these matter come before you from time to time, you will consider them and the House will support them unanimously. I said at the very outset that so far as the principles contained in this report are concerned, I welcome them, but I think that they are inadequate. Until these fundamental principles are added, neither can the poor masses of the country be fully benefited nor can our country become strong. I hope that the Honourable Members of the Constituent Assembly will welcome this report and will support the inclusion of the fundamental principles stated by me.]*

With these words I welcome once again the report Jai Hind.

**Mr. Satyanarayan Sinha** (Bihar: General): Sir, I move:

"That the question be now put."

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

"That the question be now put."
The motion was adopted.

Mrs. Renuka Ray (West Bengal: General): Sir, yesterday you said in the House that the clauses of the Report would be discussed at a later stage. Some of us have amendments, particularly to clause 16. I hope we shall have an opportunity to bring up these amendments at a later stage.

Mr. President: At present we have taken up the motion that the Report be taken into consideration and if this motion is carried, then we shall take it up clause by clause and any amendments to the clauses may be taken up at that stage. Does the mover wish to say anything in reply?

The Honourable Sardar Vallabhbhai J. Patel: I am glad the discussion is over. We have a very interesting general discussion on the Supplementary Report. The discussion on the main Report was shorter than that on the Supplementary Report. So far as the Supplementary Report is concerned, the general discussion is based on the non-justiciable rights, and on the few clauses which have been submitted in this Report about the justiciable rights there has been practically no discussion. The real prolonged discussion has been on the other part of the Report.

This Report lays down certain administrative objectives. We have already passed the main Resolution defining the objectives and therefore whether you have this prolonged debate or not is more or less an academic thing. Therefore I suggest that the Report be taken up for consideration and when we come to the clauses, one by one, if any amendments are moved, then I may have to say something, but now I have nothing more to say except that the Report be taken into consideration.

Mr. President: The motion is:

"That the Report be taken into consideration."
The motion was adopted.

Mr. M.S. Aney (Deccan States): Sir, I want to point out that it is the general rule that when a reply is made the Member who is replied to should be present in the House to hear the reply to his attack. This is a recognised rule of debate in all legislatures.

Mr. President: I hope the Members will bear in mind this advice of as experienced legislator like Mr. Aney.

Clause 16

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move clause 16:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

We recommend this clause to be accepted by the Assembly in its present form. That is the final recommendation of the Advisory Committed. After a long discussion considering all the amendments, we finally came to the conclusion that this is the most suitable form for incorporation into the Fundamental Rights and I move that this clause be accepted by the House.

Mr. President: I have notice of several amendments to this Clause.
Shri R.V. Dhulekar (United Provinces: General): Sir, I want to suggest a slight verbal change, that instead of the word "school" in the clause, the words "teaching institution" may be used.

Mr. President: But you have given no notice of any such amendment?

Shri R.V. Dhulekar: No, Sir.

Mr. President: Mr. Dhulekar suggests that the words "teaching institution" may be used, in the first line of this clause, in place of the word "school". He has given no notice of any amendment.

Mr. K.M. Munshi (Bombay: General): Sir, that will enlarge the meaning. The whole idea will be changed it may mean a college, postgraduate school, or anything. The whole idea is that right should be restricted to a school. It is not a simple matter of changing one word by another.

Mrs. Purnima Banerji (West Bengal General): Sir, I move.

That in clause 16 the following new paragraph be added as an explanation-

"All religious education given in educational institutions receiving Statewide will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupils’ mind rather than such as will foster sectarian exclusiveness."

The object of the clause, Sir, is, as the Mover of the Report has suggested, to prevent the students attending these schools being forced to attend the religious classes, if they do not wish to do so. With that I am in perfect agreement. But I know there are a large number of institutions which are run on religious lines and which came into the field of education much before the State came in. There are in my Province 'Maktabs' and 'Pathasalas' which perform the function of importing education to children of school-going age. But we have seen that the religious instructions given there are of such a nature that, instead of broadening the mind of the child, they mis-educate the mind and sometimes breed a certain type of fanaticism and religious bigotry as a result of receiving education in these 'Maktabs' and
'Pathasalas.' It is a controversial point as to whether we should give any aid to
denominational schools at all- I do not wish to open that subject at all
because there are experts appointed for this purpose and their report is
awaited and I am sure after that the legislature will enter into that subject in
fuller detail. My object in moving the amendment is that the education
imparted in these institutions should be restricted or controlled by the
Government without any fear of interfering with anybody's religion. The
curriculum should be in the control of the Government and should be of such
a nature that it broadens the mind rather than create an exclusiveness. When
we were discussing the Minority Rights Report, we said that our aim should
be to form a united nation and we have done away with separate electorate
and agreed on fundamental rights and given each the right to follow his own
religion. But I do believe that however secular a State you may wish to build
up, unless one member of it appreciates the religion of another member of the
State, it would be impossible for us to build up a united India. Therefore,
without interfering with the religion of anybody, the State should be perfectly
entitled to see that in the formative age of the child, when he is of the school-
going age, the religious instruction is controlled and that the syllabus is of
such a nature that the child will develop into a healthy citizen of India' capable of appreciating each other's point of view. We may be united by
political parties but if we do not appreciate each other's religion. We shall
find that instead of having really men of religion in our midst, we shall be
breeding a type of exclusiveness which will be most harmful and on that type
of mind, I am afraid, the future of the nation cannot be built up. With these
few words, Sir, I move my amendment and I hope the House will agree with
me and accept it.

Mrs. Renuka Ray: Mr. President, Sir, I move my amendment leaving
out the first party, namely-

That for clause 16, the following be substituted:-

"No denominational religious instruction shall be provided in schools
maintained by the State. No person attending any school or educational
institution recognised or aided by the State shall be compelled to attend any
such religious instruction."
Sir, I feel that the farmers of the Report did not intend to imply what this clause does imply, namely, that instruction given in schools maintained by the State of out of public funds may be of a denominational character. Surely denominational schools cannot be run by a democratic secular State. Such schools may be recognised or even aided, but as the State we envisage under the new Constitution will be secular having no State religion as such; it cannot set up denominational religious institutions as State schools. I do not want to make a long speech: I merely want to point out that if my amendment is substituted for clause 16, then this interpretation will not be possible and what this clause is intended to convey will be brought out better. I hope the House will realise the necessity of making this substitution.

Sir, even before we have freedom, the Central Advisory Board of Education decided that the education that was to be given by the State in this country should not be of a denominational character and that religious education of a denomination character was the responsibility of the community and the home to which the child belongs and not of the State. I am sure that now that we have to fashion our own destinies and we are in a position to usher in that free and democratic State for which we have striven and for which so many have sacrificed and died, it is open to us to say that we do not want to be inconsistent. We do not want to bring in an educational system whereby the education given by the State will be in direct contravention to the ideals and the interests of the State itself. I do not say that denomination religious education should not be allowed. But education given by the State should have the teaching of moral and spiritual values; it cannot by the very nature of the State be of a denominational religious character. I hope that Sardar Patel will accept this amendment, because it is not in contravention to the desire of the Committee. It merely tries to clarify the issue. The clause as it now stands may be misunderstood to mean that we are submitting to the State having denominational educational institutions as a part of its educational programme of policy.

Mr. President: There are only two amendments of which I have notice. Both the amendments have been moved. Now, the resolution and the amendments are open for discussion.
**Shri K. Santhanam** (Madras : General): Sir, I strongly support the amendment moved by Shrimati Renuka Ray. I think it carries out more fully the intentions of the Sub-Committee. In our country, even in the same religion there are any number of denominations. We want the village panchayats to control education; we want the local boards to control education. In a particular village or a particular area, a particular Hindu denomination may be in a majority. We don't want Saivaites to give Saivaites instruction; the Vaishnavaites to give Vaishnavaites education; the Lingayats to give Lingayat instruction. We do not want to give even the slightest loophole for such controversies. Therefore, it is essential that all schools maintained by the State should have no religious instruction whatsoever. Let other agencies provide this instruction, if they so choose, in 'out of class' hours. That is a different thing altogether. I am objecting to religious instruction as such, nor I am objecting even to denominational character of religious instruction, but our public institutions should be absolutely secular. They should be beyond the reach of all religious controversies. Therefore, this amendment says that where schools are maintained by the State, no denominational religious instruction shall be provided in them. It carries out the intentions of the Committee much more precisely and fully. If an institution is recognised or receives aid from public funds then there should be no compulsion. There may be religious instruction in an aided school, but where any parent of a minor or-if a student is an adult such student does not want to attend the classes, he should not be penalised in any way. He should be allowed to absent himself from such religious instruction. I think both these clauses are fundamental and I hope that they will be unanimously accepted by the House.

**Mr. H.V. Pataskar** (Bombay : General): Sir, I would like to have clarification with regard to one point. The clause states "No person attending any school." In the beginning Mr. Dhulekar suggested to replace the word "school" by educational institution." As I understand it, the word "school" is used in a wider sense implying any class of institution where education is provided, but if it is the idea that we are going to exclude colleges, for instances, which are in one way schools where education is given, then I think what it would lead to is that in schools which are aided by Government you cannot make religious instruction compulsory, but in colleges, if we use the word 'school' in its restricted sense, you can make it compulsory. I know
of some colleges in the city of Bombay where some time back this religious instruction was compulsory. So I hope the Honourable Mover will clarify this point when replying.

Mr. President: It seems to me that nobody is willing to speak on this motion or the amendment. Will Sardar Vallabhbhai Patel reply?

(B. Pocker Sahib Bahadur, Madras: Muslim, stood up)

Mr. President: Oh, you want to speak?

B. Pocker Sahib Bahadur: Yes, Sir, I only want to say a word as regards amendment No.34. The object of this amendment seems to be to unify all the people of this country towards one religion or something tending towards it. If that is the object, then I certainly oppose it. I must say that in some previous speech in Hindustani on the general discussion, some similar suggestion was made; of course, I have not been able to follow that and I am not proficient to deal with that. But generally, I would say that any attempt towards the unification of all religions or towards giving instruction in public schools which is intended to unify religion is fundamentally opposed to the other clauses of fundamental rights which we have passed.

Now, Sir, I would like to point that the carrying out of this amendment No.34 will be opposed to the other clauses and it would be opposed to the Fundamental Rights upon which we have been working so far and the introduction of this amendment will create not only discontent but it will take away the very basic principles upon which this Constitution is to be built. Then, I have no objection to the amendment No.59 but I would point out that even though no denominational religious instruction may be provided in schools maintained by the State, what we find is in all the text-books which are prescribed for the various classes in the Schools we find so many religious topics are introduced particularly topics which deal with Hindu religion or some other religion. I would like to say that subjects which deal with the moral aspects only without having any religious idea introduced may find a place but if it does find a place in the text-books it may be from all religions alike and not from any particular religion alone.
Therefore, I would oppose this amendment No.34 and support the original clause as it stands but I would only add that there are so many educational institutions which are intended to promote some particular minorities or religious minorities because of their backwardness in the matter of education. I submit that such institutions should not be affected by this clause.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): This is rather an important matter and my preference is for the original proposition. i.e., as framed by the Committee. I am in entire agreement with the mover of amendment No.59, Shrimati Renuka Ray, whose aim is to have secular education not influenced by any kind of religious or spiritual worship or education which must be the aim. The amendment by the other lady member is somewhat controversial. What would be the fundamental education that should be given to the child would be a matter of opinion and it might lead to controversy. So, Sir, the amendment No.34 cannot be taken into account at all. It will do more harm than goo. For, this elementary philosophy of comparative religion is very difficult to define. While as I have said I generally support the amendment of Shrimati Renuka Ray where it aims that in no State Schools there should be any religious instruction, it does not contemplate prevention of religious education being given by other recognized and aided schools. So the objective may not be the same by the amendment of Mrs. Renuka Ray. Allowing the proposition, rather the original motion, as framed by the Committee, is very sound. It may be that there are some institutions where religious education is given and some State aid may be given and if there is no compulsion that no pupil can be compelled to receive such education, there is no harm in it. It might stand. So, I think, Sir, that the clause 16 as amended and placed before us by the Committee is better and I support that.

Sriyut Rohini Kumar Chaudhury (Assam : General) Mr. President, Sir, I rise to give my whole-hearted support to the Motion which was moved by our Honourable friend Mrs. Purnima Banerji. It is not the personality of the Mover which has promoted me to do so but I think, Sir, taking the two motions side by side, the motion which was moved by Mrs. Banerji would take us nearer to the goal of our ideal of secular education. My Honourable friend, Mrs. Renuka Ray, has made an earnest appeal to the Honourable
Sardar Patel and I am sure he is not relishing the position of having to choose between either of the two amendments but, as is well known, he is capable of surmounting any difficulties and I am sure he will get over this difficulty and give regard to the appeal of Mrs. Renuka Ray and also accept the motion made by Mrs. Banerji.

Mr. K.M. Munshi: Mrs. President, Sir, my first proposition with regard to this Fundamental Right is that the words 'Public Funds' should be really 'State Funds'. Mr. Kamath's amendment was evidently lost sight of. When the original Fundamental Right was accepted, wherever the words 'Public Funds' were found, they were substituted by 'State Funds.' The object was that the money collected from public subscription should not be considered the same as 'State Funds'. Therefore I appeal to the Mover that this verbal change might be accepted. My second submission is with regard to the amendment moved by Mrs. Banerji. However laudable the object, the House will remember that this is a justiciable right and therefore every word of it will have to be discussed, considered and decided upon by the different High Courts and the Supreme Court in the end. Now, if Mrs. Banerji's amendment becomes law as a justiciable right, this will be the position. There is a school in which religious education is given. The first question raised by some friend or by some enterprising man will be 'Is it in the nature of elementary philosophy or comparative religions? So the matter will have to be taken to the Supreme Court and eleven worthy judges will have to decided whether the kind of education given is of a particular religion or in the nature of elementary philosophy of comparative religion. Then, after having decided that, the second point which the learned judges will have to direct their attention to will be whether this elementary philosophy is calculated to broaden the minds of the pupils or to narrow their minds. Then they will have to decide upon the scope of every word, this being a justiciable right which has to be adjudicated upon by them. I have no doubt members of my profession will be very lad to throw considerable light on what is and is not a justiciable right of this nature. (A Member: For a fee). Yes, for very good fee too.

Then again they will have to consider whether a particular kind of teaching fosters sectarian exclusiveness. All this I think will require any amount of litigation before a quietus can be given to this right.
An Honourable Member: May I ask the Honourable Member whether comparative religion taught in all universities and educational centres is not narrow minded and likely to warp the minds of the pupils?

Mr. K. M. Munshi: It is not a point of order, but a question. There are no lawyers set up there to consider whether this comparative philosophy or elementary comparative philosophy taught in the educational institutions broadens the pupils’ minds or not. These decisions will have to be for the whole country including the Indian States. But all these words are of a nature not capable of being interpreted in judicial terminology except by dozens of decisions and an expenditure of lakhs of rupees. Therefore, I am submitting that this is more in the nature of a dictum of what may be called broad rationalistic philosophy and is not to be approached legalistically and embodied into justiciable and non justiciable rights. To attempt to do so would lead to considerable confusion. Even if the idea is to prescribe that religious education must not be of a nature which is exclusive, then a better phraseology would have to be found.

On the merits I would like to say only one word and it is this: Educational institutions of a denominational character often give religious education. They are doing so, not for the purpose that the students will have a general knowledge of comparative philosophy but for seeing that the students who are members of a particular denomination are given education in that kind of religion. And as a matter of practice, I may assure the House that even if this 'justiciable rights' is there, it is not going to make any difference. Supposing there is a school of a particular denomination where a particular doctrine is taught, can any one compel that institution to impart instruction in comparative philosophy to its students? First of all, at that stage students cannot understand philosophy. But even if you compel them, the school, its teachers and even the authors can so manipulate things that at the end of the study of comparative religion, the student comes to the conclusion that that religion is the best. I know of a concrete instance. A certain denominational school taught the sacred book of that community to the classes, but at the same time lectures were being delivered in the nature of comparative study of religion. At the end of it it was taught that theirs was by far the best. This amendment will not meet the situation. It will make it worse. I submit, it is impossible to bring this doctrine under the terms of a clause as a justiciable
right. If this amendment is accepted it will work great hardship and will remain a dead letter.

Then I come to the next amendment of Mrs. Ray. As far as the first part of it is concerned, viz., "No denominational religious instruction shall be provided in schools maintained by the State" as far as the Federation is concerned, it is going to be a secular and democratic State. So far as the Units are concerned, I do not think the provinces are going to be religious States. But at the present moment this Fundamental Right would not only affect the provinces, but also the States. If the Indian States are willing to accept that, it is a different matter, but it would not be right in my opinion to lay down this general principle in the present condition of India unless we are all unanimous on this point.

As regards the second sentence, I confess it is an improvement on the phraseology of Clause 16 as adopted by the Advisory Committee and for this reason: "No person attending any school maintained or receiving aid out of public funds..." Now, the word 'maintained' in the original clause may be construed as wholly maintained. Therefore, Mrs. Ray's amendment would recognise this fact. If it is wholly maintained, it is different. This clause only refers to what may be called State-aided institutions. Therefore, her words 'No person attending any school or educational institution recognised or aided by the State' constitute a better phraseology. I submit it should be accepted. It runs thus: 'No person attending any school-'maintained' instead of this the word 'recognised' may be inserted. The result will be: 'No person attending any school recognised or receiving aid out of public funds. So it automatically puts out of its purview State institutions which are wholly financed by the State.

Now, with regard to the words 'educational institutions' I submit it enlarges the meaning of the word 'school' to a very large extent. It would create grave difficulties if it is allowed to be used. There may be pathasalas or madrassahs giving religious instruction. Their express object is to give religious instruction and everywhere today these are aided by the State. Any such rigid fundamental right would have the effect that all those thousands of educational institutions will have to go out of existence.
**Shri K. Santhanam:** May I know why those institutions should go out of existence?

**Mr. K.M. Munshi:** The point is that there are schools which are intended to teach religion and every student who goes there is taught religion. Pathasalas are not strictly educational institutions. Therefore the word 'school' has a clear meaning that meaning is that schools are institutions where primary and secondary education is given and not education of a specialized character. Therefore I submit, Sir, Clause 16 as moved will express the idea completely if two words are changed, "maintained" is altered into "recognised" and "public funds" into "State funds". That is my submission.

**Mr. Debi Prosad Khaitan** (West Bengal: General): I believe that 'out of' will have to be changed into 'by'. Then it will read: "No person attending a school recognised by the state."

**The Honourable Sardar Vallabhbhai J. Patel:** Sir, I am prepared to accept the change suggested by Mr. Munshi that instead of the word "maintained" in the clause we put the words "recognised by the State" and instead of 'public funds' we put "out of State funds."

The only thing that I have to say in considering the clause is that one has to keep in mind that this is one of the justiciable rights and we must in drafting or in adopting the clauses keep in mind that this is not a clause which belongs to British India only but to the whole of the Indian Union and in adopting these clauses we have to consider the fact that it should not be such as to open the flood gates of litigation and create many difficulties afterwards. Therefore, these should be mainly general propositions under which special cases would give so much to go to the court and therefore with these changes which I am accepting I move the proposition for the acceptance of the House.

**Dr. S. Radhakrishnan** (United Provinces: General): Mr. President, I should like to have an elucidation. Does this term "recognised by or receiving aid from" include or exclude institutions wholly maintained administered and financed by the State?

**The Honourable Sardar Vallabhbhai J. Patel:** It includes.
Mr. H.V. Pataskar: May I know if it is the idea to exclude colleges and all other higher institutions, where religious instruction may be made compulsory or is it used in the larger sense of any educational institution?

Mr. President: Mr. Pataskar wants to know whether 'school' includes colleges or not.

The Honourable Sardar Vallabhbhai J. Patel: It excludes colleges.

Mr. President: May I put the amendments to vote? The first amendment is that of Shrimati Purnima Banerji:

That in clause 16, the following new paragraph be added as an Explanation:-

"All religious education given in educational institutions receiving State aid will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupil's mind rather than such as will foster sectarian exclusiveness."

The amendment was negatived.

Mr. President: The next amendment is by Shrimati Renuka Ray:

That for clause 16, the following be substituted:-

"No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction."
Mr. K.M. Munshi: I want to know whether the Honourable Mover has accepted the word "recognised" in the place of "maintained."

Mr. President: That is in the original resolution-"maintained by the State." He has accepted that I think.

Pandit Hirday Nath Kunzru (United Provinces: General): I do not understand the exact effect of the amendment. Does the acceptance of the amendment by the Honourable Sardar Vallabhbhai J. Patel mean that clause 16 will relate not to schools maintained by the State but only to schools recognised by the State and aided out of state funds?

Mr. President: Mrs. Renuka Ray says she is withdrawing the amendment. I will put the original proposition.

Pandit Hirday Nath Kunzru: Sardar Vallabhbhai Patel said he would accept the amendments suggested by Mr. Munshi and I believe that if these amendments are accepted clause 16 would read as follows:-

"No person attending any school recognised by the State or receiving aid out of State funds shall be compelled etc. etc."

Is this correct?

Mr. President: I am going to put that very proposition to the House as you have just now read out.

Mr. K.M. Munshi: Instead of 'state funds' it would be better to have "recognised by or receiving aid from the State" because it cannot be recognised by State funds. That is only a matter of drafting.

Mr. President: The sentence will be:

"No person attending any school recognised by the State receiving aid out of state funds etc."

Pandit Hirday Nath Kunzru: That is, the schools maintained by the State are excluded from the scope of this clause. This is a curious
phraseology and I should like the meaning of this clause to be clearly explained. If it is the intention of the Government that denominational religious instruction might be given by the state in the State schools then that should be stated clearly so that we may make up our minds and decide how we should vote on this clause.

**Mr. President:** We may get over the difficulty if we put the clause in the following way: "No person attending any school recognised or maintained by the State or receiving aid out of State funds etc." Will that do?

**Pandit Hirday Nath Kunzru:** I think that will remove the difficulty.

**Dr. S. Radhakrishnan:** If the institutions which are maintained by the State are to impart denominational religious instruction then what happens to our declaration that the State is a secular institution which will not impart any instruction of any denominational kind? That is the real question. We have adhered to the first principle that the State as such shall not be associated with any kind or religion and shall be a secular institution. In other words we are a multi-religious State and therefore we have to be impartial and give uniform treatment to the different religions, but if institutions maintained by the State, that is, administered, controlled and financed by the State, are permitted to impart religious instruction of a denominational kind, we are violating the first principle of our Constitution. On the other hand, if we say aided institutions may impart religious instruction, we protect the interests of the people against the violation of their religious conscience by saying that they shall not be compelled against their will to join classes on religion. So a distinction will have to be made between institutions maintained by the State and those institutions which are merely aided from State funds. So far as the former are concerned we cannot allow any religious instruction of a denomination character. So far as the latter are concerned, you may allow, provided you protect the rights of the minorities concerned. We have to make ourselves absolutely clear on this matter.

**The Honourable Sardar Vallabhbhai J. Patel:** Sir, there is some confusion. So far as any school that is entirely maintained by the State is concerned, we cannot do anything by way of introducing fundamental rights for which the remedy of taking it to the court is given. Because, this is not restricted to the British Indian portion alone; it covers the whole of India, that
is the Indian Union. Therefore, if a Unit which is a State, take the case of Hyderabad, wants to maintain wholly its own school in which it wants to introduce religious education, it may compel; but we cannot give a remedy by which anybody can go to the court and say, "you will not impart religious education here." I do not think this is proper at this state. Therefore, the wording 'recognised by or receiving aid from the State funds' is introduced.

Mr. M.S. Aney: I have one doubt, Sir. Does the word "State" mean only the Union or the Units also?

Mr. President: He wants to know whether "State" includes Units.

The Honourable Sardar Vallabhbhai J. Patel: "State" includes Units.

Shri R.V. Dhulekar: On a point of information, Sir, I would like to know whether the wording is "recognised by and receiving aid" or "recognised by or receiving aid".

The Honourable Sardar Vallabhbhai J. Patel: The word 'Or' is there.

Mr. President: Recognised by the State or receiving aid out of State funds. One or the other.

Shri R.V. Dhulekar: If the word "or" is there, that means that even denominational institutions which are wholly maintained by private funds will not be recognised by the Government at all. So, the word "or" should not be there. It should be "and". They should be recognised by the Government and aided. If they are aided then this rule will apply. If it is maintained only by private funds, then........

The Honourable Sardar Vallabhbhai J. Patel: Even if it is maintained by private funds, if it is recognised by the State, you cannot compel the students to have religious education.

Dr. B. Pattabhi Sitaramayya: (Madras: General): May I express a difficulty, Sir?

The Honourable Sardar Vallabhbhai J. Patel: There will be no end to the difficulties.
Dr. B. Pattabhi Sitaramayya: If you want to pass it in an ambiguous manner, there is no trouble. I see an obvious defeating of the purpose for which the amendment is made.

The Honourable Sardar Vallabhbhai J. Patel: I do not see any difficulty.

Mr. President: Mr. Munshi's amendment was introduced in the course of the discussion and there was no proper notice of it. Therefore, this question has arisen.

The Honourable Sardar Vallabhbhai J. Patel: What is the difficulty?

Dr. B. Pattabhi Sitaramayya: There are certain institutions in the provinces or States where certain benefactors have maintained whole institutions and they would like to impose certain religious instruction upon the students. We wanted to exempt them. That is all very well. Now, the object is to exclude a category or institutions maintained by a certain province or State or private funds without any connection with the State. Very well, then, you have excluded them. Then you have included two categories of institutions: one which is not recognised by but is receiving State aid: in that case, my argument does not apply. But, when you say recognised by or receiving aid from the State, then you have introduced two categories of institutions. One of them includes any institution recognised by the State. A state maintained institution is a recognised one and thus becomes included, when it was meant to be excluded. Thus, the right of compulsion is taken away and the very exemption that we have given is undone; because even a State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is taken away. Therefore, if you want to validate and affirm your exemption to the State maintained institutions, you must say, "recognised and receiving aid from the State." That creates only one category. Otherwise, the language with 'or' would include those institutions which you have excluded. Let us take a little time, each person for himself, to judge what it means.
Dr. Mohan Sinha Mehta: (Udaipur State): Sir, I am very glad that the Honourable Pandit Kunzru raised that point. From the explanation that has been given, it is quite obvious that what we understand was not really intended. Now we are told that an institution maintained by a State may have religious instruction compulsory. Well, Sir, that is a position about which some of us in this House have very strong feeling, and since the matter is not clear, I would strongly submit for your consideration that it be referred back to the Committee. If you accept the first sentence in Mrs. Renuka Ray's amendment and keep the rest of the original proposition, it would be all right. It will meet the point raised by my friend, Professor Radhakrishnan..........

Mr. K.M. Munshi: Are we debating the same thing over again? I think we have adopted it.

Mr. President: The difficulty is, you put in certain words in the course of the discussion, of which there was no notice to the members. The mover has accepted them and therefore the difficulty has arisen.

Dr. Mohan Sinha Mehta: The matter is of fundamental importance. There is a very real difficulty and I wish that it should be cleared before you ask us to vote on the proposition. I would remind the House that this subject was discussed at two sessions of the Central Advisory Board of Education. It is not a matter which should be treated lightly.

Pandit Hirday Nath Kunzru: Sir, may I strongly support the suggestion by Dr. Mohan Sinha Mehta. It is very desirable, in view of the importance of the subject, that this clause should be referred back to the Advisory Committee. I do not want to labour the point, but in order to show that it deals with a question of vital importance, I wish to point out that if we allow the State to give religious instruction in any school, it means that we accept the principle of a State religion and that there shall be something like an Established Church. Now, so far as I remember, Sir, during all the years that the struggle for national freedom went on, we stood for a secular State. Indeed, the earlier generation of leaders of Indian public opinion welcomed the measures taken for the disestablishment of the Protestant Church in Ireland. How can we then, Sir, consistently with our previous principles now accept a position in which the State will be in a position to give religious instruction and thus have a State religion which it is bound to protect above
all other religions? Therefore, Sir, I strongly support. Dr. Mohan Sinha Mehta's suggestion and I hope Sardar Vallabhbhai Patel will have no objection to that.

There are many points which have not yet been decided by this House. Provision will be made in respect of them in the Bill that will come before us and we shall then have an opportunity of arriving at a decision with regard to them. No harm will be done if we leave one more point to be discussed and decided at a later stage. Indeed I think that it is absolutely necessary, in view of the cardinal character of the question that has arisen, that we should not decide it in a hurry today. We must refer it back to the Advisory Committee if we attach any value to fundamental principles.

Mr. K.M. Munshi: Sir, it is not correct to assume that the matter did not receive consideration at the hands of the Advisory Committee or the original Fundamental Rights Committee. There are two different propositions. One proposition is that no school which is recognized by the State, whether aided by the State or not, should be such where students are compelled to take religious instruction. It is one proposition, which is embodied in this. The reason why the word "maintained" was altered to "recognised" was this: there are several schools which do not receive aid from the State and yet they are recognised schools. I know in my part of the country there are several recognised schools which send up students for various examination, but they do not received any aid from the State, but they are schools all the same, and the object of substituting the word "maintained" by "recognised" was to cover all those schools, whether they receive State aid or not, but are recognised by the State. Now, so far as those schools are concerned, proposition contained is very simple, that they shall not compel any student to receive religious instruction against his will. The second proposition, which is quite different, which has nothing to do with this clause, is the one contained in Mrs. Renuka Ray's sentence, that in schools which are controlled, owned and maintained by the State there shall be no religious education. Now these two are entirely different propositions.

Pandit Hirday Nath Kunzru: May I point out to my honourable friend that Sardar Vallabhbhai Patel said that this clause as it stood included both the categories of schools?
Mr. K.M. Munshi: But not for the purpose of excluding religious education. This only recognizes the right of the student or his parent to say "my son shall not be given any religious instruction." This is only one part of it. The other is a different proposition. We need not mix up the two. A State-maintained institution and owned by it may conceivably give religious instruction or may not. It is an entirely different subject.

The object of this clause is not to fetter the State from putting up religious schools but from in insisting that every student shall be compelled to undergo religious instruction. This matter came up again and again and the Committee always held that it was not necessary to put down in fundamental rights the converse proposition. If the converse is brought before the House, it may be discussed at another time. But so far as this proposition is concerned, it stands as it is.

Mr. N. Gopalaswami Ayyangar : (Madras: General): A state does not recognise its own institutions. "Recognized" has got a particular meaning.

Mr. K.M. Munshi: If a school maintains an institution, then if you want to prohibit religious instruction in it, it is an entirely independent subject. It is not covered by this clause. This clause only covers institutions which are recognized and State-aided. I see no reason why this part must be held up till the other one is decided. That other one was discussed again and again and ruled out by the Committees. It is not correct to say that neither the Fundamental Rights Committee not the Advisory Committee considered it.

Mr. Alladi Krishnaswami Ayyar: (Madras: General): In view of the difficulties that have cropped up, and I submit that they are genuine, it is necessary that the clause should receive further consideration. The way in which I put the matter is this. You have got three classes of institutions: first, an institution which is maintained by the States, second, an institution which is recognized by the State, third, an institution which receives aid from the State. Now, though the subject might have been considered in a general way by the Committee, and my friend Mr. Munshi is quite right in that, personally speaking I am impressed by the argument that a State being a secular institution, there are weightier reasons why religious instruction should not be forced in an institution which is wholly maintained by the State than in a merely recognized or partly aided school. Difficulties in regard to Indian
States have been pointed out. If the State maintains an institution for a particular purpose, you may make an exception: for example, for imparting Sanskrit learning or training a particular class of pandits or some such thing. But generally speaking an institution maintained by the State must stand on a better footing than an institution which is recognized by the State or which is receiving aid from the State. Therefore I do think that the whole question may be reconsidered in the light of the suggestions made in the House, instead of one point being accepted, another point being left open, and another being referred to the Advisory Committee.

I do not mean to say anything different from what Mr. Munshi has said: but certain points have cropped up here. Let us consider them; they are important points, and I do think they should be remitted for reconsideration by the Advisory Committee or even by the Committee which has been set up to revise the Draft to see whether it is possible to bring in line these different classes.

The Honourable Sardar Vallabhbhai J. Patel: These difficulties arise when at the last moment pressure is being put to accept some suggestions, and then even those who make the suggestions afterwards say 'Oh, this is not what we meant.' This question was discussed in the House and the clause was referred back to the Advisory Committee. The Advisory Committee considered it in all its aspect and brought it here. Then at the last moment these changes were pressed. We said 'All right if you think those better, we accept them.' Instead of referring back to the Advisory Committee, it would be better to refer it to a small Committee of two or three people. My suggestion is that instead of referring this small matter to the whole Advisory Committee, it should be referred to a small committee, and if they make any suggestions, they can be brought forward at the next session. I do not think it is advisable to refer it back a third time to the Advisory Committee.

Shri K. Santhanam: We are not going to consider it fresh. It may be referred to the Drafting Committee.

Honourable Sardar Vallabhbhai J. Patel: That is better.

Mr. President: Does the House wish to refer it to the Drafting Committee?
Honourable Member: Yes.

Mr. Tajamul Hussain (Bihar: Muslim): The Drafting Committee will only draft. We settle the principle.

The Honourable Sardar Vallabhbhai J. Patel: The House cannot discuss what the Drafting Committee will do.

Pandit Hirday Nath Kunzru: Mr. Patel's suggestion was better. Let us refer this to a small committee that can send its recommendations to the Drafting Committee. I think that will meet the points of view of all Members of the House.

Mr. Hussain Imam (Bihar: General): A committee appointed by the President will do. They will send their recommendations to the Drafting Committee.

Mr. President: If that is the wish of the House I do not mind.

(Interruption by a member in Hindi.)

Mr President: The Members of the Drafting Committee are here and they have also heard the discussion, and they will get a report of this debate. I am sure they will take all points into consideration and then put forward a draft eliminating all the difficulties mentioned there.

Pandit Hirday Nath Kunzru: Is there any real difficulty in the suggestion made by Mr. Patel?

Mr. President: The House has accepted it.

Pandit Hirday Nath Kunzru: I think if Mr. Patel puts it forward strongly, the House will accept it.

Mr. President: I do not think it is necessary for him to do that. If the House accepts it I will do it.

Pandit Hirday Nath Kunzru: Let Sardar Vallabhbhai Patel put it forward strongly.
The Honourable Sardar Vallabhbhai J. Patel: I have no objection if it is referred to a committee appointed by you and that committee may send it to the Drafting Committee.

Mr. President: I will nominate four or five gentlemen who are really interested in this subject and they can send up their recommendations to the Drafting Committee.

An Honourable Member: It must come to the House.

Mr. President: Only the final report will come to the House.

Dr. P.S. Deshmukh: There are one or two things which require elucidation. If it is not necessary to take up the next item, we may discuss these one or two matters.

Mr. President: I do not know what are these matters.

The Honourable Sardar Vallabhbhai J. Patel: That may be discussed before the next session meets.

Dr. P.S. Deshmukh: We have for instance to fix the time of the next Session and other things!

Mr. President: That will not take much time.

*Appendix A.
Shri Arun Chandra Guha (West Bengal: General): Mr. Vice-President, Sir, we are assembled here to give final touch to the first Constitution of Free India. It is a very significant moment of our life and in this moment I cannot but recollect the past, the years of trouble and struggle that we have passed through. We have lost many comrades; the whole nation has undergone many troubles and sacrifices. When we are assembled here to give shape to our future destiny and our future constitution, I must bow down to the memories of those who have left us in the course of the long years of struggle that we have passed through, - Surendranath Banerjea, Lajpat Rai, Motilal Nehru, Deshbandhu Chittaranjan, and many others who have led us in the struggle and last by Mahatma Gandhi the Father of the Nation. And in our intimate circle, particularly in Bengal, we have also our friends who have led us through all the struggle, less known to the public, but not less devoted to the cause, not less honest and sincere in their ardent desire for freeing the country. Coming as I do from the circle of workers who have been through the struggle for more than four decades, Sir, I cannot but recollect at least the names of some - Jatindra Nath Mookerji, Swamy Prajnananda Saraswati, Surya Sen. Bhagat Singh and others. They have also served the cause, though they are not so widely known - they have also contributed to the cause.

Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress. It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only an apolitical structure that we are going to frame; it is not only an administrative machinery that we are going to setup; it is a machinery for the social and economic future of the nation.

I feel, as for the economic side, the Draft Constitution is almost silent. It is rather anxious to safeguard the sanctity of property; it is rather anxious to safeguard the rights of those who have got something and it is silent about those who are dispossessed and who have got nothing. While there is much about the sanctity of property and the inviolability of property,
things such as right to work, right to means of livelihood and right to leisure etc., have been left out and these things should have been effectively incorporated, in the Constitution.

As for the Fundamental Rights, Dr. Ambedkar, he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft - in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term; I feel, Sir, there is no right in the world which is absolute. Every right carries with it some obligation; without obligation there cannot be any right. So it is nouse taking shelter behind the plea that the Fundamental Rights cannot be absolute. I know these must be relative; but that does not mean that the Fundamental Rights should be negatived by putting some provisos. All the rights that have been mentioned in the Fundamental Rights section have immediately been negatived by putting some provisos and some subsidiary clauses. It would have been better for the Drafting Committee not to have provided these provisos within the Constitution at all. Then the future Government would have been able to act freely in framing the Fundamental Rights. But now as these have been incorporated within the Constitution it would be a question of amending the Constitution to make it broad-based. So I would ask the House either to put the Fundamental Rights rather frankly or to omit the whole chapter from the Constitution so that the future Government may frame the Fundamental Rights according to the needs of the time and not be handicapped with the task of amending the Constitution which has put some difficulties in the way.

Then, Sir, Dr. Ambedkar has passed some remarks about the village units. We have been in the Congress for years. We have been taught to think of the village panchayats as the future basis of administrative machinery. The Gandhian and the Congress outlook has been that the future constitution of India would be a pyramidal structure and its basis would be the village panchayats. According to Dr. Ambedkar, the villages have been the ruination of India, the villages have been the den of ignorance. If that has been the case now, that is due to us who have been living in the towns, who have been shining under the foreign bureaucracy and foreign rule. Our villages have been starved; our villages have been strangled deliberately by the foreign Government; and the towns-people have played a willing tool in this ignoble task. Resuscitating the villages, I think, should be the first task of the future free India. I have told you, Sir, that we have been taught according to the Gandhian outlook and the Congress outlook that the future constitution of India would be a pyramidal structure based on the village panchayats.

I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs. If we can build the whole structure on the village panchayats, on the willing co-operation of the people, then I feel the Centre would automatically become strong. I yet request the House that it may incorporate some clauses so
that village panchayats may be allowed to play some effective part in the future administration of the country.

Dr. Ambedkar has posed before us a question that they have tried to put the constitution on the basis of provinces, on the basis of some political units, on the basis of the individual as the basic unit. The village should be the real basis of the machinery. The individual is the soul of the whole constitution; but the village should be made the basis of the machinery of its administration.

Then, Sir, I would like to say something about the language. In the Draft Constitution it has been stated that Hindi and English should be freely used in this House, and other languages can be used only when the speaker is unable to express himself adequately in either of these languages.

I feel, Sir, as in the Soviet Constitution, we should allow the eight or nine major languages of India to be freely used in this House. As in the Soviet Constitution, by sheer weight of number the Russian language has all the predominance, here also, Hindi would have all the predominance by the sheer weight of number.

There is no shred of doubt in the mind of any of us that Hindi is destined to be the national language and the language of the State in India; yet that should not mean that other languages which have mighty literature, mighty traditions behind them should not be allowed to be spoken in this House without the speaker declaring himself to be unable to express himself in Hindi or English. I would request that other languages should be allowed to be freely used in this House.

Mr. Vice-President (Dr. H. C. Mookherjee): Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time limit which I have fixed as ten minutes?

Shri T. Prakasam: (Madras: General): Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable Member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari when he was speaking explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of as many as five or six members of the Committee having dropped out and their places not having been filled up. I have been attending this session regularly with the hope and expectation that the Constitution that would be evolved would be one that would meet with the wishes and desires of those who had fought the battle of freedom for thirty years, and who had succeeded in securing freedom under the leadership of the departed Mahatma Gandhi. I was hoping, Sir, having seen the Preamble, that everything would follow in regular course and bring out a Constitution that...
will give food and cloth to the millions of our people and also give education and protection to all the people of the land. But, Sir, to the utter disappointment of myself and some of us who think with me, this Draft Constitution has drifted from point to point until at last it has become very difficult for us to understand where we are, where the country is, where the people are, what is it that they are going to derive out of this Constitution when it is put on the statute book. Now, Sir, when a Constitution is drafted, generally, what is expected of those who are in charge of drafting the Constitution, those who are in charge of approving the constitution as members of the Constituent Assembly is, what are the conditions in the country, what is the situation in the country, are we doing all that is necessary to get over the troubles in the country? With that object, I have been waiting to learn from all Members who have been devoting their time in explaining the real position with regard to this Constitution. I feel thankful to some of those members who have not forgotten the way in which the battle of freedom had been fought in this country and how freedom had been secured. So far as the drafting of this Constitution is concerned, with all respect to the Honourable Dr. Ambedkar, I must say that he has not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke he condemned the village panchayat system. He has referred to the remarks of one great man of those old days of the British, Mr. Metcalfe, and the description given by him that the village panchayats existed and continued, whatever may have been happening with regard to the Government at the top; whoever may have come and whoever may have gone, they did not concern themselves. It is not a matter which should have been treated by Dr. Ambedkar in that manner. That was a condition to which we had been reduced, after the village panchayats had been exhausted on account of the oppression of the various foreign rulers who had come over to this country. Still in spite of all that had been done for their suppression, they had survived. That is what Metcalfe wanted to explain to the word and to us who have been ignoring it. Therefore village panchayats not to be condemned on that basis. I do not advocate for one moment today that village panchayat should be such as described by Metcalfe under those circumstances. Village panchayat should be one which is up-to-date, which gives real power to rule and to get money and expend it, in the hands of the villagers. I would like to know what is this Government that is being constituted under this Draft Constitution. For whose benefit is this intended? Is it for the benefit of a few people or is it for the benefit of the millions of people who pay taxes? Whether they have power or not they pay the taxes under the vicious system that had been established in this country and under which we had been groaning for a hundred and fifty years and we tried our best to get rid of that system. The British built up a system in the Centre and in the provinces in such a manner that the tiller of the soil and the
labourer and other people are made to pay some tax or other to enable this Government to carry on administration from the Fort St. George or some other Fort and from this Delhi Centre or other places. What becomes of those millions who pay the taxes? The money is taken away under the British system by those people who have been established here step by step and the money is brought here and spent. How the money is spent the taxpayer does not know and the taxpayer has been left in the lurch. He does not know whether there is any ruler at all, even after the establishment of freedom by us, because we are perpetuating the same system and we are supposed to be governing in the name of King George. The Governor-General is appointed by the British Cabinet and our currency notes are being printed with the head of King George. To-day, after two years of establishment of freedom, we are in that condition. Therefore, it is only right and proper that this Constituent Assembly which has been sent by the people of this country should take particular care to see that this Draft Constitution of Dr. Ambedkar is so amended that it would really become a constitution for the benefit of the masses and the millions of people for whose sake the battles have been fought by that great friend who has gone away leaving us here to get along with our work. When he was alive his system and his schemes were not supported by us wholeheartedly or by the millions in the country. If that had been done, as he said, within twelve months we would have established freedom. That man of vision was with us and with all the betrayal made by us, he managed to educate us and keep us calm and fought all the battles until he succeeded and gave us a scheme for the construction of the future Government. Having been the man who roused the millions of people who had been in ignorance at the bottom when he came here and lifted them up, he made them understand that 'you are all men having soul force in the same manner in which I have got. If you educate yourself and carry on my programme, you will carry out everything and you will establish freedom.' I myself, Sir, had a talk with the great Lala Lajpat Rai more than forty-five years ago in England. He was the earliest of the sufferers for freedom and he said: "Look at the organization and discipline and the way in which people here conduct themselves. Can we ever hope to send away these British people from our country and establish freedom?" That was my feeling when I touched that shore. Under those circumstances it was, that this man Gandhi came as a Seer and lifted us up and I and many friends here entered into his movement and we had been struggling on all these thirty years. The real thing has not been established. The British system drowned us and suppressed the country and made the people utterly helpless. To get rid of the capitalist system he introduced what was called the constructive Programme to enable every man and woman to do his or her duty and then make themselves fit for making sacrifices and finally to send away the British. He succeeded and the people succeeded. The must be thanked for the readiness with which they flung themselves into any ordeal whether it was one of fire or fire or one of water. Instead of having a Constitution based on a socialist basis in the manner in
which Gandhiji had formulated for thirty long years, he divided the whole country into linguistic areas and framed the Constitution for the Congress and worked that for thirty years and it is one account of that that we won freedom – that socialist basis has all been thrown off and a capitalist basis is being introduced. That for food and cloth and would ask Dr. Ambedkar whether this Constitution would solve any of these problems. To my mind it is not possible so long as the capitalist system of the world is kept up. You may pass so many resolutions and appoint so many committees to solve the inflation problem, but have not been able to reach that point. Therefore it is necessary that this Constitution must be amended in such a manner that the capitalist monetary system is not adopted but a more proper socialist system of our own – I don’t mean to say the Russian, we had our own system and we have had our system which had been put into force by Mahatma Gandhi and worked for thirty years successfully. This type of Draft Constitution is beyond my comprehension and I would appeal earnestly to Dr. Ambedkar – I do not blame him alone. Dr. Ambedkar has not been in the battle-field for thirty years. He had not in any way understood the significance of this. He had been attacking the whole system and the Programme of Gandhi and the Congress all his life - time…

Mr. Vice-President: Order, order.

Shri T. Prakasam: If I should not say so much – I do not know – I will obey your order. The Draft Constitutions has gone in a wrong direction and it requires amendment very badly. I may tell the Honourable Members of this the same capitalistic monetary system is adopted here, must remember the same capitalistic monetary system is adopted here, we must remember what happened to other countries. The monetary system adopted by the capitalist countries of the world had proved a failure not once but twice. After the first war you have all seen what was called the world’s first economic distress. Germany had become bankrupt England had become very nearly bankrupt. Her pound became equivalent only to seven shillings in the foreign market. But for the gold that was exported from here by the kind friends of our own mercantile leaders here, the capitalists, England also would have become completely bankrupt. That is the first thing. Then the second economic distress came upon the world. You will all remember what Dalton, the British Chancellor of the Exchequer said. He said that under the changed conditions the loss sustained by Britain on Account of the dollar exchange business was 13 million dollars every day. and the whole system was going to collapse. If that had not been prevented by this Marshall Aid System they would have been perhaps in a worst position. Today England is suffering this country into such an economic condition by adopting this Draft Constitution without making necessary changes when the amendment stage comes. I have been waiting to see whether any light would come – whether any day would come with regard to these things. Sometimes I put myself in communication
with the Finance Minister who is not be found here, with regard to the monetary system that should be adopted. (At this stage Mr. Vice-President again rang the bell). Well, Sir, I stop.

**Shri Vishwambhar Dayal Tripathi** (United Provinces: General): Sir, I wish to draw your attention to one very important matter. We are discussing a very important subject and it will be very difficult for any one of us to compress our ideas in ten minutes. I would therefore request you to relax your rule and to give us time to express our ideas freely and fully. The other day when we made this request to the Honorable President we were assured that we shall have full and ample time for discussion. I hope you will kindly accede to our request.

**Mr. Vice-President:** As a matter of fact yesterday every honorable member exceeded the ten minutes limit. I am in the hands of the House: I can give any amount of time you want. But after all there must be some definite rule.

**Prof. N. G. Ranga** (Madras: General): Sir, you have said that yesterday every Member was exceeding the minutes limit. As an experienced speaker to be reminded by you bell that his time is up. There is considerable force in what my Honourable friend has said, namely, that it is impossible for anyone to develop any point satisfactorily within the short space or ten minutes. It is necessary, the general discussion should be extended by one day more.

**Mr. Vice-President:** Are you prepared to give one day more to the general discussion?

**Many Honourable Members:** Yes.

**An Honourable Member:** What about those who have already spoken and taken only ten minutes time?

**Dr. Joseph Alban D'Souza** (Bombay: General): Mr. Vice-President, never before in the annals of the history of this great nation, a history that goes back to thousands of years has there ever been, and probably will there ever be, greater need – nay, Sir, I may even say as much need – as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free, Sovereign, Democratic Indian Republic – as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due; as much need for a keen spirit of fraternal accommodation and co-operation whereby peace, harmony and goodwill will be the hall-marks of our varied existence individually as well as collectively; as much need for sufficient breadth of vision so that the complex and the difficult problems that we have to faced in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as whole; and lastly, as much need for and adequately generous and altruistic display of that well-known maxim "Love thy neighbour as thyself", so that in the higher interest of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.
It has been admitted by several Members – practically by every member who has spoken before me- that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the works of experts, work which is comparative, selective and efficient in character right from the beginning to the end.

After these general remarks on the approach to the examination of what the Honourable Mover in his speech styled the formidable document before this House, which he has told us is the bulkiest amongst all the Constitutions in the World, containing 315 articles and as many as eight Schedules after indicating to the Honourable Members of this fundamental document, I carve your permission to refer to a few items in the context of the Constitutions. As a Member of the Advisory Committee for Minority Rights, I have been and am particularly interested in the Justiciable Fundamental Rights. I feel at this juncture that it is my bounden duty to express my gratitude in highest form possible to the Honourable Sardar Vallabhbhai Patel, the Chairman of the Advisory Committee for the highly satisfactory and equitable manner in which these rights have been meted out to the minorities by the majority party. I feel sure, Sir, that it is this satisfactory and equitable deal that will make the minorities cling to the majority through thick as well as thin, Sir, it is my earnest hope that these rights as they are laid down in the Draft Constitution will not be permitted to suffer in any way whatever during their transit through this Honourable House.

Whilst I am on the subject of minority rights, there is one humble submission that I would like to place before the Honourable Mover of this Resolution. It is in connection with Article 299 of the Draft Constitution which says:

"There shall be Special officer for minorities for the Union …………. and a Special Officer for minorities for each State …. Who shall be appointed by the Governor of the State."

Necessarily, Sir, the Special Officer of the Union is under the Central Legislature, but what I would submit to the Honourable House is that some modifying measure should be introduced whereby while the appointment of the Special Officer at the Centre is by the President, in the nine States it should also be by the President. In some way of other these officers in the States should be made responsible to the Centre. If that is done, I dare say work in the States by these officers will be done without fear or favour. It is a submission that I make and I make and I do hope that if it is in any way possible a modification should be made with the object of making the Special Officer in the State responsible to the Centre.

The other submission is also on the subject of minority rights and deals with the right to constitutional remedies in Article 25. Ordinarily, as the Draft Constitution stands, only the Supreme Court will be dealing with these cases. But, Sir, I wish to point out to this Honourable Houses that most of the cases will be concerning the poorer section and classes
of our citizens, especially amongst the masses. There is a provision made in sub-clause(3) that parliament may by law empower other courts, it should be done here, and it would ease the situation of the poorer class of people particularly the masses, if by means of modification something is introduced straight-away, not waiting for parliamentary, measures of enactments later on.

Sir, the last point I wish to make naturally arises from the suggestions I have already made with reference to the Special Officer for minority rights being made responsible to the Centre. I am sure the Honourable House has already made out that I am for a very strong Centre. The Stronger the Centre the greater will be the consolidation of the State services and State work. The greater will be the consolidation of the State work. The history of India shows that for want of strength in the Centre, empires have may be considered a paramount one and this is what will have to be done if we want to maintain the freedom achieved after centuries of foreign domination. A strong Centre is absolutely necessary in order to consolidate the entire the three subjects: Union subject, Provincial subjects and the Concurrent subjects with residual powers given to the Centre as indicated in the Constitution.

Sir, I am thankful to you for giving me the opportunity of expressing my views on this Draft Constitution.

The Honourable Shri K. Santhanam (Madras General): Mr. Vice-President we have come to the last and the most difficult stage of our work. While I am anxious that we finish this work a expeditiously as possible, we may not forget that we are making the Constitution of India and that for mere speed we should not sacrifice a proper and careful consideration of the provisions which may affect the welfare of this country.

The Drafting Committee have done a good job of work, but at the same time I am afraid they cannot escape two valid criticisms. The committee, I have taken upon themselves the responsibility of changing some vital provisions adopted in the open House by this Assembly. They have also felt themselves entitled to reject the report of committees appointed by the House. (Hear, hear). I happen to be a Member of the Committee which reported on the future constitution of Delhi and the Centrally administered Provinces. It is true that the report of that Committee was not discussed in this House and no decisions were taken, but I think the recommendations of that Committee were more entitled to be embodied in this Constitution than the views of the Drafting Committee. (Hear, hear). Sir, I shall not labour the point and I leave it to the House to judge when the clauses come up which proposals the House will choose to accept. But I would confine myself today to discuss certain fundamental principles which were touched upon by the Mover of this Resolution.

Dr. Ambedkar rightly stressed those aspects of our Constitution which make for rigidity and flexibility and he claimed that the Constitution of India as drafted is more flexible than the American Constitution or other federal constitutions. But I venture to suggest that flexibility
is not always a virtue. The constitution of country is like the human frame; certain parts of it have to be rigid in order that the constitution may endure; there will have to be other those parts which have to be rigid. I think it is dangerous to compromise with fundamental principles. We may think it is expedient to compromise with them for the necessities of the moment, but once we compromise on fundamental principles that compromise becomes, a canker in the Constitution and will finally destroy it.

Sir, what are the fundamental principles which are sought to be embodied in this Constitution? First of all, there is to be a single, equal and secular citizenship. Secondly, there is to be adult franchise. Thirdly, it is to be suggest that we should examine the provisions of the Constitution to see whether every one of these every one of these principles has been embodied to the fullest extent.

Take for instance the principle of single, equal and secular citizenship. These are said to be protected by the Fundamental Rights. But Dr. Ambedkar himself admitted that every one of the Fundamental Right is subject to Supreme Court has had to modify these Fundamental Rights. That is quite true. But even our Supreme Court will have to deal with these Fundamental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights. That is quite mental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights by considering the necessities of the State, it will be the duty of the Federal Court or the Supreme Court of India to restrict the scope of the limitation. For, if the limitation are to be interpreted broadly, the we may as well omit the Chapter on Fundamental Rights altogether.

Sir, I think we should scrutinize these provisions and see that the limitations imposed are as narrowly and a strictly defined as possible, because in these days of emergencies and emergency powers, it is essential that some at least of the Civil liberties of the people should be preserved by the Constitution. It should not be easy for the local legislatures and even the Central Legislature to take them away altogether.

Sir, there is next the question of adult franchise I wish that we could adopt it as a principle that it should be the duty of the Central Government to compile and maintain the Registers or Rolls of adult franchise throughout the who modify these rolls on linguistic and other secular considerations are not unlikely to be a little lax in the careful preparation of these Registers or Rolls by Madras to compile a register of voters. It was all done in a single day or two days and there are complaints that 50 per cent of the voters of the city administrative efficiency ad thoroughness in the compilation of these Registers was not observed. Sir, we feel we could not be too careful or too watchful in this matter. We want every citizen of India to be automatically included in the Register and his right to be in the rolls protected, by all means possible consider the desirability of placing the responsibility of preparing and maintaining
this Register on the Central Government itself. Now the Central Government has the responsibility of taking the census of India at ten-yearly intervals. I think we may create a permanent machinery which will not only take the ten-yearly census, but also maintain the Registers of adult franchise throughout the country so that there could be no complaint about and no manipulations of these Registers.

Sir, Dr. Ambedkar spoke of the dual polity. Now we have got three Lists – the Federal list, the Provincial List and the Concurrent List. We have had experience of the Concurrent List. It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an inevitable political the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out. Therefore we may take it that in then years of fifteen years’ time the entire Concurrent List would be transferred automatically to the Federal List. We must reflect whether this is what we want and whether this is desirable. If we do not want it we will have to see that the Concurrent List is either restricted to the minimum or define the scope of the Central and Provincial Jurisdiction in regard to matters mentioned in that List.

Then I come to the question of the responsible or cabinet type of executive. It is of the utmost importance in every responsible government that the frontiers of responsibility should be clear and definite. There should be no ambiguity about it. When once responsibility is blurred, the cabinet type of government is automatically annulled and we get near the presidential type of government. I do not myself object to a presidential type of government and it may quite suit the country, if necessary, the Centre and the Provinces can adopt a Presidential Chapter knowing all the implication and the consequences. In many cases I think the presidential type is superior and much better suited to India. But let us not adopt rather than flexibility is the need of the hour for India. But let us not adopt the cabinet type and then try to undermine it by all kinds of devices.

Take for instance the Instrument of Instruction to the President and to the Governors. Originally there was only an Instrument of Instruction to the Governors. Now the Drafting Committee have put in a Chapter on Instrument of Instruction to the President. What happens if the Prime Minister of India ignores these Instructions? Will the Governor-General tell him "Now according to the Constitution it is my right to insist on the Instruction?" There is a possibility of conflict between the President of India and the Prime Minister and the Cabinet. Similarly in the provinces also. These Instruments of Instruction may bring about conflict between the provincial Ministries and the Governor. I think if we are going in for responsible government, we should go in for it full and entire. Let us not compromise on fundamental principles, because compromise on fundamental principles will land us in all kinds of dilemmas and anomalies and it will not be easy to saddle the Constitutions with different methods to deal with each dilemma.
Within the time at my disposal I have tried simply to touch upon certain points of importance which will have to be discussed thoroughly when we take up the Articles of the Draft Constitution.

Sir, there are, however, one or two vital matters which have to be considered in particular. For instance, take the provisions for changing the Constitution by a certain majority in both Houses. I think in the matter of a Constitution changes should not be allowed easily, because political parties may come into power owing to sudden changes in national feeling. The constitution should be considered as the spinal chord. If it is more flexible than necessary and if it is altered every now and then, simply because a party has got majority in the legislature, then the whole basis of democracy will go to pieces. I think therefore the provisions regarding changes in the Constitution require to be carefully thought out. Changing the Constitution should not be made easy. At least, if the changes on most important matters are vested in the Parliament, I would suggest that it should be not only by a larger majority an interval of six months or one year. We may thus ensure that the changes in the Constitution are brought about with a full realisation of the consequences. We should not change our Constitution hastily. Canada has not changed her Constitution ever since it was set up. Has she suffered for it? The United States of America changes its constitution only very rarely.

I think a rigid Constitution is far more important for stability than flexibility and ease in changing the Constitution. The Constitution is the bone work of our freedom, and bones must be rigid rather than flexible.

Sir, I am sorry that Dr. Ambedkar went out of his way to speak about village panchayats and say that they did not provide the proper proper background for a modern constitution. To some extent I agree but I agree but at the same time I do not agree with his condemnation of the village panchayats and his statements that they were responsible for all the national disasters. I think that in spite of revolution and changes, they have preserved Indian life and but for them India will be a chaos. I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course there are difficulties because there are villages which are very small and there are big villages, and many of them may have to be grouped for establishing panchayats, but I do think that at some stage or other when all the provinces have set up panchayats, their existence may have to be recognized in the Constitution, for in the long run local autonomy for each village must constitute the basic framework for the freedom of this country.

Sir, I am finishing in a minute. There is only one more point. I shall merely touch upon it. I agree with the mover that the artificial distinction between Provinces and States should vanish as quickly and a speedily as possible. The only impediment is that certain financial interest have developed owing to the possession of Central subject by the States, and if we can find a formula to protect the States form the financial consequences of adopting the same
constitutions as the provinces, the States may not object to fall in line with the provinces. Therefore I suggest that we should adopt the principle that no State should suffer by falling in line with the provinces and let us give them a guarantee that they will be recouped from Central funds for any loss caused by falling in line with the provinces. I suggest that we may consider a formula for protecting them against any kind of financial suffering on account of becoming identical with provinces. I agree that we should not have the anomaly of having a class States and B class States which will only cause confusion. If possible, I would like that all these different categories of units should be abolished. There should be only one standard unit constitution with freedom for these constitutions to adjust themselves to local circumstances.

Sir, owing to the rigid time limit which I fear is not conducive to a proper discussion of the constitution, I have confined myself only to a few points I hope they will receive the consideration of this House.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, Sir, as an able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here, but that is not the Criterion for judging the constitution. This is a constitution prepared for democracy in this country and Dr. Ambedkar has negative the very idea of democracy by ignoring the local authorities and villages. Sir, local authorities are the pivots of the social and economic life of the country and if there is no place for local authorities in this Constitution, let me tell you in very peculiarly miserable condition. The provinces which complain that the Centre has been made too strong and that certain powers have been taken away from them, have themselves in the intoxication of power taken away the powers of the local bodies, and in the name of mal-administration today more than 50 per cent of the local bodies have been superseded by Provincial Governments. Sir, this was the attitude in the previous British regime, and our provincial Governments are merely following that practice instead of revolutionizing the entire system of local bodies. Unless a direction is given in the Constitution to Provincial Governments to make these bodies very useful organizations for the uplift of villagers, let me tell you, that this document is not worth presentation in the name of democracy. The finances of the local bodies are, in a miserable condition. The Provincial Government would not bodies are in a miserable condition. The Provincial Governments would not like to give them the electricity taxes, the entertainment taxes, etc. which are the only sources of revenue for these local bodies in Western countries. Here local bodies mere skeleton today. If this is the tendency, how can you expect the local bodies an villages to prosper? His Excellency the Governor Speech General in his recent speeches and also our Deputy Prime Minister in his speech in Bombay state that every villager must be made to understand that he is responsible man or a responsible woman and
made to realize that he or she has got a share in the administration of the country. I fail to understand how this can be done if you ignore the villagers, the largest portion of the population?

Your will merely be taking power into your hands and make some improvements in the top, but the masses of people are struggling today to become happy and you will be nowhere helpful to them. on the contrary the present feeling that the masses have been neglected will pass this Constitution without really making reference to the points that I have mentioned. Dr Ambedkar, Sir, has made a confession rightly that many of the and inserted in this Constitution. I personally think that there is nothing wrong borrowing some good provisions that these provisions that may be existing in other countries. The only thing that has to be seen that these provision which may be beneficial in those countries may be equally beneficial in this country also. I, however, see from Schedule 7 – they are important list – that the Union Power List, the State List, the Provincial List, have been copied wholesale from the 1935 Act, barring a few changes here and there. I do not know whether they have taken care to enquire from various provincial governments whether they have found loop-holes. I will mention one or two items. The terminal tax, the profession tax and the levy of taxes on Government of India building, have been the bone of contention between the Provincial Governments and the Central Government, in as much as in some cases the matter had gone to the Federal Court. It seems to me that the sub-committees have merely copied all these items without giving my consideration to the hardships that have been imposed by the Provincial Governments. Be given due attention by the House. Last time when we met this list came hope very minute consideration will be given to this list which is as important as any other provision of this Constitution.

Coming to the Fundamental Rights, I do not know whether the Committee had the power to upset the unanimous decision of this House. The sub-Committee is perfectly justifies in making recommendation, I do not dispute that and these are also recommendations, I admit. But on a fundamental matter when the House after mature consideration had taken a decision on a basic principle on the Fundamental Rights, I feel that they have exceeded their rights in making even those recommendations.

I will only give one illustration. The constituent Assembly in its last session passed the Fundamental Rights:

"No person shall be deprived of life or liberty, without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union."

The Drafting Committee have made a change in this, a revolutionary change, I should say and put before this Honourable House. I will read their recommendation:

"No person shall be deprived of his life or personal liberty expect according to procedure established by law ……"
The remaining words have been deleted. We will take this matter up when the occasion arises. But sir, I do feel that in the Fundamental Rights that we passed last time there was already a grievance that we have not gone to the extent to which we should have if your are going to curtail even those rights even those rights of the citizen, I do feel, Sir, that the very nomenclature of the Fundamental Rights would be ridiculed.

I was really impressed with one point that was raised in regard to the constitution of the States. I endorse what he has what he has stated in this respect. When we made this Constitution last time the States were quite different than what they are today and I fail to understand why there should be a separate constitution for each new State. There should be provision that all States should be no separate Constitution for each State. After all they have all acceded to the Indian Union and their should be the how there can be two laws functioning on one country when all States are part and parcel of our own kith and kin in this Union. I therefore, feel, Sir, that very serious consideration has to be given to this question as to whether we can allow the States people to prepare their own constitution which may go against the very fundamentals of the main Constitution which may go against the very fundamental of the main Constitution that we are now preparing. In the Fundamentals of the main Constitution that we are now preparing. In the Fundamental Rights they may go somewhere lesser than we have decided. In many of the matters they may go against what we have finally provided for every citizen of this country.

Sir, take for instance the High Courts. Today in the High Courts of India the best men are on the benches. They are first-rate men and even their judgments are appealable to the Federal Court and to the Privy Council; but in these second-rate High Courts in the States-I do not mean any disrespect by stating second-rate, but it is a fact that they are not first-rate men-their judgments are not changeable in a Federal Court. Is that fair, I ask you that you do not give this right to the citizen of citizen of a State? I therefore feel, Sir, that this matter also will have to be very seriously considered and to made the work of the State people very easy, provincial part of this Constitution should he absolutely made applicable to them, barring a few changes.

Lastly, a reference has been made about the reservation and protection for minorities. I have remained in this Minority Committee and Sub-Committee of the Minorities and I am really thankful to the majority community for the manner in which they have dealt with the minority question and I must say that there should be no complaint from any from any quarter in this respect. As far as our community is concerned, although the offer has been made for the reservation of seats, we have refuse it with thanks. Similarly, yesterday Kazi Syed Karimuddin instead on removal of reservation of seats. This statement even at a later stage is very welcome. Just as when the majority community offered the reservation of seats to the Parsi community, we said: "No thank you, we do no want," similarly all the groups, I expect, Sir, will refuse with thanks the offer of the majority.
Maulana Hasrat Mohani (United Provinces: Muslim): Mr. Khaliquzzaman wanted reservation and not Syed Karimuddin.

Shri R. K. Sidhwa: I do not follow. I therefore appeal that this communal poison should be removed from this country and this Constitution should be made into a document about which we could feel proud and we should be able to say to the world that this is a document which the Indian people have made for other to initiate. With these words, Sir, I end. Hope that some of the points which I have mentioned will be borne in mind when the time comes. Thank you, Sir.

Shri Ram Sahai [United State of Gwalior-Indore-Indore-Malwa (Madhya Bharat)]: [Mr. Vice-President, Sir, many Members have shed light on a number of points relating to the Constitution. I shall not go over them again, I shall only speak a few words in regard to the States. I would like to made it clear to the House that the people of the States are in favour of a strong Centre and would whole-heartedly support the establishment of a strong Centre in this way. I submit, however, that much thought does not seem to have been given to the States in the Constitution that has been placed before us. I would like to illustrate this point by one example.

In Schedule I, Part III, the States have been specified as they had in the past, although a number of States Have merged to from Union and have in a way given themselves the character of a province. Madhya Bharat signed a new Instrument of Accession on June 15, by which all the subjects mentioned in the first and third list of Seventh Schedule excluding taxes and duties, have been handed over to the Centre. This means that even the Judiciary has been subordinated to the Centre. But even then no appeal can lie to the Supreme Court from the decisions of its High Court under Sections 111 and 113 of the present Draft. When the Madhya Bharat Union has, by its new instrument of accession surrendered all its rights, transferred all its powers to the Centre and agree to all it proposals. I cannot see why a provision has been made prohibiting appeals being to the Supreme Court against the judgments of the High Court of the Union Section 113 lays down that a reference can be made to the Supreme Court. But I fail to understand why an appeal against the High Court cannot be admitted in the Supreme Court. This is a matter which particularly affects the rights of the people. I submit that a single provision of such a type would have been sufficient for the protection of the rights of the people. Our efforts to bring the High Court of the Union, into line with the Provincial High Court would be facilitated and would be crowned with success if these High Courts are made subordinate to the sufficiently developed there but so far as far as the High courts of Gwalior and Indore are concerned I can say with some pride that they are in no way inferior to the High Courts of the provinces; nor do they have lesser standing. They too have as learned Judges as have the High Courts of the provinces.
Honourable Dr. Ambedkar wants that Constituent Assemblies may not come into being in the States. But I think that if Dr. Ambedkar had been a little in touch with the Ministry, of States regarding this matter and had placed it before that Ministry, these complication, that have been introduced now, would not arisen at all. I would place before him the matter of the Constituent Assembly of Madhya Bharat as a case in point. An interim legislature is being formed there and a Constituent Assembly will also be formed. What may possibly be the necessity of forming these two at the same time? There will be interim legislature there and after that the Constituent Assembly will be formed. No session of the interim legislature is in view as yet and it is yet to seen when the work of the Constituent this Constitution Assembly to frame the Constitution. I fail to understand Constitution here, cannot frame the Constitution. Such complications have been brought in. I am sure that if Dr. Ambedkar had consulted Sardar Patel in this matter, many problems would have been easily solved.

No necessity now remains for the Constituent Assemblies that have been formed or are being formed in the states particularly when almost all the States have taken the shaped of provinces.

I would like to submit to the House that the third part of the First Schedule should be revised and the Unions, wherever they have been formed should be included in the first part. Such an inclusion will result in bringing the States up to the level of the provinces- the only remaining difference would be that the Governors of the Provinces would be that the governors of the Provinces would be elected for the public. While the Rajpramukhs of the States would be selected by the princes. As remarked by Messrs., Santhanam and Sidhwa, it would be very advantageous to put the provinces and the Unions on the same footing and in my opinion such a step is both necessary and essential. We should revise the parts of both these schedules, and they should be redrafted in such a way that the States which have already formed Unions be brought to the level of the provinces.

The committee of experts appointed in connection with the ‘financial provisions has decided that within then years all the States should at least be brought to the level of the provinces. I find that there is nothing in this Constitution which would permit the report of the committee of experts being given a practicable shape. I would therefore request the drafting Committee that it should make some such provisions by which States which have merged to form Unions should be brought to the level of the provinces. And there should remain no difficulties in respect to this matter.

I would like to submit to the House one thing more, and this is that the big states like Mysore and Travancore, which claim a better position than most of the provinces, should-and I request the rulers and representatives if these states to give up their interest in this aspect-accept the same status as is enjoyed by the other provinces. All the resources, which are not essential for the State, should be handed over to the Centre. One cannot fail to understand that
like other States Gwalior State could have maintained its separate existence. But ruler of that State himself realized this necessity and handed over all his powers to the Centre. Just as the constitution is meant for the people of the provinces similarly it should be for the people of the States also. Hence I would like to submit to the House and more specially the Drafting Committee that they should adopt some such device that those Unions which have assumed the form of provinces ad the big States which have not merged into any Union may be able to attain uniformity in this respect.

Shri Jairam Ram Vyas (Jodhpur): *[Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copyists have to be thanked for the labour expended in preparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it. But as is the case with all drafts prepared by men, this Draft too "has many defects. In particular, the use of the word "State" which has not been defined at any place is, in a way, very confusing to all of us, what a State means form the territorial or place therein. From the point of view of rights of citizenship also it cannot gathered what the term "State" means. For purposes of Fundamental Rights the term "states" has been made to include Legislatures of the State of the States, Local Governments and the Government of the States. As the word "State" was generally used for Indian States, it would have been better if some other word had been substituted for it.

States too have been divided into different categories. There are Governors’ Provinces and Chief Commissioners’ Provinces and the third category would consist of what are called States that is to say, Indian States. They are specified in Schedule O, Part III. I support the view of Dr. Ambedkar, which he expressed in the course of his speech, that the States should be as big ass the provinces and they should be in line with the provinces. I fact we the people living in States cannot do justice to our economy by remaining in small territories nor can we properly carry on our administration. But at the same time we would like to tell Dr. Ambedkar and his colleagues that they should have also shown some anxiety to bring us into small units. We should have been grouped into larger units even there. States, that is to say Prices’ States have not been the right of appeal to the Federal court by the article providing for appeal for appeal to that Court. Only the provinces can avail themselves of that right of appeal. Why have we been made Harijans in the matter of appeals to the Federal Court? This policy of treating the people of States as Harijans in the matter of appeal to Federal Court reveals that even you have not cared to form big units. On the contrary I find that you are keeping some mental reservations. You say that we should form big States but then it is your duty that you should grant us our rights. Mr,. Sidhwa observed just now that we should come on a par with them? But you say that the Princes of the States and the people of the provinces can be Governors. Why do you not give this opportunity the people of the States? If you really mean that the mean that the States and Governors’ Provinces are of two different
categories, you should clearly, as also that you want to keep this reservation in respect to the States—that you will keep some such matters exclude and will not give them to the people of the States. You should be quite frank in these matters. One the one hand it is said that the Starters should be brought on a par with the Governor’ Provinces and on the other that the people of the States will not be entitled for appointment as Governors though the Prices of the States may be so appointed. I do not appreciate this distinction. I think that this is a defect in this Constitution and it should be removed.

Another observation which I would like to make is in regard to the territories of the provinces. It has been provided in this Constitution that some territories of the provinces can be separated form them and joined to other territories, that two or more territories can be joined together to form a province. The condition for forming such provinces is that either the legislature of the State or its members or the majority of the member should submit to the President of he State that they want to form a separate province for them selves. But this matter too a reservation has been dept against the people of the which are specified in Schedule I, Part III. The States are not permitted to form a big unit by submitting a proposal through their legislatures or through the Members of their legislatures. For that the State” means. If the legislature of the State consents, if its members consent, it of the State is necessary. I do not understand what "consent of the State" should have been taken to be the consent of the State. But perhaps "consent of the State" means "consent of the ruler". If it is not so, will a referendum State does not mean consent of the ruler, it should be stated clearly. Therefore, I think that so far as the States are concerned, the constitution is not fully clear.

I would like to make one or two other observation about this Constitution. I admire that equal right have been given to all classes of people but I cannot say whether it is deliberately of otherwise the while the people have been given the right of entering temples. I cannot say whether the fact that while the Harijans have been the right of access to wells, Dharamshalas, etc., they have not been given the right of entering temples came under the notice of Dr. Ambedkar. I think that it is either a mistake or an omission. If it is an omission, it should be provided for.

There is no doubt that it has not been considered necessary to differentiate between the minorities and the majority and the citizens have been considered citizens in a general sense but even then it has been accepted that if some educational institutions are run by the minorities the State should be able to aid them. It means that under this Draft it should still be possible to run the existing communal schools and educational institutions. I do not think that it is right to leave scope for such a possibility when we are free and the people of the minority communities and the majority community have to live as brothers. But the system of Grants-in-aid to such institutions would produce only such a result.
I have to make only one more observation and that is about the language. A number of our brothers have spoken about it. An Honourble Member went so far as to remark that Hindi Imperialism is being established here. Another Honourble Member said that linguistic fanaticism is being fomented here. I would like to tell that no question of Hindi imperialism or linguistic fanaticism is involved, when we say that we should have a national language of our own. When we can about English I do not understand why we cannot about Hindi. If you do not want to adopt Hindi have courage and say that English is our national language. But you do not say that. When English is not our lingua franca it is not right that we should not allow another language to become the national language to become the national language. I sympathize with those who say that they cannot understand Hindi but at the same time I would say that they should now try to evolve a national language of their own. If we do not do so there is not so much the danger of the imposition of the English language of the question of linguistic provinces taking the form of linguistic countries. We do not say that all the people should speak one language only. So long as they cannot do so they may speak English—no one will prevent them from doing so. I am speaking Hindi although my language is Rajasthani which is different from Hindi and has some peculiarities not to be found in Hindi. But at the same time I know that the largest number of people can speak Hindi and can learn Hindi. Therefore we should adopt one national language. I hope there will be no misunderstanding about those who are trying to make Hindi the national language, that they want to establish supremacy of that language. They only want one national language in the interest of our country. It does not mean that the provincial languages will be put under any ban or that English will be bereft of the position it has attained. It may be that in the long run English may no more be there.

With these words I support the Draft Constitution placed before us by Dr. Ambedkar and I hope he will try to incorporate the changes that have been suggested.

Shri B. A. Mandloi (C.P. & Berar : General): Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace time as well as in war-time. He has answered in his speech the various criticism leveled against the Draft Constitution and I submit that his speech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various committees, namely, the Union Power Committee, the Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The
Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader Pandit Jawaharlal Nehru, and was unanimously passed. We had to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch-stone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that looking from that point of view also this Draft Constitution serves our purpose.

There are, however, certain omissions and certain things which are not found in this Draft Constitution and proper emphasis has not been placed on those subjects. The omissions are with respect to our National Flag and National Anthem. In a Draft Constitution and in a Constitution which is going to govern our country, there should be a proper place for the National Anthem and for the National Flag. There is also a necessity with respect to a common language and a common script. We should be definite on this because after all our aim is to be one nation and one State. In the absence of one common language we can not claim to be one nation and one State. Taking into consideration the various languages prevailing in our country one can say without any controversy that the place of honour should go to Hindi and the script should be Devanagari script. We should bid good-bye to the English language as early as possible because it would be derogatory to our nationhood if we adopt a foreign language. The Hindi language is spoken and understood by a vast majority of the people in the country and the Devanagari script is a very scientific script and it should be adopted as the official script of our Government.

While we have attempted to make the Centre quite strong, I submit that we have not paid sufficient attention to our Provinces. The Provincial budgets are poor budgets and there is a chronic poverty prevailing in the Provinces. The responsibilities of the Provinces are great. We have to fight ignorance, disease and so many other things and we have to carry on nation-building departments and the constructive work in the provinces. The allocation from the Centre revenues to the provinces should be on an equitable basis so that the Provinces may be able to discharge their duties properly and efficiently.

In his speech Dr. Ambedkar made an appeal with respect to the States – that the States which have formed into units and acceded to the Union should also be on a par with the Provinces. We would certainly like to see that uniform laws prevail there also and the level of progress is maintained in the States in a uniform manner. I therefore would suggest that in the Draft Constitution we should not make a distinction between the units of the provinces and the units
of the States. We have got representatives of the States and we can, in consultation with them, bring the States to the same level as the other Provinces shown in Part I of the Constitution. Something has been said with respect to the minorities. The Advisory Committee on Minority has recommended certain safeguards for the minorities. Though the future relationships are going to take place on the basis of joint electorates, these safeguards have been provided. Sir, I submit that these are days of voluntary surrenders. In the year 1947 the British, after a rule of a hundred and fifty years, surrendered voluntarily though there was the fight of the Congress going on for so many years. Then we found that the Rulers of the Indian States have also surrendered. And I feel sure that if the minorities were to surrender the safeguards, they would be in a better and stronger position and they need not have any fear from the majority. If they surrender the safeguards and join the majority, coalesce with the majority and merge with the majority, we would have a stronger India and our ideal of nationhood would be realized earlier.

Sir, our Constitution is a Constitution which has been evolved by us from a comparison of the various constitutions prevailing in the civilized countries all over the world. Various good points from all the Constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly work out the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that thereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words, Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

Pandit Balkrishna Sharma (United Provinces: General) Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honorable the Law Minister who was in charge of this Draft Constitution that it will sound almost a tautology if I repeat the same sentiments again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and critics have come here and leveled certain charges against our Constitution. The one charge which has been repeated by many friends is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constitutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of the British North America, that is Canada, contains only 147 Articles; the Commonwealth of Australia Act contains about 128 Articles; the Union of South
Africa Act contains 153 Articles; the Irish Constitution only 63 Articles; the U.S. Constitution contains 28 Articles; the U.S.S.R. Constitution 146 Articles; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles, and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.
Saturday, the 6th November 1948

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky. Not only are we making a Constitution for a number of people for whom so far no other country has made any Constitution but our problems are varied and are different. Also, at the same time we have tired to give in the Constitution of ours a modus operandi whereby we have been able to set at naught the rigours of federalism and the vagaries of unitary form of Government. In an attempt to bring about that compromise between federalism and unitary from of Government, we had naturally to take recourse to certain Articles which are responsible for increasing the bulk of our Constitution.

As I said, Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities - the States - and there should be no wonder that in order to bring all these various factors inline with the present day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.

The second charge is that we have borrowed almost verbatim from the various constitutions and that we have not cared to glance at the Constitution of the U.S.S.R. Now, so far as this particular charge is concerned, I would like to draw the attention of the Honourable House to some very patent factual and fundamental differences that exist between our country and the U.S.S.R. Let us not forget that the Russian Constitution came into existence after full eighteen years of Government by a single party, the Communist Party of the U.S.S.R. For full eighteen years that party was in power. The October Revolution of 1917 brought that party to power and, till 1935, they did not think of making a Constitution for their country. After eighteen years, during which period a rigid single-party rule was there, they thought of giving a constitution to Russia. Our conditions are far different from the conditions prevailing in Russia. Naturally, if we could not borrow any provision from the Russian Constitution which may appear on the face of it desirable, we must not forget that we did not borrow with purpose. It is said that the Russian Constitution gives the fullest scope to the minorities, but we forget that
during the eighteen years when that rigid party known as the Communist Party of Russia was in power in what is called the Democratic Republics of Russia, it had established such a strong hold upon the various Republics that constitute the U.S.S.R., that in spite of the fact that the Constitution gave them power to break off their connection with the Central Government, in the very nature of things it is impossible for them even to think of doing so. The Republics of Georgia, Ukraine, etc. and some of the other Central Asian republics, long before a Constitution was given to them, were in the grip of that well-knit, well-organised Communist Party of the U.S.S.R. Therefore, to turn round and say that we have not taken this or that great principle of the Russian Constitution and embodied it in our own Constitution is to ignore the facts as they exist in Russia and as they exist in our own country.

Sir, if we look at the political development that has taken shape in our own country, we will find that it is on democratic principles that our party, the Congress Political Party, has developed. The Russian Communist Party has developed on a totally different basis and that basis is the basis of revolutionary totalitarianism. Therefore those friends who came to the rostrum and spoke very well of the Russian Constitution and twitted us for not having borrowed various clauses from the Russian Constitution, may be told that their criticism is absolutely baseless. While making that criticism they have not cared to look at the situation in our own country.

Then again, let us not forget that there is a vital difference between the principles, the aims and objects of the Russian polity and the principles and the aims and objects of the polity which we want to develop in our own country.

Sir, in Russia, the individual as such has got precious little value. It is the State, the Society and the Party for which the individual should exist. But here, under the inspiring leadership of Mahatma Gandhi we have learnt to look at things in a little different way. We consider individuals to be the basis of society and party and State. This insistence upon the individual makes our situation far different from the situation that prevails in Russia. For all these reasons if our Constitution makers could not borrow from the Russian Constitution, then I can say that they did so on purpose and that it was proper that they should have looked to the democratic countries for inspiration rather than to Russia which, though apparently a democratic State, is yet a Government on a rigid single party basis.

The third charge which has been laid at the door of our Constitution makers is that this Constitution has got a very powerful centrifugal tendency and that the little provincial autonomy which seems to have been given under the Constitution is likely to be taken away in the course of working this constitution and that all power is likely to centre in the Union State. But why should we forget that we, our country, we all, have been chronic patients of what I may call centrifugalities? This centrifugal tendency is a tendency to fly
away from the Centre. This tendency of the various limbs to break off from the body politic is a historical tendency. We should not ignore it.

Today we are sitting here to weld the Nation into a strong well-knit, well-organised society. If our Constitution-makers do not take care to guard against that chronic illness from which our country has been suffering for centuries, then we are likely to come to grief. Therefore I say that these friends and critics, who think that the Centre which has been given certain powers to meet certain emergencies is likely to abuse those powers, are trying to cry 'wolf' 'wolf' before actually the wolf comes to their doors.

There is no doubt that the Constitution does not contain any clause about village panchayats. A good deal of criticism has been hurled at it for that reason, but may I point out that the Constitution in no way rules out the development of the village panchayats? The Constitution does not put any obstruction whatsoever in the path of the development of those units of local self-government which will enjoy power for managing their own affairs, and therefore that criticism also seems to me to be without any foundation.

One word more, Sir, and I have done. I was rather pained to see that my esteemed friend, Mr. T. T. Krishnamachari, and my respected elder, Pandit Lakshmi Kanta Maitra, have taken our efforts, in the direction of trying to give a national language, with suspicion and even with a little sense of exasperation. I tender to my friend, Mr. T. T. Krishnamachari, a thousand apologies if that impression has been created. May I tell the House that those of us who feel that there should be a national language, that there should be a common medium by which we may be in a position ultimately to exchange our ideas and to express ourselves - this lingua Indica should be Hindi in our opinion - that certainly does not mean that we wish to tread upon the toes of any friends of ours. No provincial language can come to grief if those friends cooperate with us in evolving a national language. In trying to give a common language to the nation, our efforts are not with a view to exasperating any friends. We want sympathisers from every quarter. We want the whole group from the Daksina to come to our rescue and to help us in our efforts to give a national language to this ancient land of ours. Thanks.

Pandit Thakur Dass Bhargava (East Punjab: General): (Began in Hindustani).

Shri S.

Nagappa (Madras: General): Sir, may I request that those of the members who can express themselves in English should speak in English?

Pandit Thakur Dass Bhargava: Since my friends insist that I should speak in English, I bow to their wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done
what we expected it to do. Some of the members were absent, some did not join, some did not fully apply their minds. In regard to the financial provisions, what do we find? They have shirked the question and have not given us any solution whatsoever with regard to some other questions also. The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same, Sir, I cannot withhold my need of praise for the labour, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touchstone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good. Insofar as these four things which are contained in the Preamble are wanting, then I am bound to say that the Constitution is wanting, and from this angle I want to judge the Constitution. I know that time is very limited and I cannot touch upon everything. I wish to speak about only three or four subjects.

In the first place, I would like to draw the attention of the House to Part II-Citizenship. There are about 60 lakhs of people or more who have come from Western Pakistan, Sind, Baluchistan and East Bengal. These people are not aliens. If technically they are regarded as aliens, I maintain that it is a sin to do so, because this situation has been brought about by the Government who agreed to partition. Therefore to make a law that each one of them should go before a District Magistrate within one month and declare that he or she is a citizen of India is rather hard. In practice, I know it will be impossible as most of these 60 lakhs of people are illiterate and do not know anything about this provision in the Constitution. If any such illiterate man fails to register himself as a citizen under this article, what would happen to him? Therefore I maintain that this is a very serious flaw in Part II. We ought to see that all these persons who have come from Pakistan on account of this Government agreeing to partition automatically become citizens of India without any effort on their part. If they want to secure themselves by making a declaration, I have no objection, but in case they fail to comply with this provision, I maintain that we should have a provision that mere permanent residence entitles them to full citizenship rights. To insist that they can only become citizens after they have gone to a District Magistrate and made a declaration that they want to be citizens of India, in my opinion, an act of tyranny on them.
I therefore submit that this clause should be amended in such a way that those 60 lakhs of people may become citizens of India without any special effort on their part.

Secondly, I beg to submit that in regard to the question of minorities, as you know, Sir, I have been taking the very same position which you have been taking in the Minority Committee and I must say that you yourself have been a sort of beacon light to me and to others who thought like you. In regard to this question, I beg to submit that under the third clause of the Preamble equality of status and of liberty will be given to all.

In regard to the majority community - Sir, there will be either single constituencies or plural constituencies. In regard to single constituencies my submission is that if a member of a minority community will stand for those constituencies the members of the majority community will not be allowed to stand. This means that the electoral right of the member of the majority community will not be equal to the electoral right of the minority community. Again if they had plural constituencies even then I maintain, it is very humiliating for any person to stand and secure the largest number of votes and then to be told that another person of a minority community will represent that constituency and not the one who secured the largest number of votes. It is extremely humiliating and I want that in regard to the electoral right there should be perfect equality among the members of the minority community and the majority community.

Sir, I have been a worker all my life for the welfare of the minority community people. For the last 35 years I have been a worker and all those who belong to minority communities know that I have never made a speech on the occasion of budget when I have not submitted to this House that in regard to posts, lands, money, property, the members of the Scheduled castes should be given preference and priority and I do maintain it is necessary to pass such measures as will level up their economic and social equality.

I am in favour of Clauses 299 and 300 which provides sufficient safeguards for them, but in regard to this aspect of reservation of seats, I must submit that I am dead-opposed to it. When weightage was sought to be given to the Anglo-Indians we made an effort to see that this weightage question is not introduced into our Constitution and we succeeded ultimately and by nomination any deficiency in the number of Anglo-Indians was sought to be made up and we have got section 293 and other sections where nomination has been impressed upon to make up deficiencies, if any. Now, Sir, I maintain that in regard to Muhammadans and Sikhs and Christians no occasion for reservation arises at all and the entire population is almost homogeneous, so far as wealth, social influence and status and other things are concerned. In fact some of these communities are perhaps better off than the majority community. In regard to Harijans, members of the Scheduled castes it may be said that in wealth, social influence and social status they are inferior, but all the same I want that their position may be levelled up.
ways other than by reservation of seats. In regard to this right also I am agreeable that if there is any deficiency in any number according to section 67, then we will have recourse to nomination and by nomination the number may be made up if this House thinks that their right should be secured in this respect. There is no occasion for having reservations at all but if any are necessary this method of reservation is very humiliating to the majority community and will be very harmful to the minority community. Yesterday Mr. Karimuddin gave very good reasons in the House. In the Legislative Assembly Sardar Gurmukh Singh on behalf of the Sikhs said that he did not want reservations. I know that since August 1947 the situation has changed and my Muslim friends and my Sikh friends are coming round to the view that the reservations are not useful for them. I wish that many of them expressed their minds. In regard to reservations therefore my position is that if reservations are thought to be necessary by this House, the reservation should be made only by nomination. We know how the Bureaucracy used this power of nomination, but in regard to a President who will be elected by the people. I do not think that such a misunderstanding or such asituation can arise. In regard to reservations the question of equality of status comes in the way and at the same timesuch a system tends to perpetuate the psychology of separation and the majority community is bound to consider that the reservation being there they are not bound to do anything further and the word fraternity which has been added in the last sentence by Dr. Ambedkar will lose its significance. If we want to abolish the sense of separation, it is necessary that we should not encourage the sense of separation by our own act. I therefore submit, Sir, that in regard to reservation I wish the House accepted the proposition which I am advocating from the very day in which I entered this House.

Some criticism has been made in this House that this Constitution is more political than social and economic innature. Prof. K. T. Shah gave vent to his feeling yesterday and I for one respect every word of what he said, but may I humbly submit that in this Constitution we have got sections 32, 33, 38 which deal with the social and economic aspect? Now, Sir, I do not want that we should have a Constitution which we may not be able to work; if this Constitution said that the State shall provide full employment and amenities and these rights given in the directive principles were also justiciable, we shall be stultifying ourselves and promising to do what we are unable to do at present as I do not think that the present Government of India is able to do what the other States in Europe can do. This Constitution very modestly says that we shall endeavour to the best of our ability to do what we claim to do. These directive principles have been spoken of disparagingly by some of the Members. I beg to submit that I regard these directive principles to be essence of this Constitution. They give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied. In regard to this, sections 32, 33 and some other sections provide social and economic basis for
advancement. In regard to section 38 it says that the standard of living shall be raised. But the question arises. How shall the standard of living be raised?

In India a poor country, where the average earning of a man is only five shillings a week, compared to other countries of the world where the earnings are at least twenty times as much, we do not know how to face this question. If we go to the villages, even drinking water is not easily available. In regard to clothing, you know better than I can describe. In regard to these matters, if we want really to place some sort of an obligation on the Government, let us say clearly that the Government shall have, as soon as it gets into full power, to undertake the execution of irrigation and hydro-electric projects by harnessing the rivers, by the construction of dams, and adopt other means of increasing the production of food and fodder. Similarly, we can say certainly that the Government should provide good drinking water in the country. If you want rivers of milk and honey to flow in India, we should also say that the Government shall preserve, protect and improve the useful breeds of cattle, and ban the slaughter of useful cattle, particularly milch cows and young calves. I am placing this humble submission before the House. I know that the Congress party unanimously accepted this proposition when it was put to the House by me at the time of their meeting. But, it was my misfortune that this thing could not be debated in this House; and when the occasion came, the House was adjourned. I submit that there is a very great demand in this country that some steps should be taken to see that people get good food, good drinking water and milk. I have used the words "useful breeds of cattle and useful cattle". I may say every Government in India, even the Muslim Kings, the Government of Afghanistan, and even now Burma, have settled this thing by law for all time. In Burma, today, which has got no religion like ours, who donot regard the cow as sacred, they have enacted that the slaughter of cows shall be banned. I do not want that. What I want is that the slaughter of useful cattle shall be banned. That is my humble submission to this House and I think nobody will disagree. This would, at the same time, give satisfaction to crores of people who regard this question from a different motive, though I do not regard it from that motive.

I have to make one other submission to the House and it is this. We have heard too much about the village panchayats. How these village panchayats will work I do not know. We have got a conception and that conception we try to put into practice. I wish to submit to this House for their very serious consideration that when the constituencies come to be formed under the new Constitution, they should make territorial constituencies; they should not make constituencies of cities alone and they should not make constituencies of villages alone. They should evolve a system by which the differentiation between the rural and urban people, between those who have too much and who have too little may for all time be removed, so that we may evolve one nation. In my visit to England just now, I found when an application goes
to the Government for starting anew factory, they say, "go to the villages, we shall not allow any more factories in London". I want all the factories should be so established in India that for the villages or for groups of villages some sort of employment may be provided. The industries should be decentralised as much as the administration should be decentralised. The disparity between the mode of living of the rural people and the urban people must be abolished if we want to evolve one nation. At the present time, what do we find? The urban people and the rural people are so much apart from each other in their modes of living and outlook on life. To go near the villages is very difficult. The urban people do not like to go to the villages. I know the Congress has gone to the villages all honour to the Congress. But, there are a good many in the Congress also who do not wish to go to the villages; they cannot go because their mode of living is different. You will have to evolve such constituencies in which the cities and villages come in without any distinction; if there is a constituency for a lakhs of the population, the cities and villages should be included in one constituency. Some of the village people themselves may not like the urban people coming in, and will regard this proposition as a contrivance for usurpation of their preserve but in making this proposal I have the best interests of the country as a whole before myself. I wish that the amenities of life maybe the same everywhere in city as well as in village and if all efforts be concentrated financially and politically to bring the village into line with the city, I hope if you will ponder over this question, you will agree that it is essential to work this constitution in such a manner and in such a spirit as will conduce to better life and better happiness of the nationals of this country.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir, may I ask whether it is fair to this House that Dr. Ambedkar who has moved this motion and who is expected to reply, to the debate should remain absent from the House? Is anybody deputising for him here?

Mr. Vice-President: Yes.

Shri Algu Rai Shastri (United Provinces: General): [Mr. President, Sir, the point raised by Shri Kamath just now appears to be quite sound because so long as the member in charge does not benefit from the speeches that are being delivered and does not pay attention to whatever is being said in the House, it is futile to have a discussion. Therefore, I request that so long as he is unable to be present here, the discussion should be postponed. However, if he has authorised some one else to note down whatever is said here and then to help him, there would be no harm done. Otherwise, the whole discussion that is being held appears to be a mere waste of breath and will not be of any use in amending the Constitution.

You should, therefore, give a clear ruling that if there is to be a discussion, the member in charge, who is piloting the Draft, should be present here or some representative of his should be here. So long as this is not arranged, the discussion should be postponed.]
Shri Satyanarayan Sinha (Bihar: General): Mr. Saadullawho was in the Drafting Committee is here and he represents Dr. Ambedkar.

Mr. Vice-President: There are members of the Drafting Committee here who are deputising for the Honourable Dr. Ambedkar. I think that our requirements are fairly met. I hope this will satisfy the House.

Shri Lala Raj Kanwar (Orissa States): Sir, as a back-bencher and as one who has generally been a silent Member of this House, I crave your indulgence and the indulgence of this august Assembly to make a few observations for what they are worth. My observations, if I may say so, will be confined to only one aspect, albeit a very important aspect, of the problem that we are called upon to tackle, namely the question of national language.

Mr. Vice-President: It is for you to consider whether a detailed examination of that is necessary now.

Shri Lala Raj Kanwar: I am not going into the details; I shall confine myself to general observations. The Constitution is bound to reflect the will of the people and the voice of the people and I believe, therefore, the voice of God, as the Latin saying goes, vox populi, vox Dei. It means that it is not a question of the language of the Constitution, but the language of the nation and the country at large. Sir, in the Upanishads, which are the

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* [] Translation of Hindustani speech.

repository of concentrated wisdom and divine knowledge, and about which the great German Philosopher Schopenhauer said that "in the whole world there is no study so elevating as that of the Upanishads, which has been the solace of my life and which will be the solace of my death", it is written:

As one thinks from the mind, so he speaks from the mouth;
as one speaks from the mouth, so he acts;
as one acts, so he becomes. That is, the deeds proclaim the man.

Language is the outward expression of our innermost thoughts and a common national language is a prime necessity as it makes for unity and cohesion in a manner in which no other single factor does. As in the case of redistribution of provincial boundaries, there is an outcry in favour of some of the provincial languages struggling for supremacy. This is only natural but there should be no antagonism between one language and another. Whether the provinces should be formed on linguistic basis or some other basis or should be left intact has nothing to with the question of national language - the lingua franca of the country. That the Government of the day can give a great lead in this matter goes without saying. Witness the case of English which under the domination of our late foreign masters practically became the lingua franca throughout the length and breadth of this vast country. But in order to be the national language it should not only be the language of the intelligentsia but of the common
people. It should be a language which should be spoken and understood by all classes of people and by the majority of them. Considering the huge population of India we find that of the provincial languages such as Bengali, Marathi, Gujarati, Punjabi, Telugu or Oriya, none of them is spoken or understood by the great majority of the people of India and the only language that can lay claim to a great extent to this position is Hindi which is spoken not only in Upper India but in C. P., Rajputana, Bihar and various other tracts. But the spoken Hindi is not the Sanskritised Hindi of Scholars and the intelligentsia - for after all what is their percentage as compared to the huge population of the country - but a Hindifull of short, sweet and simple words, the pure, chaste and unadulterated Hindi spoken by the great majority of the people and which the uneducated people, the womenfolk and the children make full use of and speak freely and frankly. Although Sanskrit is the mother of most of the Indian languages - the languages not only of India but also of the World - and although it is the language par excellence in which our Vedas, Upanishads, Shastras, the Ramayan and Mahabharat and the Immortal Gita are written and although in the words of Sir William Jones, the great Orientalist, "Sanskrit is more perfect than Greek, more copious than Latin and sweeter than Italian", still it is not the language of the common people and so it is not desirable that we should draw upon it for our daily requirements in Hindi. Moreover Sanskrit has been a dead language for several centuries like Latin, Greek and Hebrew, and in spite of the marvels of the marvellous and inimitable Ashtadhyayi of Panini, the greatest Grammarian of the world, Sanskrit is most difficult to learn. The test of a national language should be its simplicity, and that it should be easily understood by everybody in the country. Now nobody can deny that the Sanskrit Alphabet is the most perfect and scientific in the World and it is also very natural and not unlike the alphabets of other languages. For example the very first letter of its alphabet is. The mouth automatically opens when you have to utter this and the sound represented by it is the very first sound which one hears when the mouth is opened. Similarly when the last letter of the Sanskrit alphabet, that is m is uttered the mouth is automatically shut, which means that it is rightly the last letter of the alphabet, although I do not forget that in a sense it is not the last letter of the Devanagri alphabet because it is followed by other letters like but they are variations of other letters. For instance is a variation of is a variation of is a variation of is a variation of. On account of the perfection of the Sanskrit alphabet, Hindi which is spoken by the great majority of the people in this country, should when reduced in writing, be written in Devanagri script (Cheers). Sometimes ago a move was made to evolve what is known as basic English. If some such steps could be taken with regard to Hindi, it would be much easier for other people who do not at present speak Hindi or write Hindi to learn it in the minimum of time. In view of the position hitherto and at present occupied by Urdu written in the Persian script and in view of the fact that it is the language generally used by our Muslim brethren who number nearly 3 1/2 or 4 crores in this country and who are
scattered throughout the length and breadth of this country, and in view of its intrinsic merit that its script is a sort of shorthand, I think it is desirable that we should pay some attention to Urdu also but of course it can never be and there is no reason why, it should be the primary language of the Nation. The national and official language should of course be Hindi written in the Devanagri script but the second language should in my opinion be Urdu because it is a sort of shorthand and takes much lesser time to write and occupies much lesser space than other languages. For example take the word 'Muntazim' which in Urdu is written as if it were one compound letter, but if you write in Hindi in Devanagri script or Roman English it will consist of 7 or 8 distinct letters. Similar instances are 'Muntazir, Muntashir, Muntakhib' and hundreds of other similar combinations of letters which at present form unitary words. So I think that in view of the fact that Urdu is at present spoken by an appreciable number of people in this country and especially in big cities like Delhi, Agra, Lucknow and other places, and the countryside round about Delhi, and other large centres of population in Northern India and it possesses certain advantages in as much as it is a sort of shorthand, I submit that we should treat it as this second language of the country. Moreover, if we adopt it as a second language, it will be a gesture of good-will towards the Muslim population who, as I have already said, number no less than 3 1/2 to 4 crores. And in a secular State we will do well to make such a gesture. However much we may feel the consequences of the partition and the holocaust that followed in its wake we should take a realistic view of things, for after all we cannot build on anger, vengeance or retribution. Although I happen to represent a distant part of India at the moment, namely the Orissa States, I am a Punjabi, and like most Punjabis have suffered grievously in a variety of ways on account of the partition, but that should not make me forgetful of our duty towards the country. We should also not forget that the Father of the Nation during his lifetime freely and unreservedly expressed himself in favour of Hindustani, and in expressing this opinion he was never depressed; on the other hand he was always impressed with the reality of the situation and the necessity and the correctness of this view.

One other suggestion that I should like to make in all humility is that in framing our Constitution we should invoke God's blessings as is done by every household when he performs some big ceremony or when some great Yajna has to be performed. And what greater Yajna could there be than this in the new India that is born after so much travail? I therefore suggest that at the commencement of the Constitution we should say that we invoke God's blessings in this holy task, and at the end of the Preamble also we should use some such words as "So help us God". At a time of great trial facing his country Rudyard Kipling devoutly wrote:

Lord God of gods,
Be with us yet,
Lest we forget, Lest we forget.

I trust this suggestion of mine will be considered by this Honourable House.

Before I resume my seat I should like to add my tribute to the chorus of praise showered on the Honourable the Law Minister, Dr. Ambedkar, Chairman of the Drafting Committee, for the excellent speech made by him while moving for the consideration of the Draft Constitution. For lucidity and clarity of exposition and expression it could hardly be surpassed. Both he and his co-adjutors are entitled to our best gratitude for the very strenuous work they have done in preparing the Draft Constitution. Sir, I thank you forgiving me this opportunity of making my submission.

Shri Yudhisthir Mishra (Orissa States): Mr. Vice-President, Sir, I have been called upon to speak at this fag-end of the morning session and I shall try to finish it as soon as possible. I want to submit a few points for the consideration of this Assembly. The first thing is that in the whole of the Draft Constitution there is no provision for the economic independence of the country. So long we had been fighting for the political independence of the country, and times without number, our leaders have said that we shall try to establish in this country such a Constitution as will provide for the economic independence of the country. But I am sorry to say that nothing of the kind has been done. There is no thing for the common people to be secure about their future. There is nothing in this Draft Constitution which provides them full opportunities for their growth in the future. The Constitution should firstly provide that all the lands, machinery and all other means of production and products thereof will be owned and controlled by the State in the interests of the people.

Secondly, the State should provide for every man and woman work according to his or her capacity and ability and supply the people with materials and goods according to their needs and requirements.

Thirdly, the production of goods should be determined and regulated according to the needs of the people. The Draft Constitution does not give any guarantee for the nationalisation of the wealth within a reasonable time; and it does not say anywhere that every man and woman should be provided with work in this country.

The second submission I would like to make is about civil liberty. The Draft Constitution provides that a person can be detained without trial in the interests of the state. I do not understand what is meant by "in the interests of the state". You have been seen, in the last few months, from January and thereafter, what is meant by detention without trial. In the various High Courts it has been held that the detention which has been ordered by the various Provincial Governments was in some cases illegal. When there is the law of the land to be applied to different individuals, I do not understand why there should be any provision at all for detention without trial. We fought against this during the time of the British Government, and I do not see any
reason why this provision should be retained now also. Of course, this principle has been agreed to by this Assembly while adopting the principles for the Constitution. But I would submit that this view should be changed and that the provision which has been given a place in the Draft Constitution should be amended.

The third submission I would like to make is about States, the Rulers of which have ceded their jurisdiction and power to the Central Government. The provision which has been made in the Draft Constitution is beyond the terms of reference given to the Drafting Committee. I do not understand why the Drafting Committee has gone beyond the terms of reference and has gone beyond the wishes of the people of the States who have come under the administration of the Government of India, and adopted a Constitution which is not at all demanded or liked by the people of the States. I would therefore say that Article 212 which has also been applied with respect to the States who have merged with the Provinces should be amended and that the wishes of the people should be respected in that regard. Of course, in due time the amendments will be moved, and I hope the House will accept the same.

With these words, Sir, I command the Draft Constitution for the consideration of the House.

Mr. Vice-President: I am glad to announce to the Honourable Members that the President has agreed that in deference to the wishes of the House, we shall have another day, that is Monday, for general discussion.

The Assembly then adjourned for lunch, till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath: Will you be so good as to direct that......

Mr. Vice-President (Dr. H. C. Mookherjee): Will the Honourable Member kindly resume his seat?

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following member took the Pledge and signed the Register:

Shri Ratna Lal Malaviya (C. P. and Berar States).

Mr. Vice-President: We will now resume the debate.

Shri H. V. Kamath: Will you be so good as to direct that a copy of Dr. Ambedkar's speech introducing the Draft Constitution be supplied to every Honourable Member with the least possible delay?

Mr. Vice-President: I understand that the speech of the Honourable Dr. Ambedkar will have to be cyclostyled. This will be done as quickly as possible and possibly copies will be made available to the Members either this evening or to-morrow morning.

We will now resume the debate.

Prof. Shibban Lal Saksena (United Provinces General): Mr. Vice-President......

Shri B. Das (Orissa General): Are you allowed to speak twice on this motion?
Prof. Shibban Lal Saksena: No. Formerly I spoke on the amendment of Seth Damodar Swarup. I have not yet spoken on the motion moved by Dr. Ambedkar.

Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution. But I would like to say something about the principles incorporated in the Constitution.

Sir, this Draft Constitution has accepted, as he himself said, the democratic Government of England as the model and has rejected the American system of Government. I personally have tried to compare both and to weigh which is better. I personally think that our country's need at present is for a stable State. I think what we require first is stability of Government. I therefore think that we should have opted for the system which prevails in America. A President elected by adult suffrage should be in charge of the Nation and he should have the right to choose his executive to carry on the administration, and the judiciary should be independent of the executive. I personally think that stability of Government is the first need of the Nation today. There are already tendencies which are fissiparous. There is the demand for linguistic provinces and for re-distribution of the provinces. We have also seen quarrels about the division of powers between the units and the Centre. All these tendencies are natural. But if we had modelled our Constitution on the American example and had adopted their system of election, I think it would have met our needs better. Therefore, in one fundamental respect I beg to differ from Dr. Ambedkar who has opted for the British model. The British system works admirably. But that is the result of seven hundred years' experience and training. Besides, I think there are two special features of British life which enable them to keep their system going. There are no fissiparous tendencies and the loyalty to one King is a strong binding force. Secondly, in every Englishman, respect for his Constitution is ingrained. In our own country, I personally feel that the American system would be better. There will be less corruption and we can grow to our full stature much better under that system than we can do under the system recommended.

Then, Sir, Dr. Ambedkar has criticised the system of village panchayats which prevailed in India and which was envisaged by our elders to be an ideal basis for our Constitution. I was just now reading Mahatma Gandhi's speech in the 1931 Round Table Conference in London. He was speaking about the method of election to the Federal Legislature. There he recommended that the villages should be the electoral units. He in fact gave fundamental importance to the village republics. He said that it was in villages that the real soul of India lived. I was really sorry that Dr. Ambedkar should express such views about
the village panchayats. I am certain that his views are not the views of any other Members of this House. Let us see what Dr. Ambedkar has said about these village panchayats:

"Their part in the destiny of the country has been well described by Metcalfe himself who says:

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

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

I am certain that a very large majority of the House do not agree with this view of village republics. As one who has done work in villages and has experience of the working of Congress village panchayats for the last twenty-five years, I can say that this picture is purely imaginary. It is an entirely wrong picture. I personally feel that, if we bring to these village panchayats all the light and all the knowledge which the country and the world have gathered, they will become the most potent forces for holding the country together and for its progress towards the ideal of Ram Rajya. In fact, the Soviet Constitution is based on village units, village Soviets as they are called. I feel personally that these village republics, like the Russian village Soviets, can become models of good self-government. I think that the Constitution should provide for the establishment of village republics.

The Upper House under this Draft Constitution is to be elected indirectly by provincial legislatures. I think it should be elected on a wider franchise and village panchayats should be required to elect the Upper House. The suggested method of electing the Upper House by provincial legislatures is a very wrong method. If village panchayats are allowed to elect the Upper House, we will have a more representative Upper House. I personally feel that unless we give the villages more responsibility, we cannot really solve their problems.

The third point I want to touch upon is States. I fully agree with Dr. Ambedkar in his criticism against having two kinds of constitutions, one for Indian States and one for provinces. I feel that the States should be made to fall in line with the provinces. I hope that the States' representatives here will see that it will be more advantageous to have constitutions for
the States similar to those for the provinces. Instead of Governors, they can have Rajas as constitutional heads. Most of the smaller States have already merged themselves with bigger units. Where they are very small, they have already merged themselves with provinces. I feel that the Constitution should have a provision that, if any State wishes to fall in line with the provinces, the provincial constitution shall apply to that State also. I hope that by the time the Constitution is passed, most of the States will agree to fall in line with the provinces.

Then, Sir, about the fundamental rights, Dr. Ambedkar said that nowhere in the world are Fundamental Rights absolute. I personally feel that our Fundamental Rights should be in more unambiguous form. I think there is much force in the contention that the provisos to these Fundamental Rights take away much of the rights granted by the Constitution. I think that these Articles should be modified.

Then, Sir, one word about our national language. I think there should be a separate clause stipulating a national language on the model of the Irish Constitution. I personally feel that it should be Hindi written in Devanagri characters. Similarly I think the form of the flag should also be provided for in our Constitution: what colour it shall be and what its dimensions should be, should all be declared in the Constitution. I also quite agree with Seth Govind Das when he said that cow-slaughter should be banned in the Indian Union. I personally feel that the sentiment of thirty crores of population should be respected. I feel that we should provide in one of the Articles of this Constitution the banning of cow-slaughter. I feel that after all we have to take the people as they are and we will have to respect their sentiments also. I therefore feel that this Constitution should be amended to suit our needs and requirements.

Lastly, Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

Shri Sarangdhar Das (Orissa States): Mr. Vice-President, Sir, like all the previous speakers I congratulate the Drafting Committee, and especially its Chairman, Dr. Ambedkar for the hard work that they have put in. But at the same time, there are certain things in his speech with which I cannot agree. When he says: "What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism?" I am rather surprised that a respected member of this House and also a Minister of the National Government should have such an idea about our villages. I must say here, that with the spread of western education in our schools and colleges we had lost contact with the villages, and it was our leader, Mahatma Gandhi, who advised the intelligentsia to go back to the villages, and that was some thirty years ago. For the last thirty years we have been going into the villages and making ourselves one with the villagers; and in reply to Dr. Ambedkar's accusation, I would say that there is no localism in the villages. There is
ignorance, - yes, ignorance of the English language and also our various written languages, and that situation is due to the kind of Government we had, a Government that destroyed our educational system. As far as knowledge of nature and wisdom gathered from Shastras and Puranas are concerned. I would say that there is more wisdom and more knowledge in the villages than in our modern cities.

I am not a hater of cities. I have lived in cities in two continents, but unfortunately our cities in India are entirely different from the cities in other countries. Our people living in the cities are far away from the villagers, from their life, and that is why we have become such that we think there is nothing good in the villages. Now this idea is changing; I do not know if it is changing outside the Congress circles, but I am positive that within the Congress circles, the idea of the villages is uppermost in everybody's mind. I shall therefore appeal to Dr. Ambedkar to reconsider this matter and to give the villagers their due because the villages in the near future will come into their own as they used to be.

Now then when we come to the Draft Constitution itself, I am at one with Dr. Ambedkar in the matter of more power to the Centre, because a strong Centre is very necessary at the present time. No matter what we say about the fundamental of the culture of our peoples in different provinces being the same, we are a heterogeneous people; and taking advantage of the situation that the British have gone, there are all kinds of disruptive elements trying to raise their heads, and therefore it is essential that the Centre must be strong so that all the different peoples of the country can be welded together into one nation. In this connection, I would urge upon you to keep this idea of linguistic provinces in abeyance for, say, five or ten years, because although I come from a province where we also think that injustice has been done to our province, nevertheless because of this linguistic provinces idea during the last one year, there has been more bitterness between the peoples of neighbouring provinces than anything good. And this is not the time to have bitterness. We want goodwill between the neighbouring provinces and that is why I would strongly urge that this linguistic provinces idea should be kept in abeyance for at least five years. As regards language, I know and every freedom-loving man in any country knows that there must be a national language. In that respect also, we have different provincial languages some of which have developed very much and are of a very high order, while there are others which are backward. So, there is a competition between the different provincial languages. But we must remember that we must use a language that the majority of people speak or understand. There is no language other than Hindi that can stand this test. Hindi is a language based on Sanskrit. Because in the different provinces we study Sanskrit to some extent, although not as fully as the older generations used to do, our regional languages also are based on Sanskrit, our Sadhu Bhasha as we call it in my province, that is, the scholarly language is such, that I believe, this scholarly language spoken in Orissa can be understood by the Hindi people or the people from the Punjab and they do understand
it. So also, the Oriyas understand Hindi though they may not be able to speak it. The same is the case in Bengal, Maharashtra, etc. When we look at it from that point of view, I am rather surprised that other non-Hindi-speaking friends, particularly in South India consider that the demand for adopting Hindi as our national language is "imperialism of language". I do not see where there is imperialism of language. If the South Indians can speak in no other language than English, do they mean to say that the millions of people living in the Madras Province understand English? It is only a few, and a few of the uneducated people in the cities also who understand English; but not in the villages. We will have to banish English; but at the same time, I would say to the advocates of Hindi that it cannot be done right away, immediately. Some time must be given to the people of South India and other non-Hindi speaking provinces to get acquainted with Hindi and to make their contacts with North India and Western India in the national language.

The next point I want to dwell on is the Indian States. When we first considered the principles of the Constitution, some ten months ago, the Indian States were in a different position. Since then, things have changed. I cannot see how we shall have units of Indian States and of provinces, and call them all units, and yet, the Indian States are not on a par with the provinces. Particularly I see, that the High Courts of the Indian States will not be under the jurisdiction of the Supreme Court. It is said in the Chapter on Fundamental Rights that these rights are guaranteed to every citizen in India. It is that a person, man or woman, living in an Indian State or in a Union of States as they have been formed during the last few months, is a citizen of India and if his Fundamental Rights are curtailed by the Government there, there is an appeal to the High Court and that is the final judgment, while in the provinces, the matter can go up to the Supreme Court. I do not see how the man or woman in the States is on a par with the man or woman in the provinces.

Then there are various other matters that exist in many States, particularly in Rajputana and Central India, where there are Jagirdars who own practically 75 to 90 per cent of the land under the Maharajas of Jaipur, Jodhpur and Bikaner; there is an inland customs duty collected by the Jagirdar from the producer, and then again by the Maharajas' Government, and then when the goods are exported to the neighbouring State, that State also levies an import duty. I can give a particular instance of cotton grown in Jaipur, paying two duties in the Jagirdar's territory and while going out of Jaipur, paying another import duty in Bikaner, when exported to Bikaner, where there is no cotton grown. These matters will have to be changed and the earlier they are changed, the better it is for the primary producer as well as the consumer and also for the expansion of trade and commerce.

Then there is another matter and this is the last one that I want to stress, that is the tribal population in the various States that have come into the provinces, particularly in Orissa and the Central Provinces. It is the duty of the Union Government to improve their standard
of living, and to give social and economic amenities to all the people. These tribal peoples, unfortunately, have been in a very backward condition as far as education, sanitation and economic status are concerned. There are about twenty lakhs of tribal people in Orissa and about 15 lakhs in the Central Provinces. For the quick advancement of these fellow citizens of ours, it will be necessary to allot large sums of money from the Centre, because the provinces cannot bear such heavy burdens. In the matter of financial arrangements between the Centre and the provinces, it will be necessary, when there is any per capita allotment on population basis, for the purposes of the tribal people, the amount must be four or five times the ordinary allotment allowed for the non-tribal people. I press this point particularly, because, if we are to improve their status in the quickest possible time, it is necessary to spend more money whenever it is needed and wherever the people are backward.

Chaudhari Ranbir Singh (East Punjab: General): * [Mr. Vice-President, while supporting the motion of Dr. Ambedkar I would like to submit a few words to this House. I agree with Seth Govind Das that it would have been better if we had decided upon our National Anthem, National Flag and National Language in the very beginning. With reference to what Shri Maitraji said yesterday, I admit that we cannot expect our Deccan friends to speak in Hindi and to use it for the business of the House all at once. But there would have been one advantage if the problem of the national language had been settled in the very beginning - and even now the advantage would accrue -

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* [] Translation of Hindustani speech.

and it would have been that people would have come to know which language was to be their national language and which language they should seek to learn.

I would not like to go deep into the question of centralisation and decentralisation of power, but I would like to draw the attention of the House to one matter. Mahatma Gandhi, the Father of the Nation always taught us that whether in the political or in the economic sphere decentralisation engenders a power which is much greater than other kinds of power. Besides, there are other reasons also for this view. I am a villager, born and bred in a farmer's house. Naturally I have imbibed its culture. I love it. All the problems connected with it fill my mind. I think that in building the country the villagers should get their due share and villagers should have their influence in every sphere. Besides there is another matter to which attention was drawn this morning by Babu Thakur Dasji. It is that the distinction between rural and urban seats should be done away with. I have no doubt that if we take a long view of the matter it would be beneficial for the rural areas - and more specially in a country like India where there are seven lakhs of villages and only a few cities. But we cannot ignore the conditions of today. Howsoever ingenuously we may try to beguile them with subtle
arguments and finesentiments the village people cannot be blinded to the fact that the power of the Press and the Intelligentsia is centred in the cities alone, and that they of the villages have little say in the affairs of the nation. It is no use, therefore, to ignore this reality. Today a distinction has to be maintained in our country between the rural and urban seats. In fact reservation of seats is to be provided and it should be provided, for those who are backward. The reservation provided in our Constitution is rather a peculiar one. We should remember what used to be emphasised by the Father of our Nation, Mahatma Gandhi, that is, the means for achieving an end have to be very carefully scrutinised, for the end is conditioned by the means. Our aim today is to set up a secular State - a non-denominational State. I cannot therefore, see any reason why seats should be reserved for minorities or sectarian groups. I do not see any sound reason for the adoption of such a course of action. Would not its adoption defeat the realisation of ideals we have in view? Our object of establishing a secular State in this country would remain merely an unrealised dream if we decide to provide safeguards on grounds of religion. The training, the level of education, and the power of the followers of Islam do not need any further demonstration in the circumstances prevailing in the country today for we have already had ample proof of the same.

We have seen that by the power of their organisation and with the help of a foreign power they brought about the partition of the country. The other minorities that have already been referred to are not less powerful. We cannot from any point of view call them backward communities. It is no doubt true that it may be said, if it can be said for any group at all, that Harijans constitute a backward class. Both from their educational and financial conditions they may be called a backward class. But even in this respect we have to keep in view one other consideration. It is that if we provide in this Constitution safeguards for Harijans, the word 'Harijans' would be perpetuated even though such is not our intention. We want to form a classless society in the country. But a classless society cannot be formed if we make a provision for reservation of seats on the contrary. This would only perpetuate the word 'Harijan'. In my opinion there is another way and a much better way of providing safeguards for them. All the backward people in the country are either peasants or labourers. All such people were disfranchised in Russia as did no manual work and lived not by their labour, but on the returns on their capital. We may not disfranchise such people in our country today. We may even give them rights according to their numbers. But we should provide safeguard for manual workers, the peasants and the wage-earners. If safeguards are to be provided they must be only for those who are peasants and wage-earners and in fact safeguards can be properly provided for them alone.

* [] Translation of Hindustani speech.
There is one thing more. As I said before, it may perhaps be objected that this will give rise to another serious problem, that is to say, the words 'peasant' and 'labourer' will find a permanent place in the Constitution. But I think that, even if this happens, it will not be in any way injurious to anyone. It will be all the better that the people of the whole country would be labelled as peasants and workers. If every one would earn his bread by labour, it would be the best thing for the country and the problems of food and cloth with which the country is faced today would then be solved easily.

I would like to proceed to make one more observation and this I may do only as a peasant. It is with respect to the protection of the cows. Pandit Thakurdass Bhargava and I had jointly moved a resolution on slaughter of cows in the Congress party and at that time it was unanimously adopted. But unfortunately no mention of it has been made in our Constitution. Though the same was the case in regard to Hindi on which question also the party had come to a decision, yet the mention of Hindi is to be found in the Draft while no mention has been made of the resolution as regards cow protection. I humbly submit that resolutions should be carried out as a whole - rather it should be enlarged as follows:

"In discharge of the primary duty of the State to provide adequate food, water and clothing to the nationals and improve their standard of living the State shall endeavour:

(a) as soon as possible to undertake the execution of irrigation and hydro-electric projects by harnessing rivers and construction of dams and adopt means of increasing production of food and fodder.

(b) to preserve, project and improve the useful breeds of cattle and ban the slaughter of useful cattle, specially milch and draught cattle and the young stocks."

Sir, I would like to make one more point in regard to the economic order. I have no objection, rather I am happy that the Centre should be very strong. But I consider it my duty to submit that the finances of the provinces should be on a sound basis. Today there is not a single pie of the income of the peasant who earns it by his sweat and blood, which is not taxed. If he cultivates even a single bigha of land he has to pay a tax on it. As compared to this even an income of two thousand rupees of other people of India is not taxed. This is a great injustice to the peasant, particularly in a country where they dominate and have a large population. It should rather be considered how the continuance of this injustice in a country of peasants would look like? Therefore I want that the provincial governments should realise land revenue on the same basis as the income tax; for this purpose their finances should be strengthened.

I would like to make one more observation as a Punjabi. Punjab was partitioned as a consequence of the Freedom of India and partition completely dislocated the entire administration of this Province. To bring it again into line with the other provinces it is necessary that at least for the next ten years, in so far as its finances are concerned, special concession should be shown to East Punjab."
Mr. Vice-President: I have received a number of communications from Honourable Members suggesting that the House might be adjourned as they want to go to the Exhibition. I want to know the views of the House.

Honourable Members: Yes, it may be done.

Mr. Vice-President: I have got the names of sixty gentlemen who wish to speak. The adjournment will mean that only a smaller number will be able to speak because there is only one day left. It is for the House to decide what they want.

An Honourable Member: We might adjourn at half past four.

Another Honourable Member: Let it be four o'clock.

Mr. Vice-President: We will carry on up to a quarter past four.

Shri R. R. Diwakar (Bombay: General): Mr. Vice-President, Sir, Honourable Members who have spoken before me have covered enough ground and I think I should not take much time of the House in going over the same ground. I would like to make a few points which from my point of view are very important when we are on the eye of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is piloting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the Constituent Assembly but in my humble opinion it has gone far beyond mere drafting. I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do sounder the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments.

The second point I want to make is about the hurry with which some people want to finish the discussions about this Draft. I do not think that much hurry will be beneficial in going through the Draft. Enough time should be allowed, and none of the amendments that may be given should in any way be suppressed or insufficient time given to them. Enough time should be given for the discussion of important things. If not for anything else, I want to point out that it is more than one year since Free India is in existence, and this year has been one of rich experience. This experience itself, I think, should make us pause and think about changing a number of provisions that are there in the Draft, as it is today before us.

Let us take the question of adult franchise. A number of us are already thinking as to whether we shall have the required type of people in the legislatures if we straightaway introduce adult franchise. I am one of those who would suggest that while we should keep adult franchises as it is, so far as the electorate is concerned, we should consider and put our heads together and see if the qualifications of candidates are, in a way, such as would bring to the legislatures people
who would really be capable of shouldering their responsibilities. No doubt it is a superstition with western democratic method that each one who has a vote is also eligible for becoming a candidate. But I do not think that it is absolutely necessary for the purposes of democracy to follow this tradition of western countries. We can as well think about the important consideration that we want a legislator who is not merely a representative but also a representative who can legislate and who has a certain perspective. While we are speaking in terms of nationalism, unitary government, strong Centre etc., all these words would be useless and meaningless if we do not have in our legislatures people who have this perspective and who can look upon every piece of legislation with this perspective and in this context. The Constitution, after all, draws its force from the people who work in and if we are not able to send to the legislatures people who can understand, who can grasp the spirit of the whole Constitution, I think it would be very difficult to work it for what it is worth. I want to point out that there are some more considerations of this type which experience has brought home to us during the past one year, and they should stand us in good stead in considering the Draft that is before us.

Another important point which has been harped upon from this platform is about linguistic provinces and the question of language. The battle of languages has been or is being fought almost from day to day - it comes up in a number of dubious ways. But I think that when once we have all agreed that there should be a lingua franca, a national language, I do not think that we should quarrel any more about details and emphasise unnecessarily the point that our Constitution itself should be in that language. With due respect to the Hindi language - or Hindustani or whatever we may call it - I should say that it has not yet developed the connotations, that are necessary for its free use in legalistic and constitutional works as well as constitutional methods and interpretation. Therefore, it is absolutely necessary that we should wait a little more before we rush in that way. I would plead that we should pass the Constitution in the English language and we should also have a good Hindi translation of it, but so far as an authoritative version is concerned, for the next few years the English one should be that authoritative version. That, of course, is my humble opinion.

Now, the old hatred or rather the dislike for the English language must really lapse with the 15th of August 1947. Before the 15th August 1947, we were using the English language as slaves, and therefore we ought to have felt the revolution that we were feeling. But today, it is out of choice, out of the merits of that language possibly, out of the difficulties of the situation, on account of the heterogeneous languages which so many of us speak that we take to it, we rely on it for some period; and that I think should be the best way of doing things. It is from the point of view of arriving at the highest common measure, what maybe called the highest common factor, that we ought to look at this problem; then I hope we shall be coming to a very good conclusion and a harmonious one.
Now about linguistic provinces. The question is before the Commission that has been appointed by the President of our Assembly; it is premature to say anything about it. Really speaking, I wish that none had referred to it from this platform. But since it has been referred to, I should think that this question should not in any way be shelved or postponed since this Constituent Assembly is there; and since we are considering the whole future of the country as well as of the Provinces, it is no use simply brushing it aside saying that there are difficulties in the way. If there are difficulties, well, we are all here to see that those difficulties are removed. I do not think that there are insuperable difficulties which we cannot overcome as a nation. We have overcome greater difficulties, possibly we shall have to overcome far greater difficulties in future, and at such a time it is necessary that each limb of the nation, each group in the country, feels that its future is assured, that its development is assured and that there is no danger of its being suppressed or neglected in the future Constitution of India.

Sir, I once more urge that we should not be in a hurry about this Constitution - it might take a few days more or a few days less. I would urge you to take fully into consideration the experience that we have had during the whole year and bring that experience to bear upon the provisions of the Draft Constitution that we have before us.

With these few remarks, I commend the Draft and congratulate once again the Drafting Committee and its able Chairman and on the way in which he has presented this Draft to this House.

Shri Himmat Singh K. Maheshwari (Sikkim-and-Cooch Behar): Mr. Vice-President, Sir, the House has during the past two days heard some very vigorous and useful criticisms on the Draft before it. It is not my intention to repeat or to paraphrase any of the suggestions that have been made. I shall permit myself to make only one general comment and to make one appeal.

The general comment that I wish to make is that the Draft tends to make people, or will tend to make people, more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, Sir, the Draft is really a lawyers' paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do. Whether this will help the nation as a whole, is extremely doubtful.

Many of the provisions of the Draft confer benefits or concessions of a somewhat illusory character. Some of them, in my opinion, are even harmful. The question then is: what is this blemish due to? I shall hazard an answer: the answer is that the raw material out of which this Draft has been made is all foreign. The ideas are foreign, the garb is foreign, and what is more, the form is top-heavy. With these disadvantages I am afraid it was not possible to do much better than what the Committee has done. Whether at this stage it will be possible to remove these defects I am amenable to say. But I wish to put in a strong plea that when the Draft
is examined clause by clause by the House, every effort should be made to expunge all unnecessary provisions and provisions which might more conveniently be left for legislation by the Dominion Parliament in future.

The appeal which I wish to make to the House is in connection with a subject which has been touched upon by a number of speakers today and yesterday. It is in connection with reservation of seats in the legislatures for the minorities - Muslims, Sikhs, Scheduled Castes and others. My friend Mr. Karimuddin sounded a very healthy note yesterday when he opposed reservation of seats for Muslims. From my personal experience in the State which I represent, I am able to say that the refusal to grant separate electorates and the refusal to grant reservation of seats in the legislatures to Muslims during the last 25 or 30 years has had the most beneficial results in my State. The result has been that Hindus and Muslims have always been on the most friendly terms and have, even during the troublous times of 1946, 1947 and this year, remained on the most friendly terms without breaking each others' heads. They co-operate in every field of life and are the best of friends. Reservations are bound to encourage separatism and postpone at least for some time the realisation of the dream which we have, namely, that of evolving a truly secular State. As long as any community demands and gets reservation of seats in the legislatures a truly secular State, in my opinion, must remains a distant dream. I therefore make a most earnest appeal to my friends of all minority communities to drop their claim for reservations voluntarily so that this Constitution may start off as a truly democratic, virile, strong Constitution without any drawbacks to begin with. One of our Sikh friends yesterday, as far as I could understand him, also put in a plea I believe against reservation. That is a very healthy sign. I have still to hear what the Scheduled Castes in this House have to say. Personally, Sir, I have always felt that giving any person the name of a Scheduled Caste involves a stigma.

(At this stage the bell was rung indicating that the Member's time was up.)

I bow to your call, Sir. I have said nearly all that I wanted to say.

Mr. Vice-President: The House stands adjourned till 10 o'clock on Monday, the 8th November 1948.

The Assembly then adjourned till Ten of the Clock on Monday, the 8th November 1948.
Monday, the 8th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register:

1. Mr. H. P. Mody (Bombay: General).

MOTION re DRAFT CONSTITUTION

Mr. Vice-President (Dr. H. C. Mookherjee): It has been the decision of the House that we should close the general discussion today. There are about sixty names on my list and it is obviously impossible for me to give an opportunity........

Many Honourable Members: We cannot hear you, Sir. Evidently the mike is not working.

Mr. Vice-President: It is obviously impossible for me to give an opportunity to every Member who wishes to speak. I have therefore decided to give Members of the minority communities the opportunity to speak first. Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.

I am afraid, Sir, I am unable to agree with either the form of Government or the form of constitution embodied in the Draft Constitution or the reasons that Dr. Ambedkar gave in their justification.

Firstly, let me deal with the form of Government. Dr. Ambedkar's view is that the British parliamentary executive is preferable to the American non-parliamentary executive on the ground that the former is more responsible though less stable, while the latter is more stable but less responsible. I am inclined to think, Sir, that the advantages of the parliamentary executive have been exaggerated and its defects minimised. It is common knowledge - and from experience also we have found - that the responsible executive under which we have been working for the last two decades has pointedly brought to our attention the fact that a removable parliamentary executive is at the mercy of hostile groups in their own party. Very
little time is left to the executive to achieve the programme which is before it. It is so unstable. It is always in fear of being turned out by no-confidence motions. Further, Sir, it is there that the seeds of corruption are sown. A corrupt party-man cannot be turned out by the electorate under the present Constitution or under the proposed Constitution. The Minister or Ministers have always to be very careful to satisfy the various elements in their party in all their legitimate and illegitimate demands. This is the opinion also, Sir, of the Commission that was sent out to India sometime ago, called the Simon-Attlee Commission. It was clearly said that the Ministry is so much engaged in cajoling, insatisfying its Parliament that there is hardly time to look after its administration or to put into effect its schemes. That is a very serious defect. Further, I have heard several members of the party saying: "Well, we cannot vote according to our conscience. There is the Party Whip. God save us from this party system". This is what has been expressed by many honest legislators. Further, Sir, as I said, there is no stability at all.

The third point I would like to urge against this parliamentary executive is that it cannot reflect the several sections of the country. The defects are so overwhelmingly great that I should rather prefer a stable Government, a government which does not stand in fear of being turned out overnight, because it was not able to satisfy some corrupt supporters of their party. Now, it is true in a democratic Government, the executive must be responsible. Let us see whether there is any other system of Government which has both responsibility and stability. It is no doubt true that in the American system there is less responsibility and more stability. But if you look at another system of Government, namely, the Swiss form of Government, where the elected parliament again in its turn elects the executive, there the responsibility is emphasized. Having elected its executive, it leaves the executive to work out its schemes in a satisfactory way for a period of four years and the decisions of the Parliament are binding on that executive, unlike in the case of the American Presidential executive. Therefore, if we want both stability and responsibility, the Swiss system of executive is preferable.

Now, Sir, with regard to the form of constitution, I am unable to agree with the constitution that is embodied in the Draft Constitution. People seem to think that the Centre must be strong, and that unless the Centre is very strong the provinces will always be an impediment in the way of the Centre becoming strong. That is a wrong view. If provinces are made autonomous, that does not necessarily mean that the Centre will be rendered weak. What do we find here? My view is that the provinces will be nothing but glorified District Boards. Look at Article 275 where in an emergency all powers can be usurped by the Centre. Look at articles 226, 227 and 229. The Centre can legislate for the provinces in all matters; and again look at the long Union List and the Concurrent List. All these clearly show that in the hands of a Central Government which wants to over ride and convert this federal system into a
unitary system, it can be easily done. Now there is a danger of this sort of Government becoming totalitarian. This is the danger in the form of the constitution that is embodied in the Draft Constitution. Now to add to this, look at the Fundamental Rights that are enunciated. Can they be called Fundamental Rights at all? Fundamental Rights are those which are fundamental in character, unchangeable except in extreme circumstances. But what do you find here? These Fundamental Rights are hedged in by provisos, by overriding exceptions. There is a little confusion also in that chapter that deals with Fundamental Rights. It is said that from experience, it is found that instead of a Supreme Court deciding whether the government cannot under certain circumstances override the Fundamental Rights, provision is made in the draft itself; and it is claimed, Sir, is the provisions for the form of constitution that it must be a flexible constitution. May I, with due respect to Dr. Ambedkar, state that the rigidity and the legalism which he says must be avoided are the very essence of a written constitution? It is not an unwritten constitution as in the case of Britain. In the case of Britain, Sir, it is a matter of history. It is an unwritten constitution and it has suited the peculiar genius of the British people to go on with their work without any written constitution and the peculiar parliamentary democracy suited the British Government. The very rigidity and the legalism which Dr. Ambedkar complained of is a necessary and unavoidable characteristic of a written constitution. We do not want to be so flexible as to allow any Government to ride roughshod over the fundamental rights. They are not written rights at all if they are hedged in by so many exceptions. What is stated as Fundamental Rights, in the very article they have been rendered useless. Further, with regard to these Fundamental Rights, it is stated in section 13 that nothing contained in this shall in any way affect the operation of the existing laws. You know very well how reactionary the existing laws have been. No doubt in Article 8 it is stated that all laws which are inconsistent with the Fundamental Rights must go, but in article 13 it is said that the existing laws must prevail as against the Fundamental Rights. Not only there is contradiction here but there is confusion. I could understand, Sir, if under Article 8 a list of Acts and their sections have been mentioned as well as those which have been annulled. That section does not make it clear. In these circumstances, Sir, I am afraid, there are no fundamental rights at all.

One thing with regard to minority rights I am bound to say. There is nowhere any mention of provisions which safeguard the personal law of the people. You know, Sir, in India, at least, people of several communities are governed by personal laws based on their religion. It is possible to legislate with regard to personal laws also. That would go against the claims that this government is going to be secular, which would not interfere with the religious rights of the people.

Sir, one word with regard to reservation. Some Muslim friends of mine, especially Mr. Karimuddin has stated that he does not want reservation for his community. But, when I had a
talk with him, he clearly stated that when there are no separate electorates, the people who will be returned will be those put up by the majority community, and therefore, the Muslim candidates who really represent the Muslims may not be elected. That seems to be the reason why he did not want reservation. If we can find out a way by which the Muslims who are elected would truly represent their community, there should be no objection. If in case of minorities a device is found, for instance, the election being based on what is called proportional representation by the system of single transferable vote, if such a device is made by the party in power, by the persons responsible for the framing of the constitution, I think that might go along way. In the absence of such a device, in the absence of separate electorates, I do not think I will be voicing the opinion of my community if I gave up this reservation that has been agreed to in the Minorities Sub-Committee. Therefore, Sir, I feel, on the whole, that this draft has not been very satisfactory. There is almost a certainty system of Government would lead to fascism or totalitarianism and it is capable of riding rough-shod valued rights of the citizens and also of the minorities.

Mr. Z. H. Lari (United Provinces: Muslim): Mr. Vice-President, Sir, before making my submissions on the draft Constitution, I would like to lodge a protest. The Constituent Assembly refrained from taking any decision as to the language question, and had postponed its consideration to a future stage. But the Drafting Committee, of its own accord, inserted a clause laying down that Hindi and English shall be the languages for transacting the business of the House. In today's paper I saw a report that the Muslim members from the United Provinces and Bihar have agreed that Hindi with Devanagari script shall be the official language. I therefore think it necessary to repudiate that statement at the very outset, and say clearly that we stand for Hindustani written in either script as the national language of our motherland. So far as English is concerned, I think it is necessary to retain it for some years to enable those who are not acquainted with Hindustani to be able to take an effective part in the discussions in the House. An Honourable Member from Madras was right when he said that there should be no linguistic imperialism. For that reason, Hindustani written in either script along with English should be the languages used for transacting the business of the House.

Coming to the Draft Constitution, which is primarily intended to usher in a democratic secular republic, we have to see how far the contents, the form and the spirit of the provisions contained therein are calculated to promote the Objectives Resolution unanimously adopted by this House and universally acclaimed by the country. To assess the provisions of the Draft Constitution, we have to see how far the Draft Constitution ensures the inherent rights of man, rights without which life is not worth living, how far the provisions safeguard against possible prostitution of democratic forms for totalitarianism, how far the provisions ensure justice if not generosity for the minorities and lastly, how far they ensure the independent
development of the various national elements in the country. In order to assess the value of the provisions, we have to bear in mind two things: firstly, certain admissions made by the honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions which are the basis of the Draft Constitution, we had no such experience before us; but now we have. The first admission that the honourable Mover made was, and I will use his own words: "Democracy in India is only a top-dressing on Indians oil, which is essentially undemocratic"..... "It is wiser not trust the legislatures to prescribe forms of administration." With respect, I say he is mainly right.

An Honourable Member: He is wrong.

Mr. Z. H. Lari: I would like to point out in this connection the various Security Acts which have been passed by the various legislatures, particularly the Safety Act in one province which even excluded the right to move the High Courts under section 491 of the Criminal Procedure Code. The second admission that he made is: "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it." I say not only the people but even our Governments have to learn it. To prove this I will cite only two instances. The House will remember that in Calcutta - in Bengal - the High Court was seized of a case and had appointed a full Bench to decide as to what is the effect of the word 'reasonable' in an enactment dealing with Government's power to arrest and detain. The Bench was to meet only next day but the Government came out with an Ordinance laying down that the word 'reasonable' shall be held to have been deleted. No doubt, as the High Court remarked in that case 'His Excellency the Governor of the Province' was fully within his rights to enact an Ordinance but it was against constitutional morality. The second instance which I would place before the House is that the head of an autonomous institution - I mean the Aligarh University - was only the other day asked to quit and give place to another man although that head had the confidence of the University Court and of the community to which the institution appertains. I say therefore in assessing the value of the provisions we have to keep in view these two admissions made by the Honourable Minister, as well as the recent working of the democracies during the last fifteen months.

Now the first requirement of a citizen is there must be security of life and there must be safeguard of liberty. This august House when considering the Draft Fundamental Rights laid down that nobody should be deprived of life and liberty except in accordance with due process of law. Now those words have been substituted by the words 'procedure established by law'. That absolutely nullifies the intention of those of personal liberty and life "in accordance with procedure" it becomes open to the legislature to frame any legislation affecting life and liberty. That nullifies the very intention. Therefore the substitution of the
original clause is absolutely essential. In the Introduction to the Draft Constitution reference is made to the Japanese and Irish Constitutions but those responsible for those constitutions had laid down the procedure itself. For instance it is laid down there that everybody arrested shall have the right to be given the cause of arrest and he will have the right to get it adjudicated by courts. Therefore so far as Japanese and Irish Constitutions are concerned, they have laid down the procedure and after laying down the procedure, the Constitution says 'Nobody can be deprived of life and liberty except in accordance with procedure as established by law'. I submit that the examples of Ireland and Japan have no relevance. Next to individual liberty and life comes the sanctity of one's house. One's house has been said to be a citadel, and it is of sanctity for him. In all democratic constitution you will find that no searches or seizures can be made in the houses except on causes shown and on complaints specifying the reason thereof and thing to be seized. Similar articles should appear in our Constitution. The next necessity of the individual is the right to have elementary education. That is singularly absent in the Fundamental Rights. In the Directive Principles of State Policy it is contained that it shall be the endeavour of the State to provide elementary education. My submission would be that is absolutely insufficient. What is necessary is that it should be the duty of the State to provide elementary education and such a provision should exist in the Constitution among the Fundamental articles.

Now I come to Article 13 which refers to freedom of speech, assembly or association. These are conceded but have been hedged in by such provisos and conditions that they reduce them to a nullity. I think addition of the words 'subject to reasonable requirements of public order and morality' would be enough. The Honourable Mover said that in America these rights have been circumscribed by judicial decisions, but when judicial decisions circumscribing those rights are given, they are given out of necessities of State. I think the addition of the words 'subject to reasonable requirements of public order and morality' would do. I submit that Fundamental Rights as conceded in the Draft Constitution are indefinite, insufficient and in certain particulars, vague.

The next item I would like to bring before you is this. The twin principles of democracy are that everybody has a right to representation and the majority has the right to govern. The electoral system, therefore, must be such as to ensure representation to everybody. This is the significance of adult franchise but the method adopted, viz., that of single member constituency really amounts to disenfranchisement of 49 per cent of the voters. It is possible in a single member constituency to disenfranchise even a minority extending to 49 percent. I am talking of political minority. Even political minorities are entitled to be represented in representative institutions. Therefore the system which is laid down in this Constitution needs revision. It may be said it prevails in England but this is why I drew the attention of the House
to certain basic facts to which the Honourable Mover has referred and I would say it would be more advisable to follow the Irish, Swiss and now France in regard to introduction of proportional representation by single transferable or cumulative voting. It may be said that such system leads to multiplicity of parties. This has been in vogue for 25 years in Ireland and everyone is aware that one party governed the country for more than fifteen years and there had been not more than two parties. France had a plethora of parties even when there was no proportional representation. It is better for us to adopt this principle which is more progressive in instinct and which is really democratic.

I come to another feature of the Constitution, viz., the Ordinance. There was a time when we used to complain that Ordinance was the rule and legislature was hardly consulted. I may here refer to the Father of the Nation who said: "Under the British rule the Viceroy could issue Ordinance for making laws and executing them. There was a hue and cry against the combination of legislative and executive functions. Nothing has happened to warrant a change in our opinion. There should be no Ordinance rule. The Legislative Assemblies should be the only Law makers". It is said when the Assembly is not meeting, an emergency arises, and an Ordinance has to be promulgated. But there is no significance of time and space and you can get an Assembly within two days and it is not at all difficult. Even if a necessity existed, that has disappeared; and moreover what is its effect? Because of the use of Ordinance-making powers the Assembly has become a rubber-stamp. In our province I know there is hardly any legislation which is not preceded by an Ordinance and in a Parliamentary Government where the Cabinet determines really the policy of the majority, once the Cabinet has framed an Ordinance and it comes forward in the form of a legislation, it is impossible for the major party to go back and therefore it is the Cabinet which determines the legislation. I would accordingly submit that there is really no necessity of a provision requiring powers of issuing Ordinance.

Then there is the contingency of emergency. No doubt an emergency clause should be there. But such is the wide scope of the emergency as put in the Draft Constitution, that not only actual violence, not only actual invasion as in the case of America, but threat of violence is enough to warrant declaration of emergency. These features are dangerous and must be eliminated.

I will now come to that portion of the draft which deals with minority rights. In dealing with these rights the first thing that has to be seen is reservation of seats. That is the one unique feature of the Constitution - that a minority is said to be safeguarded by means of reservation of seats, without ensuring that the minority concerned has any right or voice in determining its representative. This is meaningless and even deceptive. The only means of safeguarding minorities is by adopting the system of proportional representation. A writer in the Round
Table of March 1948 referring to this system and its working in Ireland said that this solved the question of reconciling justice to minorities with the necessities of a stable Government. Then I come to the Services. What a strange contrast In the Legislature you have got statutory reservations where they are meaningless, but when you come to the Services it is merely said their claims shall be considered. This is a very pious wish. The experience of the last fifteen months in the United Provinces and in other provinces has shown that mere pious wishes are not enough. There must be statutory reservations. Take away the reservation from the Legislature and for God's sake give us reservation in the Services. Here I speak not only for the Muslims of the United Provinces but also for other minority people. You concede reservations to Anglo-Indians but you deny it to the Muslims. Why this discrimination? Take the situation in the United Provinces. If you peruse the results of the last twelve months there, hardly five per cent of the Muslims have been taken in the services. I say if you take into account their discharges and dismissals it will be 75 percent., but if you take new recruitment - it is hardly 5 percent.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): What did your leaders do in Pakistan?

Mr. Z. H. Lari: My friend wants me to follow in the footsteps of Pakistan. I am not going to do so.

Mr. Vice-President: Order, order.

Mr. Z. H. Lari: I have not mortgaged my rights to Pakistan. I stand here as a citizen of India. What Pakistan does or does not do is not my concern.

An Honourable Member: You have grown wise today Mr. Vice-President: Order, order.

Mr. Z. H. Lari: We never said that Muslims in these parts are going to migrate to Pakistan. We are the children of the soil and as such we claim the rights of citizens of India.

Shri. Vishwambhar Dayal Tripathi: Even your U. P.leader has escaped Mr. Z. H. Lari: Interruptions only show how uncharitable and how undemocratic are these........

Mr. Vice President: Order, order.

Mr. Z. H. Lari: I Submit to the order. I was saying that my time was very short.

Mr. Vice-President: It has gone already Mr. Z. H. Lari: Give me two minutes more please. Now there is the question of the Cabinet. I admit there can be no statutory representation there. In a parliamentary system of Government it is inconceivable. But you have to consider whether, after introducing proportional representation, it is not proper for us to go back to the Presidential system. In that case it will be possible to have the election of the Cabinet on the Swiss system. But in the present set-up of the Constitution I admit that statutory reservation is impossible and the best that could be done has been done.

Lastly, I would beg of this House to consider that there must be some
provision which should recognise the existence of an opposition in the Legislature. Of late since the Socialists seceded from the Congress, there have been utterances from responsible men indicating that the majority party - I do not say this is a confirmed opinion - are not very charitably disposed towards such an opposition. Just as it is in South Africa, or in England or in other countries, the position of the Leader of the Opposition should be accepted, and the one means of accepting is that it should be provided that he should be also granted a salary as in other countries. We know that in the system that is coming, men like myself have no chance to come back. Therefore, it is not in our interest but in the interests of democracy that there should be a proper Opposition which is constructive and charged with a duty to the country, and the motherland, and this can be assured only when you give a status to it in the Constitution itself.

I notice that in the further amendments provided by the Drafting Committee, there is a suggestion for the appointment of an Advisory Committee to advise the President and there the position of the Leader of the Opposition has been recognised. But his position should be recognised even in the Constitution for the Union and for the States.

With these few submissions I conclude. I have made references to certain admissions by Dr. Ambedkar but all the same I have faith in the goodness of my countrymen and in the catholic spirit of those who inhabit this motherland, and I hope that they will rise to the occasion, and now that the critical phase has passed, now that passions have subsided, they will be more realistic and more conciliatory so that there may be an even balance in the country between the majority and the minority, not only theoretically but actually, so that we may concentrate on making India great.

Mr. Hussain Imam (Bihar: Muslim): I wish to say a few words on the Constitution as it has been presented to us. My task has been lightened a great deal by the previous speakers who have referred to many of the questions to which I wished to refer.

I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some our friends' minds, when they want that the Constitution should provide for all the ills to which Indians are subject? It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission, Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials which are peculiar to our own circumstances.
The first lacuna which I find is that there is no mention of the sovereignty of the people. Unless you accept the principle of sovereignty of the people that all power is derived from the people and all Constitutions are based on the will of the people, the result will be confusion. This has resulted in confusion. For instance, take what was formerly called the Indian States and the British Indian Provinces. The way in which the two have been treated is scarcely just and equitable. We find that people who mainly fought for the achievement of Swaraj or self-rule have lesser power than the people of the States, who did not participate as much in the struggle as we of the Indian provinces. The customs income of certain States has to be compensated by means of central grants. We have been told that there is one citizenship, the citizenship of India. With one-citizenship rights, can the people of the States have different rights? In the Indian States the people will be free from income-tax and income-tax can only be applied to the British Indian provinces. Corporation tax is not levied there except in so far as it might be applicable to one or two Indian States. I therefore suggest that there should be uniformity with a single kind of suzerainty. That is my first fundamental objection to the Draft Constitution.

Secondly, as Dr. Ambedkar himself has pointed out, I think there must not be any differentiation between the provinces and the States. The right to maintain an army which has been given to the Indian States is wrong. India is in a dynamic condition. Thanks to the sagacity and firmness of Sardar Patel, the question of the Indian States has been solved to a great extent and they are no longer a stumbling block in our way. I was very glad to hear yesterday the Prime Minister of the Jodhpur State and one representative gentleman from Madhya Bharat speaking, in which they themselves came forward with the idea of uniformity with the Indian provinces. There is no reason why the portals of the Supreme Court should be closed to the citizens of Indian States. If they are citizens of India, they have as much right as we have to go to this court for the adjudication of their interests and rights. I think that it is all due to the fact that we have not conceded the suzerainty of the people nor the proposition that with uniformity you get as a matter of course a system under which every one will be equal before the law in power and in responsibility.

I was also surprised that a learned pundit of constitutional law like Dr. Ambedkar should have skipped over the fact that the responsibility of the non-parliamentary executive is not less than that of the parliamentary executive. If it is examined it will be found that the committees of the House of Representatives and the Senate in U.S.A. exercise far greater control than the control exercised by the House of Commons. It is wrong to say that the Executive in the U.S.A. only comes in for a corrective after four years' term of the President. He is subject to day today control and that control is far greater in the case of the Senate Committees and the House of Representatives than it is in the case of the British Parliament. A very well-known instance is the failure of President Wilson to carry forward his move for the League of
Nations, because it was the Senate Committee which did not consent to it. Even the appointment of ambassadors to other countries is subject to the control of the Senate. Therefore it is wrong to say that in the presidential non-parliamentary system there is no control and the control if at all is very remote. It is as intimate if not more intimate than in the British system of parliamentary control. I do not wish to discuss this aspect of the matter further as I shall have opportunities later when we will be discussing this subject again.

I might mention in this connection, as I said earlier, that the constitution must be framed to fit in with the needs of the country. I ask leaders to examine conditions in India. Look at the U. P., the centre of India, where the only other political party that you have got, viz., the Socialist Party, was supposed to be the strongest. What was the result in the local board and district board elections? They were beaten. In the Parliamentary elections out of twelve seats vacated by them every one of them was lost. Is this the way in which you can maintain parliamentary democracy? In a parliamentary democracy it is necessary that we must have an effective opposition. You can never have an effective opposition if you have single seat constituencies. It is only by means of a system of proportional representation that you can avoid the danger of reducing India to a Fascist State. I make this observation in all humility that for the preservation of democracy in India it is necessary that you must have a system where by an opposition may be allowed to come in. The popularity, the prestige and the name of the Congress are so great that it is impossible for anyone to come in opposition to the Congress and the result of this is, as has been seen many times in England, that the majority of the electors are disfranchised in this way that if there is a three-cornered contest the defeated candidates might together get more than the successful one. Even conceding that there will be no three-cornered contest a large part of the electorate is disfranchised. Even if you have 60 and 40 per cent. voting, 40 per cent. have no representation in the country, whereas under the system of proportional representation which is prevailing in most of the new advanced countries of Europe you will have representation in which every shade of opinion will be represented......

Shri. L. Krishnaswami Bharathi (Madras: General): What are those countries in Europe where there is proportional representation at general elections?

Mr. Hussain Imam: In the U.S.A. there is proportional representation......

Several Honourable Members: No, no.

Mr. Hussain Imam: Switzerland has got it. (Voices: No, no.) Even if nobody has got it, if it is necessary for us, we should not follow what others have done. As I said in the beginning, a constitution must be framed suitable to the needs of the country and not necessarily in line with what others have been doing.

I might explain a point which was made by the previous speaker, viz., that the personal law of the minorities should be safeguarded. The majority need not have the safeguard, because they
are the majority, and nothing can be passed in the legislature without their full consent and concurrence, whereas, the minority have not got this privilege and therefore it is necessary that the personal law of the Muslims and other minorities who so desire should be preserved from interference by the legislature without the concurrence of a vast majority of the members thereof.

Adverting to the question of reservation, as Mr. Larihas said reservation in the legislature is no good when there is no method of proper representation. I therefore say that proportional representation, in addition to being a very necessary item for the preservation of an opposition in the country, would also serve the interest of the minorities. There will be no need to have reservation for minorities provided you give proportional representation insufficiently large numbers.

For instance, one or two constituencies in each district may be made multi-member constituencies with ten or twelve seats in each. And, if you have the Lists system which prevailed sometime ago in Germany, that would serve a greater purpose; because voting will be on the basis of parties and not on the basis of persons. We want representation more in groups than individually. We do not want the spectacle of France repeated in India. But we do not wish to have a one-party Government which is liable to degenerate into something anti-democratic.

Before I conclude, Sir, I wish to say a few words on the language question. I am not going to say anything in opposition to the prevailing sentiment on this matter. The need for the continuance of the English language for the time being has been advocated by the South. But as far as Hindi is concerned, there is no difference of opinion, provided we know what is Hindi. I personally am prepared to adopt the language spoken by Sardar Patel and the language in which he delivered his recent address at Bombay. He does not come from the Urdu-speaking tracts. He is a Gujerati. He speaks the language which is spoken by people everywhere. I had occasion to listen to the radio-relay of his speech at Chowpathi and I found that it was nothing but Hindustani or whatever name you give it. To me the language in which he spoke at Chowpathi was Hindustani. It is a language which is far better understood by the people than the language used by the Department under him, the A.I.R.

We have been told, Sir, that in this respect too, we are following the Gandhian conception. But people forget that Mahatma Gandhi stood for Hindustani to the last moment. He stood for Hindustani, in both Devnagri and Urdu scripts. Devnagri, as far as the script is concerned has nothing to rival it. It is the best possible medium. But what about the language? Hindi (you may call Hindustani), unless you mix it up with big Sanskrit words and fill it up with all common genders, is Hindustani. As I said, the language of the Deputy Prime Minister, coming from a province not speaking Urdu, should be our criterion and guidance. If the Members of the Constituent Assembly are willing to accept it
I suggest that Hindustani, written in both Devnagri and Urdu, which was the last wish of Mahatma Gandhi and the most accepted in India today, should be adopted as the national language.

Sir, the Constitution is only framed once. It is not a thing which is done every other day. So it is but right and proper that in framing it we should give the utmost consideration, cool consideration, without heat and without rancour or mental reservations. I appeal to the House that they should forget and forgive the past. It is very painful, Sir, to be reminded every day that we are responsible for bringing Pakistan into existence. In its creation the Congress was as much a party as anybody else. In that spirit I request that Muslims should not be regarded as hostages. They should be regarded as citizens of India with as much right to live and enjoy the amenities of India - the land of their birth - as anyone else. I conclude my speech.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.

Much has been said about the fact that most of the provisions have been borrowed from the Constitutions of the U.S.A., England, Australia, Canada, Switzerland, etc. Sir, if for my part see nothing wrong in so borrowing as long as the higher interests of the Nation and the well-being and prosperity of the country are kept in mind. There is no doubt that the draft Constitution has been framed to fit in with the present administration. But this had to be so in the very nature of things. After all, we have all become used to a certain way of life of government and of administration. If the draft Constitution had changed the whole structure of Government, there would have been chaos. India is a new recruit to the democratic form of Government. Its people have been used to centuries of autocratic rule and, therefore, to carry on more or less on the lines they have been accustomed for some time more, with changes here and there according to changed conditions, is the best thing possible. The important thing is that power is derived from the people and it is the people who will make or mar the destiny of India.

A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.
Sir, coming to the Fundamental Rights, I find that what has been given with one hand has been taken away by the other. Fundamental Rights should be such that they should not be liable to reservations and to changes by Acts of legislature. It is essential that some at least of the civil liberties of the citizen should be preserved by the Constitution and it should not be easy for the legislature to take them away. Instead of this, we find the provision relating to these Rights full of provisos and exceptions. This means that what has been given today could easily be changed tomorrow by an Act of the legislature.

To my mind it is necessary that some sort of agency should be provided to see that the Fundamental Rights and the Directive Principles are being observed in all provinces in the letter and in the spirit. Otherwise it may be that the absence of such an agency may give rise to the formation of communal organisations with the object of watching the interests of their respective communities. It should be the function of the agency I have suggested to bring to the notice of the Government the cases where the Fundamental Rights and the Directive Principles are not being followed properly. I hope this point of mine will be seriously considered by this august Assembly when we come to discuss the Draft Constitution clause by clause.

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Constitution.

Sir, I will not go into the details of the Constitution because I shall deal with the various provisions as we discuss the Constitution clause by clause, but there are a few fundamental issues which have been raised and discussed on the floor of this House during the last two or three days to which I may refer in passing.

Sir, the question of the reservation of seats for the minorities has engaged the attention of this House. It is true, Sir, that last year on the recommendations of the Minorities Sub-Committee, this House accepted the principle of the reservation of seats for certain communities. At that time also I was opposed to this reservation of seats, and today again I repeat that in the new set-up with joint electorates it is absolutely meaningless to have reservation of seats for any minority. We have to depend upon the good-will of the majority community. Therefore speaking for the Muslims I say that to ask for reservation of seats seems to my mind quite pointless, but I do agree with Dr. Ambedkar that it is for the majority to realise its duty not to discriminate against any minority. Sir, if that principle that the majority should not discriminate against any minority is accepted, I can assure you that we will not ask for any reservation of seats as far as the Muslims are concerned. We feel that our interests are absolutely identical with those of the majority, and expect that the majority would deal justly
and fairly with all minorities. At the same time, as has been pointed out by some honourable Members in their speeches, reservation of seats for minorities in the Services is a very essential thing and I hope that the members of this House will consider it when we deal with that question.

Then, Sir, another question which has been engaging the attention of this House is the question of language. Sir, the question of language in its very nature is a very important question because after all we have to devise something which is most acceptable to the people living in this country. It is quite true that the language of the country should be the language that is mostly spoken and understood by the people of the country, and I do not deny the fact that Hindi is the language which is understood and spoken by the majority of the people (hear, hear), but, Sir, the word 'Hindi' as it is being interpreted today is a very wrong interpretation. After all there is not much difference between Hindi and Hindustani. Every one will bear witness to the fact that the language spoken in the country, whether by Hindus or Muslims, is a very different language to that which is being described as Hindi and which is being advocated by the protagonists of Hindi. What is advocated is Sanskritised Hindi which is only understood by a small section of the people. If we take the villages, the languages spoken there is very different to what is called Hindi here.

Then, Sir, I do not think that the forty million Muslims living in this country can immediately be asked to change their language. I agree that we will have to learn Hindi in the Devanagri script, but some time must be given to us to effect the change-over. It is very unfair of you to ask us suddenly to transact all the business of the state as well as the business in the legislatures in a language that we are not conversant with. I therefore feel that this is a matter which should be calmly and coolly considered. After all, this is not a matter which can be decided on the spur of the moment or on grounds of sentiment or passion. We have to keep in mind the requirements of the country. The Father of the Nation up to the last advocated Hindustani written in both the scripts as the only language which is most suitable and which can be acceptable to the mass of the people living in this country. I therefore recommend that, whereas Hindi in the Devanagri Script can be made the ultimate lingua franca of the country, a certain time limit, say about 15 years, must be given for the change over and until then Hindustani in both the scripts should remain the language of India.

In conclusion, Sir, I would say that whatever we put in this constitution, we must see that all our efforts are concentrated to make India strong and prosperous with equality of opportunity, happiness and prosperity for all so that India may lead the countries of the world on the path of peace and progress.

Dr. Monomohan Das (West Bengal: General): Mr. Vice-President, Sir, a few days have passed since the Draft Constitution was introduced on the floor of this House by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days,
the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of a very few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other Members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with.

One very reassuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, whenever a province likes to thrive at the cost of its neighbouring ones, when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great reassuring feature. I, as a member from West Bengal, especially find myself elated to think that henceforth when this constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethren from the Eastern Pakistan, will find a breathing space in our neighbouring provinces.

I beg to mention another point regarding the minority problem. The safeguards that have been awarded to the minorities in the draft Constitution, have caused some amount of resentment. Nobody can deny that minorities do exist in this country. No amount of denial can efface these minorities from the face of India. You know Sir, that democracy means rule by majority. The majority is always there to rule and the minority will always be there at the mercy of the majority. The majority has no need to be afraid of these minorities. It behoves the majority, I think, to protect these minorities, and give them safeguards, if necessary, so that a sense of confidence, a sense of security may be created in their hearts. I think, what the minorities of India demand and deserve today, from the majority, is a sympathetic consideration of their problems and not a challenging attitude.

One very pertinent question has been raised by an eminent member of this House, Sir, when he said that the Draft Constitution of India has borrowed many things from the Constitutions of other countries of the world, but it has taken nothing from the indigenous soil, from our cultural heritage, evidently meaning the Village Panchayat System. We, as a sentimental and idealist race have a natural tendency and love for everything that is old and past. Our Chairman of the Drafting Committee has been criticised by various personages of this House, for not including this Village Panchayat System into the Draft Constitution. They have taken it for granted that this Constitution has been the work of a single man, forgetting that there was a Constitution-making body, the Drafting Committee, always to guide the framing of Constitutions. I think, it is strange, Sir, that all the members of the Drafting Committee including the Chairman have forgotten to include this Village Panchayat System into our Constitution. The Village Panchayat System has been a blind spot
to all of them. I personally think the Drafting Committee has wilfully left it to the provincial legislatures to frame whatever they like about this Village Panchayat System.

In fact, Sir, there are provinces in which legislation has already been undertaken in that direction, I mean, Sir, the Gram Panchayat Bill of the United Provinces. There is nothing in our Constitution that will take from the provincial legislatures the power to pass an Act in that direction. If our provincial legislatures think that this Village Panchayat system will do immense good to our country, they are quite at liberty to introduce it in their legislatures and pass it accordingly. So I think, Sir, the criticisms sometimes amounting to abuse, which have been showered upon the Chairman of the Drafting Committee, are wholly uncalled for, unjustifiable, uncharitable, and if I am permitted to say so, undignified.

I beg to utter a few words of caution to all Honourable friends who are so enthusiastic protagonists of the Village Panchayat System. Unless and until our village peoples are educated, unless and until they become politically conscious unless they become conscious of their civic rights and responsibilities, and unless they become conscious of their rights and privileges, this Village Panchayat system will do more harm than good. I know that I am inviting upon myself when I say that the Village Panchayat System has been there and was there for centuries and centuries. How much has it contributed to the welfare of our country, how much has it contributed to our social, political and economic uplift? If this system is introduced before our village peoples are properly educated, then I think, Sir, the local influential classes will absorb to themselves all the powers and privileges that will be given by the Panchayat System and they will utilise it for their selfish motives. This system will enable the village zamindars, the village talukdars, the Mahajans and the money-lending classes to rob, to exploit the less cultured, the less educated, poorer classes of the villages.

With these words, Sir, I endorse wholeheartedly the motion put forward by the Chairman of the Drafting Committee for consideration of the Draft Constitution. I thank you, Sir, for the opportunity you have given me to express my views on the floor of this House.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future regeneration will feel great pride that this Drafting Committee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.

Sir, going through the various sections, one has to note whether the underdog, the common man, the communities that have been neglected in the past, have been well protected, and facilities for citizenship have been afforded. Reading this constitution, one finds that there are two novel things that are not obtaining in any of the constitutions of the world: first of all, the
eradication of untouchability. As a member of the so-called Harijan community, I welcome it. Untouchability has eaten into the vitals of the nation, and with all the pride and privilege of the Hindu community, the outside world have been looking at India with a doubtful eye. I welcome this provision because it shows the greatness of the majority community that they found out that there is a fungus that is eating into nation's pride and they have come forward to remove this course of untouchability. There are people in India today who say that enough propaganda has been made to eradicate untouchability and there is no need for further propaganda. But I honestly feel, Sir, if you go to the village parts, untouchability is rampant still and a provision of this sort in the Constitution is a welcome thing.

The second feature is the abolition of forced labour (begar). If there is any labour required for common purposes in the village, this most unfortunate fellow, the Harijan, is always caught hold of to do all menial and inferior service. By the provisions in this Constitution, I am sure you are elevating a community that has been outside the pale of society. It was given to the great Father of the Nation, Mahatma Gandhi, as a great mycologist, to find out the fungus that were eating into the national vitality. He has made certain proposals to eradicate this evil and I am glad that the Drafting Committee have made provisions to eradicate untouchability and forced labour on this unfortunate community.

Sir, in the Draft Constitution, they have stated that the eradication of untouchability can be made by laws. I plead that mere laws are not enough. Special laws have to be made. In my own province the legislature was good enough to pass an Act to remove the civil disabilities; but in putting the Act into operation, it was not possible even for the Government to enforce the facilities that were sought to be conferred by the Act. Therefore, I plead that there ought to be special laws if you really want to do away with untouchability and forced labour.

Coming to the Fundamental Rights that have been accorded to all in this country, and especially for the unfortunate minority communities, the Advisory Committee, the Minorities Committee and the Fundamental Rights Committee that went through the whole thing have adopted certain methods and they have been approved by this august Assembly. There are certain sections of people who say that no reservation is required. But, all those who have seen the unfortunate plight of these minority communities, feel that reservation must be there, as already accepted by the Minorities Committee and also approved by this august Assembly. So far as the protection of the minorities are concerned, it is the good-will of this august Assembly to confer adult franchise with joint electrates. Of course, none can deny that this is the best thing that could be done in the circumstances to elevate this community, that is poor in economic status and also poor in education. Any attempt to do away with adult franchise will be a great sin. In the matter of safeguard to the minorities, I think what is
now provided in the Draft Constitution is a welcome thing; but there is still in the provinces a strong feeling against these safeguards. I honestly feel that they must be enforced in all ways. Coming to the economic condition of the villagers, especially the tillers of the soil and agricultural labour, I do not find any provision has been made in the Draft Constitution to consider the village as a unit. Of course, due to exploitation and other things, the villages are in rack and ruin. It is the highest duty of any constitution-making body to see that the village is set right. Due to the hereditary system of appointment of village officers, Maniagars and Karnams, they are the people who rule the villages. Having made a constitution for the upper strata for the management of the provinces of India, if we leave alone the village reconstruction, I feel that we are doing a wrong thing. It is the wish of Mahatma Gandhi also that the village must be made a self-governing unit. I am sure this august Assembly will reconsider what has been presented to this House and see that we make proper amendments so that the village or a group of villages could come under the category of self-governing institutions. Whether in the District Boards or Municipalities, there are no real representatives of the people of the village or the taluk. Due to certain circumstances, the Collectors in my province are asked to look after the District Board administration. These Collectors are loaded with so much other responsible work that they appoint a Special officer to carry on the District Board administration. This is not a popular institution as it is now constituted. I feel that the village unit must be taken into account.

In the matter of appointment of Ministers, the President is given full powers. If you read the provisions of the Government of India Act, 1935, you will find that provision has been made that the Governor or the President, in choosing his Ministers, shall take into account the claims of the minority communities. I find no such provision in this Draft Constitution, some such provision will be made to take into account claims of the minority communities for these Ministers' posts. Sir, I believe that it is political power that can give a chance of better service to these neglected communities. Even in the matter of All India services, in section 10 it is said that the backward communities are to be taken not of. But, if you pursue the list of backward communities from province to province, the Scheduled Castes do not come in it. I feel that also must be rectified.

Finally, there is the controversy about the national language. Taking my own community, I do not think that even one per cent of the population have taken to Hindi or Hindustani. I feel, Sir, that this august body must deliberate properly and should not force any language on a province, or district or state where it is not welcomed.

With these few observations, I congratulate the President and members of the Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.
Shrimati Dakshayani Velayudhan (Madras: General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame - and I think there is - it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft. I fear that the Constituent Assembly from the very beginning of its formation showed more interest in things other than making a constitution. We hear daily speeches made by our great leaders and their ideals and principles but in the Constitution we find that it is barren of their ideas and principles. We have got leaders of national and inter-national importance but in our Constitution we find that those principles and ideals are absent and it is a great tragedy to find that such a draft has been placed before us and I do not think even the members of the Drafting Committee have completely read the Draft that is placed before us.

The general criticism is that the draft is a replica of the 1935 Act, but we cannot forget the fact that we have got a legacy of the British Imperialist administration which goes by the name of the Parliamentary system of Government. The trouble was that we were depending on it and we will have to depend on it even after the Constitution is put into operation. The trouble arose from one point, viz., just as the British administrators who wanted to keep India centrally and provincially as a single unit, we in our bewilderment and anxiety tried to bring India centrally and provincially as a strong unit and this centralisation of power has led to all the troubles. There are two ways of making India a strong unit. One is by the method of centralisation of power and the other is by decentralisation; but centralisation is possible only through parliamentary system which now goes under the safeguarded 'democratic methods', but in this draft we can't find anything that is democratic and decentralisation is totally absent. It is a great tragedy that in making the constitution of a great country with thirty crores of people, with a great culture behind it and the great principles and teachings of the greatest man of the world on the surface, we were only able to produce a constitution that is totally foreign to us. The arguments put forward by the Chairman of the Drafting Committee are not at all convincing. He has said that we are very late in making the Draft Constitution. But I can cite examples which will show that his arguments are not sound. The Drafting Committee recommends that the President of the Union can nominate fifteen members to the Council of States. Then another plea is that the term of the legislature should be more than
four years. There is another misnomer in the Draft and that is about the selection or the election of the Governors. The Committee feels that if the Governor and the Chief Minister who is responsible to the Legislature are elected by the people then there will be friction between the two. But the remedy they have suggested is worse than the disease. There is a panel and the President is to select from the four one person as a Governor. If the Centre happens to have a Congress President and if a province is having a Socialist majority, suppose the Socialist party recommends three from their party and one from the Congress, certainly the President at the Centre will select the Congress man to be the Governor. Certainly this will lead to friction. We find that this direct recruitment to Governorship is taken from the Government of India Act and it shows that we have not left out even a comma from it.

Then, Sir, I cannot understand why there should be Centrally Administered areas under the new Constitution. The British kept these areas simply to have the military rule in the country. But I do not understand why we should have such areas under the present Constitution. It is better that these provinces are merged with the adjoining provinces and thus we will not be losing anything. We find that the draftsmen included such a clause and as a result it has come before us for discussion.

Then I want to say a few words about the Socialist demand at this stage. The Socialists are the second party which wants to come as an Opposition to the official bloc. We cannot deny the large following that they are having in the country. They have declared that they want to be a Constitutional Opposition in the future. But I must say that I do not agree with their demand that this Constituent Assembly should be buried. I have to make one suggestion. The present Constitution, when it comes into force, will be put before the public by way of the General Elections. Then this Constitution can be made an election issue either for its acceptance or rejection. If the majority of the electorates accept the Constitution, then we can take it that the whole country has accepted it. If the majority of the electorates reject it then we must take it that the whole country has rejected it, and the party that comes into power, and the Legislature that will be formed thereafter, can take up the Constitution and makes the amendments that are necessary. I think, Sir, the Congress Party that is in power today will accept such a policy and see that we are not blamed for being undemocratic in our approach to Constitution making.

Shri Deshbandhu Gupta (Delhi): *Mr. President I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different Members of the House. I have read that part of the recommendations of the Drafting Committee which relates to the Chief Commissioners' Provinces, with great care. I would like to confine my remarks to this part only and wish that the Members of this House should go through it minutely.

Mr. President, you are aware that previously when the problem of Chief Commissioners' provinces was brought before the Constituent Assembly, the recommendations of the Drafting
Committee were that the system of governance should remain the same as is now in force. Hindustan is changed, the country is free, but Delhi and other Chief Commissioners' provinces, in spite of their considerable population, did not have any say in the administration. There was no change in the system of their governance. When such a recommendation was brought before us in the Constituent Assembly, the representatives of the Chief Commissioners' provinces raised their voice and the Constituent Assembly appointed a special sub-Committee, which was entrusted with the task of framing a constitution in accord with the conditions prevailing there. Mr. President, the chairman of this special Sub-Committee was Dr. Pattabhi Sitaramayya, the President-elect of our present National Congress and a senior member of this House. This special Sub-Committee had obtained the services of our constitutional "Pandit" Shri N. Gopalaswami Ayyangar. Moreover, our another Constitutional "Pandit", Shri K. Santhanam was also one of its members who always took a keen interest in it (laughter). (Do you doubt it)? Every member of the committee took interest in it and the recommendations which they submitted were unanimous. This committee held several meetings, considered the whole problem, examined all the sides of the question minutely and it also considered those difficulties of the Government, due to which they had deemed it proper to treat the Chief Commissioners' Provinces with indifference. Accordingly, taking all the matters into consideration, recommendations were submitted in which it was clearly stated that although the people of these areas demand that they should have the same rights as the people of the other provinces have already got - and there is no reason why this should not be - yet, considering that Delhi has a peculiar position of its own, they have recommended that Delhi and other similar provinces should be turned into Lieutenant-Governors' Provinces; and as regards the appointment of a Lieutenant-Governor it was conceded that the Centre should have control over him. Accordingly, it was resolved that instead of electing the Governor the President of the Republic should nominate him.

Another safeguard which has been provided is that, unlike other provinces, the constitution of the provinces should be framed differently and in such a manner that the provincial and central list should be concurrent, so that the Centre should have the full power to interfere in any legislation it likes which has been passed by the provincial Legislature. Moreover, the province should not have its exclusive jurisdiction.

It also has been provided that its budget should be brought before the Centre and that the President should have the right to interfere in it. This is not all. There is yet another safeguard, which says that should any difference arise between the Lieutenant-Governor and the Ministers on any matter it would be referred to the President whose decision on the subject would be

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taken as final. I fail to understand why the Drafting Committee deemed it necessary to
dismiss this question in a few lines on the plea that as Delhi is the Capital town, local
administration was not possible - although the committee had submitted its recommendations
after mature consideration in which maximum regard was paid to the powers of the Centre. It
seems to me that the Drafting Committee, instead of paying due regard to the
unanimous recommendations of the special committee or trying to find any other way out, has
acted according to its prejudices and thought that it was not a matter to which
consideration should be given. It seems to me that these
gentlemen were under the impression that the special committee was appointed merely to
console the people of Delhi and other Chief Commissioners’ provinces. That is why
its recommendations have been thrown into the waste paper basket. I would like to ask them,
why did they not realise that so many Members of the Constituent Assembly who
spend considerable time in Delhi have certainly thought it proper that Delhi's population of 20
lakhs should have a say in their own administration? Does it look nice that in case there is a
partial strike in Delhi, the Home Minister and the Prime Minister should run about to stop it?
Is it proper that even under the new system of administration the cabinet ministers should be
called upon to settle even the petty affairs of Delhi and the people of Delhi should have
no voice? It is said that there being no parallel in Australia, it could not be done also here in
India. I should have thought that we should try to benefit by the constitution of other countries
and should not merely copy word by word. The example of Australia has been cited, but the
population of its Capital town was 8000, and the estimate of its population in 1944 was 12,000.
Its population is less than that of Narela, a town near Delhi. If you want to follow the example
of Australia, then by all means make Narela your capital and exercise your authority there.
The people of Delhi will have no objection. Another example which has been cited is that of
Washington. This example can hold good to a certain extent. But I think that Delhi and
Washington cannot be weighed in the same scale. Delhi is a commercial and an industrial town
and it has a population of 20 lakhs whereas the population of Washington is near about 8
lakhs. Washington has been specially built to serve the purpose of a capital. Delhi has been in
existence for centuries, maybe for thousands of years. It has a culture of its own and
its population has its own requirements.
To my mind, great injustice is being done to the citizens of Delhi by dismissing the whole
question in few lines by saying that, as it is not done in United States and in Australia,
therefore nothing can be done likewise in Delhi. I would like to ask whether it is not a fact
that Moscow has a separate province and a provincial administration of its own. If Moscow,
being the Capital of U.S.S.R. can have a separate administration, why can't Delhi have one? Is
it not a fact that there are four separate provinces in the Union of South Africa? And is it not a
fact that even there, the capital city is also the capital of a province? Then why cannot it be done in India? Only two examples have been cited before us and of these two, one is that of a place where the population is 8000. I would like to ask with greatest respect: what comparison could there be between the capital of Australia and Delhi? Is it not an injustice that the case of Delhi be dismissed in a minute by comparing it with a town having a population of 8000?

I would like to say in all humility that if this Constituent Assembly, which is representative of the people, does not lend its ear to the voice of the people, then they will have to adopt some other method for making their voice heard by the members. Since 1927 from every nook and corner of Delhi the cry is being raised that Delhi should have a separate administration of its own; even today a resolution to the effect has been passed by the Delhi Provincial Congress Committee. A similar resolution has also been passed at a provincial political conference. Chief Commissioner's Advisory Council and the Delhi Municipal Committee have adopted similar resolutions. Similar resolutions have been passed in hundreds of meetings but the members of our Drafting Committee have completely ignored that; they have not cared to take note of that at all. I think it is a grave injustice. There can be no greater injustice that the residents of Delhi, which is the heart of India, be denied ashares in its administration. It is said that this demand is being put forth as some Delhi-wallas are hankering for Governorship and Ministership. I ask my worthy friend that while he poses to be the standard-bearer of the minority rights - Dr. Ambedkar's attentive eye at once catches even the minutest point, if any, concerning the minorities - how did the claim of this small province escape his notice? He should have shown some consideration to Delhi, regarding it at least as a minorities province. Even today when it concerns a religious minority, which is only 30 to 35 lakhs, the question is brought before the Constituent Assembly. It draws the attention of all of our leaders and they do their utmost to find a solution, but nobody today pays any heed to the Delhi province. Is it not an injustice to ignore the demand of twenty lakhs of people and to regard the twenty-lakh population as insignificant? Today about six lakhs of our brethren have come down to Delhi from West Punjab after losing their all. Delhi has given them shelter and made them its own. I want to know whether this Constituent Assembly wants to penalise doubly these six lakhs of people by denying them franchise? That would be a great injustice. If you think that Delhi, being the capital, needs more of protection then you can certainly give it. Delhi-wallas are prepared for that service. In the recommendation, which we have placed before you, we have ourselves conceded wide powers. What do you then lose by giving to Delhi a small Legislative Council and a few ministers? You will have full freedom to suspend the whole thing whenever you like. The special Committee have themselves given all these powers to the President. Everywhere, instead of giving this a trial which would be a step in the right direction, we are told that there is no necessity of giving it a trial, and the President is vested with powers to take any such
action, if and when he thought fit. On top of it all, it is made out that this is the only comprehensive solution of this problem. Mr. President, through you, I entreat the Honourable members of this House to ponder over this question calmly and to realise that the feeling of the people of Delhi is very strong and that their demand and their grievance is quite justified.

The same may be said about Ajmer-Merwara and Coorg; but as most probably they may amalgamate themselves with their neighbouring states they may thus acquire all the rights enjoyable by an autonomous province; but as regards Delhi it is being ordained that there would be no change in its status. Previously, Delhi's population was about six lakhs. Its present population is near about twenty lakhs, and it is estimated that within the next decade it would increase by another ten or fifteen lakhs. It is the fourth biggest town of India and its people have no voice in its administration. What is the state of affairs today? Delhi's Administrative report does not come before us. We are told that a Chief Commissioner's Advisory Council has been provided and we must be content with that. So, listen a bit about that also. It is more than a year that it was set up but not even once during all this period has the Chief Commissioner thought it necessary to consult the members of his Advisory Council on any matter of day-to-day administration so far. When riots broke out in Delhi, an emergency committee under the Chairmanship of Mr. Bhabha was set up by the Central Cabinet. But Delhi's Advisory Council had no hand in it. I want to know that if some sort of misfortune or devastation befalls Delhi today, or some sort of difficulties are created by the people of Delhi, then would it not affect us? How could it be therefore that the people of Delhi are not to be given any voice in its administration? New townships are being built around Delhi; new schemes are being planned, but nobody consults the people of Delhi. There is no place for them. For trivial matters they have to go to the Prime Minister or to the other Ministers. If Bombayites are capable of self-government, if Calcutta people are capable of running a government, and if U. P. with a population of five crores can run its government, then the same right should be given to the people of Delhi so that they may run the administration of Delhi province. The people of Delhia have never lagged behind during the hour of trial; their part in the struggle for freedom has been no less than that of others. In spite of all this, it is stated that no rights can be given to the Chief Commissioners' provinces of Delhi and Ajmer-Merwara. I want to emphasize that this question cannot be settled so easily.

Sir, I being the only member here for Delhi, my voice is feeble; I get little opportunity to make known to this House the aspirations of the people of Delhi. Today, with the great difficulty I have got this opportunity to put their case before this House; who cares for a cry in the wilderness? The most potent argument that I can place before you is that whatever safeguards you think proper, you may take. We shall have no objection to that, but the
local administration should be entrusted to the people of Delhi. Delhi’s status should be similar to that of other provinces. If you do not concede this right to them, it would be a grave injustice. The consequences will not be good.

Shri Gokulbhai Daulatram Bhatt (Bombay States): Mr. President, The minorities are being afforded an opportunity today to speak to the motion. I am, however, from the Native States. But these States are as yet political minors though they are gradually moving forward to attain the age of political majority. I am specially here to demand that we, who have reached this fulness of political age, should be recognised to have attained it, notwithstanding those who would like to deny us this right. The fact is that our outstanding those States and Unions of States are similar in character to the other provinces. I believe that I have been afforded this opportunity on this very ground and I only say that it was for this very purpose that I had agreed to it and I thank you, Sir, for affording this opportunity to me. Since the draft of the constitution reached me I have been carefully scrutinising it. I may therefore say that it is not that I have begun its scrutiny only a few days back. But from the day I began to examine it I have felt that there is nothing in it which may be said to be proper and right. I admit that it is quite proper to borrow, in a written constitution, such provisions from constitutions of other countries as may be considered obviously very good and useful. But the bold and authoritative statement of the Chairman of the Drafting Committee that the constitution we are going to accept would be the best in the world should be taken with some reservation. He says so because he is one of those who have prepared this draft - and I admit that they are entitled to gratitude on our part for the pains they have taken and the labours they have put in, borrowing parts from the constitutions of innumerable countries. Of course, it is not that these parts are disparate nor do I suggest that they have strung up a remarkable frame of unharmonious parts gathered from here and there. No, I would not like to make such an observation, for I do not think that the disparity within its various parts is to such an extent as would justify such a sentiment. But I would say that even in the buildings of Delhi, the city where we are meeting today and of which Shri Deshbandhuji has been telling us just now and which I agree should be given a separate status of its own.

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* [] Translation of Hindustani Speech.

in the buildings of Delhi, for example, in a building like the Governor General’s House there are to be found traces of ancient architecture just as there are those of modern architecture. Similarly I concede that good provisions of the constitutions of other countries may be included in our Constitution. But I feel pained today, as I did even before, that in our eagerness to borrow from other countries we have totally neglected those ancient principles and institutions of our country which are there even today and which we have inherited in our blood. It is a draft of the Constitution but neither its guiding principles nor its body
arevitalised by the heart of India. The truth is that it does not give us the sense of being our own. This draft is nodoubt beautifully decorated and decorated with flowers and another attractive articles. But the fragrance which such of constitution should give out is not there. I do not suggestthat the labours of the Committee were a mere waste of energy and time, but I beg to be excused if I do wonder whyso many months were spent on it when the constitution to be framed was to be only of this nature. I do not deny that there are some good features in it and I extend my congratulations to them for the same; but considering it as a whole I doubt seriously if it can at all be considered a constitution which is Indian in spirit and in character.

Dr. Ambedkar boldly admitted, and the members of the Drafting Committee do concede that in this constitution there is no provision for establishing Panchayat Raj, the village Panchayati system in India. When there is no such provision, it can never be the constitution of India. To forget or sprung the system of village Panchayats, which has lifted us up and which has sustained us so far and to declare boldly that it has been deliberately spurned - willin all humility I lodge my protest against it. They admit that they have spurned it and have not included it in our constitution. He has said so and that too with great emphasis. I am pained at the fact that the chairman of our Drafting Committee has used the words, "what is the village but a sink of localism and a den of ignorance..." I am glad that the Draft Constitution has discarded the village..." I was grieved to find that our great Pandit with all his knowledge of Sanskrit and politics, has opposed the system of village Panchayats in this way. If the village is to be discarded, someone can also boldly demand that this constitution be discarded. But I am a humble person and do not have much experience either. Occasionally I am led by sentiment also to make an observation. But in all circumstances an attempt should be made to include in some form, by the amendments we intend to bring forward, that democracy should be the foundation of our polity. Then alone can our Constitution be complete, then alone will it have life and then alone will we have the feeling that this constitution is our own. Otherwise we would be rearing this great building on a foundation of sand and it will surely fall down. This is what I particularly want to suggest and that was why I wanted to speak.

Another matter to which I want to draw your attention is that some of our States have joined together to form a number of unions. It is a matter of great satisfaction that our able leader Sardar Patel has changed the very face of the States with great speed and I am proud of it. Now, the constitution will be completed, I admit by the end of December or in January next. But several States have and desire to continue to have a separate existence of their own. It must be said that if the province of Orissa can have a separate existence, several states such as Travancore, Cochin, Jaipur, Jodhpur etc., can also maintain their separate existence. But I humbly submit that if we form such small provinces, we will find ourselves in the grip of
much worse provincialism than we have today and all our unity will be shattered. The result will be that we will not be as strong as we are today. I would say that the States and provinces should be so big and so well administered as to be able to stand on their own legs. A Revenue of six crores or seven crores or eight crores is not sufficient. No large province can pull on with this revenue. I my opinion, no such province should be formed as may have a smaller revenue than twenty five crores; nor in my opinion should there be formed any union States which does not have that much revenue. But this is a matter which requires consideration, special consideration, by our leaders. I come from Rajputana and from a small State. Even though I admit that the rulers have made great sacrifices and may also praise their self-surrender. Yet I wonder how long can Bhopal be permitted to maintain, as it is doing today, a separate existence from Madhya Bharat, how long Benares and Rampur can be permitted to have their separate existence and Jodhpur and Bikaner, in our parts, can be permitted to remain separate autonomous identities. When India is going to be divided into various provinces - and of course they should be big ones - I think the rulers, rulers of big States, should come forward and on the basis of the mutual understanding merge their States into sufficiently big units. If, for example, Rajputana is formed into a unit by itself the question of Ajmer and Merwara will naturally be solved for there would be no reason to continue its separate existence as it is but a small province. It is a part of Rajputana and should be naturally merged therein. Rulers may be given high officers in order to keep up their dignity. The offices of Rajpramukh and Up-Rajpramukh are already there. Besides these, there are many other offices in India which should be given to rulers because we respect them. So far as the States are concerned, we would not in any circumstances like to lag behind the provinces, nor would it be proper to keep them behind the Provinces. If it be said for any reason that we have acceded only in a few subjects, I would say that this need not be so. We do say that our status should be improved because you are kind to us and want to lead us forward. We would not like to be put on any other footing than that of the other provinces. Our status should be the same as of provinces in all matters, be they relating to High Court or Supreme Court. I am sure you will help us in the matter. We shall ask our leaders to help us, to lead us forward and give us the same place that the provinces have.

I shall not speak much because many friends have already put many of these facts before you. But I do like to submit that in regard to the formation of small provinces on linguistic basis I hold a different view. It is my opinion that under that under the existing conditions in India we should not even think of this for at least the next ten years. I would submit earnestly to my friends to postpone for the present the issue of the Linguistic Provinces for the sake of the unity that we are seeking to establish and for the sake of the powerful nation we are trying to build up now. We shall think over the question after ten years when things have settled down.
This is what I wanted to say. As far as Delhi and other places are concerned. I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lala Deshbandhu Gupta on this question. But the small regions like Ajmer-Marwara, Coorg, Pantpiloda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution.

The Honourable Pandit Jawaharlal Nehru: (United Provinces: General) (Rising amidst cheers)

Mr. Vice-President. Sir, we are on the last lap of our long journey. Nearly two years ago, we met in this hall and on that solemn occasion it was my high privilege to move a Resolution which has come to be known as the Objectives Resolution. That is rather a prosaic description of that Resolution because it embodied something more than mere objectives, although objectives are big things in the life of a nation. It tried to embody, in so far as it is possible in cold print to embody, the spirit that lay behind the Indian people at the time. It is difficult to maintain the spirit of a nation or a people at a high level all the time and I do not know if we have succeeded in doing that. Nevertheless I hope that it is in that spirit that we shall consider it in detail, always using that Objectives Resolution as the yard measure with which to test every clause and phrase in this Constitution. It may be, of course, that we can improve even on that Resolution; if so, certainly we should do it, but I think that Resolution in some of its clauses laid down the fundamental and basic content of what our Constitution should be. The Constitution after all some kind of legal body given to the ways of Governments and the life of a people. A Constitution if it is out of touch with the people's life aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds up to a certain high mark. I think that the Objectives Resolution did that. Inevitably since then in the course of numerous discussions, passions were roused about what I would beg to say are relatively unimportant matters in this larger context of giving shape to a nation's aspirations and will. Not that they were unimportant, because each thing in a nation's life is important, but still there is a question of relative importance, there is a question also of what comes first and what comes second. After all there may be many truths, but it is important to know what is the first truth. It is important to know what in a particular context of events is the first to be done, to be thought of and to be put down, and it is the test of a nation and a people to be able to distinguish between the first things and the second things. If we put the second things first, then inevitably the first and the most important things suffer a certain eclipse.
Monday, the 8th November, 1948

Now I have ventured with your permission, Sir, to take part in this initial debate on this Draft Constitution, but it is not my intention to deal with any particular part of it, either in commendation of it or in criticism, because a great deal of that kind has already been said and will no doubt be said. But in view of that perhaps I could make some useful contribution to this debate by drawing attention to certain fundamental facts again. I had thought that I could do this even more because in recent days and weeks, I have been beyond the shores of India, have visited foreign lands, eminent people and statesmen of other countries and had the advantage of looking at this beloved country of ours from a distance. That is some advantage. It is true that those who look from a distance do not see many things that exist in this country. But it is equally true that those who live in this country and are surrounded all the time without numerous difficulties and problems sometimes may fail to see the picture as a whole. We have to do both; to see our problems in their intricate detail in order to understand them and also to see them in some perspective so that we may have that picture as a whole before our eyes.

Now this becomes even more important during a period of swift transition such as we have gone through. We who have lived through this period of transition with all its triumphs and glories and sorrows and bitterness, were affected by all these changes; we are changing ourselves; we do not notice ourselves changing or the country changing so much and it is a little helpful to be out of this turmoil for a while and to look at it from a distance and to look at it also to some extent with the eyes of other people. I have had that opportunity given to me. I am glad of that opportunity, because for the moment I was rid of the tremendous burden of responsibility which all of us carried and which in a measure some of us who have to shoulder the burden of Government have to carry more. For a moment I was rid of those immediate responsibilities and with a mind somewhat free, I could look at that picture and I saw from that distance the rising Star of India far above the horizon (hear, hear) and casting its soothing light, in spite of all that has happened, over many countries of the world, who looked up to with hope, who considered that out of this new Free India would come various forces which would help Asia, which would help the world somewhat to right itself, which would cooperate with other similar forces elsewhere, because the world is in a bad way, because this
great continent of Asia or Europe and the rest of the world are in a bad way and are faced with problems which might almost appear to be insurmountable. And sometimes one has the feeling as if we were all actors in some terrible Greek tragedy which was moving on to its inevitable climax of disaster. Yet when I looked at this picture again from afar and from here, I had a feeling of hope and optimism not merely because of India, but because also of other things that I saw that the tragedy which seemed inevitable was not necessarily inevitable, that there were many other forces at work, that there were innumerable men and women of goodwill in the world who wanted to avoid this disaster and tragedy, and there was certainly a possibility that they will succeed in avoiding it.

But to come back to India, we have, ever since I moved this Objectives Resolution before this House - a year and eleven months ago, almost exactly - passed through strange transitions and changes. We function here far more independently than we did at that time. We function as a sovereign independent nation, but we have also gone through a great deal of sorrow and bitter grief during this period and all of us have been powerfully affected by it. The country for which we were going to frame this Constitution was partitioned and split into two. And what happened afterwards is fresh in our minds and will remain fresh with all its horrors for a very long time to come. All that has happened, and yet, in spite of all this, India has grown in strength and in freedom, and undoubtedly this growth of India, this emergence of India as a free country, is one of the significant brothers and sisters who live in this country, significant for Asia, and significant for the world, and the world is beginning to realise - chiefly I think and I am glad to find this - that India's role in Asia and the world will be a beneficent role; sometimes it may be with a measure of apprehension, because India may play some part which some people, some countries, with other interests may not particularly like. All that is happening, but the main thing is this great significant factor that India after a long period of being dominated over has emerged as a free, sovereign, democratic independent country, and that is a fact which changes and is changing history. How far it would change history will depend upon us, this House in the present and other Houses like this coming in the future who represent the organised will of the Indian people.

That is a tremendous responsibility. Freedom brings responsibility; of course there is no such thing as freedom without responsibility. Irresponsibility itself means lack of freedom. Therefore we have to be conscious of this tremendous burden of responsibility which freedom has brought: the discipline of freedom and the organised way of working freedom. But, there is something even more than that. The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in world affairs. It is not a question of our choosing this or that;
it is an inevitable consequence of what India is and what a free India must be. And, because we have to play that inevitable part in world affairs, that brings another and greater responsibility. Sometimes, with all my hope and optimism and confidence in my nation, I rather quake at the great responsibilities that are being thrust upon us, and which we cannot escape. If we get tied up in our narrow controversies, we may forget it. Whether we forget it or not, that responsibility is there. If we forget it, we fail in that measure. Therefore, I would beg of this House to consider these great responsibilities that have been thrust upon India, and because we represent India in this as in many other spheres, on us in this House, and to work together in the framing of the Constitution otherwise, always keeping that in view, because the eyes of the world are upon us and the hopes and aspirations of a great part of the world are also upon us. We dare not belittle; if we do so, we do an ill-service to this country of ours and to those hopes and aspirations that surround us from other countries. It is in this way that I would like this House to consider this Constitution: first of all to keep the Objectives Resolution before us and to see how far we are going to act up to it, how far we are going to build up, as we said in that Resolution, "an Independent Sovereign Republic, wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people, and wherein shall be guaranteed and secured to all of the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and this ancient land attain its rightful and honored place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

I read that last clause in particular because that brings to our mind India's duty to the world. I should like this House when it considers the various controversies - there are bound to be controversies and there should be controversies because we are a living and vital nation, and it is right that people should think differently and it is also right that, thinking differently when they come to decisions, they should act unitedly in furtherance of those decisions. There are various problems, some very important problems, on which there is very little controversy and we pass them - they are of the greatest importance - with a certain unanimity. There are other problems, important no doubt, possibly of a lesser importance, on which we spend a great deal of time and energy and passion also, and do not arrive at agreements in that spirit with which we should arrive at agreements. In the country today, reference has been made - I will mention one or two matters - to linguistic provinces and to the question of language in this Assembly and for the country. I do not propose to say much about these questions, except to say that it seems to me and it has long seemed to me inevitable that in India some kind of reorganization should take place of provinces, etc., to fit in more with the cultural, geographical and economic condition of the people and with their desires.
We have long been committed to this. I do not think it is good enough just to say linguistic provinces; that is a major factor to be considered, no doubt. But there are more important factors to be considered, and you have therefore to consider the whole picture before you proceed to break up what we have got and re-fashion it into something new. What I would like to place before the House is that, important from the point of view of our future life and governance as this question is, I would not have thought that this was a question of that primary importance, which must be settled here and now today. It is eminently a question which should be settled in an atmosphere of good-will and calm and on a rather scholarly discussion of the various factors of the case. I find, unfortunately, it has raised a considerable degree of heat and passion and when heat and passion are there, the mind is clouded. Therefore, I would beg of this House to take these matters into consideration when it thinks fit, and to treat it as a thing which should be settled not in a hurry when passions are roused, but at a suitable moment when the time is ripe for it.

The same argument, if I may say so, applies to this question of language. Now, it is an obvious thing and a vital thing that any country, much more so a free and independent country, must function in its own language. Unfortunately, the mere fact that I am speaking to this House in a foreign language and so many of our colleagues here have to address the House in a foreign language itself shows that something is lacking. It is lacking; let us recognise it; we shall get rid of that lacuna undoubtedly. But, if in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution, I submit to this House it is not a very wise step to take. Language is and has been a vital factor in an individual's and a nation's life and because it is vital, we have to give it every thought and consideration. Because it is vital, it is also urgent matter; and because it is vital, it is also a matter in which urgency may ill-serve our purpose. There is a slight contradiction. Because, if we proceed in an urgent matter to impose something, may be by a majority, on an unwilling minority in parts of the country or even in this House, we do not really succeed in what we have started to achieve. Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned; but there will always be one all-India language. Language ultimately grows from the people; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought. I would beg this House to consider the fact and to realize, if it agrees with me, that the surest way of developing a natural all-India language is not so much to pass resolutions and laws on the subject but to work to that end in other ways. For my part I have a certain conception of what an all-India language should be. Other people's conception may not be quite the same as mine. I cannot impose my conception on this
House or on the country just as any other person will not be able to impose his or her conception unless the country accepts it. But I would much rather avoid trying to impose my or anyone else's conception but to work toward that end in cooperation and amity and see how, after we have settled these major things about the Constitution, etc., after we have attained an even greater measure of stability, we can take up each one of these separate questions and dispose of them in a much better atmosphere.

The House will remember that when I brought that motion of the Objectives Resolution before this House, I referred to the fact that we were asking for or rather we were laying down that our Constitution should be framed for an Independent Sovereign Republic. I stated at that time and I have stated subsequently this business of our being a Republic is entirely a matter for us to determine of course. It has nothing or little to do with what relations we should have with other countries, notably the United Kingdom or the Commonwealth that used to be called the British Commonwealth of Nations. That was a question which had to be determined again by this House and by none else, independently of what our Constitution was going to be. I want to inform the House that in recent weeks when I was in the United Kingdom, whenever this subject or any allied subject came up for a private discussion - there was no public discussion or decision because the Commonwealth Conference which I attended did not consider it at all in its sessions - but inevitably there were private discussions, because it is a matter of high moment not only for us but for other countries as to what, if any, relation we should have, what contacts, what links we should bear with these other countries. Therefore the matter came up in private discussion. Inevitably the first thing that I had to say in all these discussions was this that I could not as an individual - even though I had been honored by this high office of Prime Ministership - I could not in any way or in any sense commit the country - even the Government which I have the honour to represent could not finally decide this matter. This was essentially a matter which the Constituent Assembly of India alone can decide. That I made perfectly clear. Having made that clear, I further pointed out this Objectives Resolution of the Constituent Assembly. I said it is open of course to the Constituent Assembly to vary that Resolution as it can vary anything else because it is Sovereign in this and other matters. Nevertheless that was the direction which the Constituent Assembly gave to itself and to its Drafting Committee for Constitution, and so long as it is (cheers) - that Constitution would be in terms of that Objectives Resolution. Having made that clear, Sir, I said that it has often been said on our behalf that we desire to be associated in friendly relationship with other countries, with the United Kingdom and the Commonwealth. How in this context it can be done or it should be done is a matter for careful consideration and ultimate decision naturally on our part by the Constituent Assembly, on their part by their respective Governments or peoples. That is all I wish to say about this matter at this stage because possibly in the course of this session this matter no doubt will come up before the House in more concrete form. But
in whatever from whether now or later, the point I should like to stress is this, that it is something apart from and in a sense independent of the Constitution that we are considering. We pass that Constitution for an Independent Sovereign Democratic India, for a Republic as we choose, and the second question is to be considered separately at whatever time it suits this House. It does not in any sense fetter this Constitution of ours or limit it because this Constitution coming from the people of India through their representatives represents their free will with regard to the future governance of India.

Now, may I beg again to repeat what I said earlier and that is this: that destiny has cast a certain role on this country. Whether anyone of us present here can be called men or women of destiny or not I do not know. That is a big word which does not apply to average human beings, but whether we are men or women of destiny or not, India is a country of destiny (cheers), and so far as we represent this great country with a great destiny stretching out in front of her, we also have to function as men and women of destiny, viewing all our problems in that long perspective of destiny and of the World and of Asia, never forgetting the great responsibility that freedom, that this great destiny of our country has cast upon us, not losing ourselves in petty controversies and debates which may be useful but which will in this context be either out of place or out of tune. Vast numbers of minds and eyes look in this direction. We have to remember them. Hundreds of millions of our own people look to us and hundreds of millions of others also look to us; and remember this, that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. Therefore it has to be flexible. So also, when you pass this Constitution you will, and I think it is proposed, lay down a period of years - whatever that period may be - during which changes to that Constitution can be easily made without any difficult process. That is a very necessary proviso for a number of reasons. One is this: that while we, who are assembled in this House, undoubtedly represent the people of India, nevertheless I think it can be said, and truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote - man and woman - the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that House elected so - under this Constitution of course it will have the right to do anything - should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is
sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility.

May I say one word again about certain tendencies in the country which still think in terms of separatist existence or separate privileges and the like? This very Objectives Resolution set out adequate safeguards to be provided for minorities, for tribal areas, depressed and other backward classes. Of course that must be done, and it is the duty and responsibility of the majority to see that this is done and to see that they win over all minorities which may have suspicions against them, which may suffer from fear. It is right and important that we should raise the level of the backward groups in India and bring them up to the level of the rest. But it is not right that in trying to do this we create further barriers, or even keep on existing barriers, because the ultimate objective is not separatism but building up an organic nation, not necessarily a uniform nation because we have a varied culture, and in this country ways of living differ in various parts of the country, habits differ and cultural traditions differ. I have no grievance against that. Ultimately in the modern world there is a strong tendency for the prevailing culture to influence others. That may be a natural influence. But I think the glory of India has been the way in which it has managed to keep two things going at the same time: that is, its infinite variety and at the same time its unity in that variety. Both have to be kept, because if we have only variety, then that means separatism and joint to pieces. If we seek to impose some kind of regimented unity that makes a living organism rather lifeless. Therefore, while it is our bounden duty to do everything we can to give full opportunity to every minority or group and to raise every backward group or class, I donot think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

I trust, Sir, that what I have ventured to submit to the House will be borne in mind when these various clauses are considered and that ultimately we shall pass this Constitution in the spirit of the solemn moment when we started this great endeavor.

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

The Constituent Assembly reassembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Giani Gurumukh Singh Musafir (East Punjab: Sikh): Mr. President, like my Honourable friend Shri Deshbandhu Gupta, I cannot say that Dr. Ambedkar, President of the Drafting Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee’s labour in framing this first constitution is certainly praise-worthy.
In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding.

Now I want to say something regarding Article 5 which is embodied in the Part relating to the rights of citizenship. Some of my friends have already drawn our attention to the fact that it would be very difficult for illiterate people to appear before a magistrate for filling their declarations. But I look at it also from another point of view. From both points of view, some sort of amendment is essential, because in this Article no distinction has been made between a foreigner and the Hindus and the Sikhs coming from Pakistan. Those that are still perforce in Pakistan will have no right of acquiring citizenship after this Constitution has been framed. I think this Article should be so amended that they might be regarded as the citizens of this land, whenever they come here. There is yet another point. Just at present Non-Muslims are coming from East Bengal. If, therefore, any provision is made in this Constitution to the effect that they would not be able to come, after this Constitution has been passed, then the process of their migration will gain momentum. We are not able to look fully well after the refugees who have come here already. From this point of view, too, I consider it expedient that suitable amendment should be made in this item.

Another point which I want to mention is regarding the Fundamental rights, namely the one which concerns our basic rights. They have been stated in grandiloquent style, but the many limitations made therein have lessened the grandiloquence. Seth Damodar Swarup had moved an amendment on behalf of his party, which was lost. The object of his amendment was to point out that his party, which was lost. The object of his amendment was to point out that this Assembly which is not elected on the basis of joint electorate and adult franchise, is not representative of the masses; but we did not agree with him and the House rejected his amendment. But this much is very clear that although our Assembly was not elected on the basis of joint electorate and adult franchise, yet this Constituent Assembly has to look to the interest of the masses at the time of framing the constitution. Articles 9 to 13, where the people's rights have been embodied, answer the objection raised by Seth Sahib. For instance, there is equality of right on the basis of religion, race or caste, meaning thereby that there shall be no discrimination on grounds of Caste. Untouchability is abolished. Freedom of speech is guaranteed and in awarding punishment, no discrimination shall be made on grounds of creed or caste. All these things have been incorporated and they are all very good; but I have objection against some of the limitations. For example, in Article 13, freedom of speech has been guaranteed, freedom of movement throughout the country without any distinction has been given and there is freedom to acquire and to dispose of property - all these things have been embodied. But the limitation imposed in item (5) of Article 13 should not have been there. In the face of these limitations, all grand clauses which have been embodied in it will lose some of their grandeur. Even now I
have this complaint. any body may admit it or not; but I strongly believe, that those of our brethren who have come from Pakistan - although in some places they have been treated well, yet distinction has certainly been made and their rehabilitation has not been liked. Wherever they have gone, difficulties have certainly been raised in rehabilitating them freely and comfortably. Therefore from the point of view of refugee problem, too, there should not be any limitation regarding the freedom of movement throughout the country and of acquiring and disposing of property. Those who cannot acquire plots should have the liberty of acquiring cultivable lands. I have received telegrams from everywhere that this limitation should be done away with so that this old evil of disunion might disappear.

Third thing which I want to say is about the language. This is a very important question but I had not thought it to be so intricate as made out by our learned men and research scholars. Till the time this question had not come to me in its present form, I never thought there was any difference between Hindi and Hindustani. It never occurred to me that Hindi is separate language from Hindustani. In this connection I recall a Panjabi couplet of my own which means "Ignorance was bliss to me; knowledge has landed me into a difficult situation" or, in other words, I wish I had not known about it; now when I have known it I am in a puzzle what to do. But one thing is quite clear. As a principle we should agree to keep only one script in our Constitution. There should be one script and one language for the whole of India, as has been stated by our friend Seth Govind Das Ji and several other speakers.

I also agree that our first constitution should be adopted in the National language. This is my firm faith and my confirmed opinion. So far as language is concerned, it undoubtedly varies from place to place; there is no doubt about it. There seems to be some difficulty about language question. Some Honourable members have gone to the extent of threatening that if a particular decision is taken they would stop attending the House or would have to take some steps as a protest. In our armed forces, Roman script, Urdu script as well as Devnagri script are prevalent. If we have to keep only one script than we ought to see in which of these three scripts all our languages can be written and reproduced correctly. I would go to this extent, that if all the advocates of provincial languages so agree, then I would be prepared for the position that Bengalis should leave their Bengali script, Tamilians and Telugus give up their scripts and Punjabis leave their Punjabi script and all these languages should be written in Devnagri script and I would have no objection. Under the present conditions however this seems to be somewhat difficult, though it would create a sense of oneness. If all of us differ in every other respect, at least we must be one in one respect. We must unite on one point, that is we must agree to have one common script, in which all different languages may be rewritten. If it is done we shall be saved from several perplexities. In case this is not possible, then every provincial language must be given equal importance in that particular province.
Then remains the question of language; regarding that I want to say this that I have seen all the translations of this draft constitution. I have seen its Hindi translation, and have read its Urdu and Hindustani translations. I have used the word "seen" about Hindi translation for the reason that I have talked to several of my friends who are supporters of Hindi. None of them could explain the purport of the Hindi translation to me. Our great poet of Panjab Dr. Iqbal, used to write his poems in Persian. I have read several of his books in Persian but when he realised that his Persian poetry was like a wild flower for the people, out of which nobody got any fragrance, then he began writing in Urdu. If you see the language of his Urdu poems, you will find that he was obliged to use a simple dictionary so that his thoughts may reach the people.

Just listen; I repeat one of his couplets to you: -

"Iqbal bara updeshak hai, Man baton men moh leta hai, Guftar ka woh ghazi to bana Kirdar ka ghazi ban no saka."

Now tell me what you will call this language - Hindi, Urdu or Hindustani? To which language do the words 'updeshak', 'Man', and 'Moh' belong? If the language in which my friend, Chaudhary Ranbir Singh, delivered his speech the other day, is Hindi then I am a supporter of Hindi. Now, we have to see what is most suitable and most practicable. If you ask me about the Punjab I can tell you that all those papers, which are supporters of Hindi, are printed in Urdu script. It is not a question of personal or individual convenience but of finding a most suitable and practicable solution.

So what I mean, is that our language should be easy and commonly understandable. I suggest that a committee be appointed for coin the terms, and after the terms have been coined and the simplification of language decided upon then I think there will be no difficulty in the way of solving the language question. There is short-coming in us all and particularly in Panjabis, that we tend to give a religious tinge to every problem. We pitch ourselves against each other on the basis of religion. The matter may be simple but by giving it a religious colour we create a mess.

There is a talk of division of provinces on linguistic basis. On that point our constitution is almost silent; only vague hint has been given. In the Panjab this question too has taken a religious turn although it is a very simple one. So, as was said by one speaker in the morning, it is a controversial matter. It should be postponed, and this principle should be accepted that if provinces are formed on a linguistic basis, then all the developed languages will be given due consideration.

My time is almost finished, but I want to say something about the minorities. I have not given much thought to this question because I have been a Congress worker. Even now I am the President of the Provincial Congress. To my mind, rights of the minorities will be quite safe in the hands of the Congress Governments. But at present the question of reservation is before us. This is true that on the basis of religion I belong to a minority community, and I am proud
of the fact that I have never viewed this question from a communal angle. Regarding this, I would like to state that the Sikh community has always been proud of the fact that it has bravely made sacrifices in making the country a strong nation. That was the reason which prompted revered Pandit Malviya ji to remark that every Hindu family must have a Sikh son. Shri Savarkar had once advised the co-religionists of Dr. Ambedkar that if they wished to change their religion they could become Sikhs. I had then enquired from Shri Savarkarji as to how could he, being himself a Hindu and an Arya Samajist, give such advice? (A voice - Savarkar is not an Arya Samajist.) Then, I withdraw my words. Anyway, hereplied to me that though he had not studied Sikhism, this much he knew that when he was at the Andamans there were several old and distinguished Sikh prisoners with him, in whom he had found intense patriotism, passion for national service and sacrifice in abundance. Judged from that he could say that they were good people and for that reasons he had advised co-religionists of Dr. Ambedkar to embrace Sikhism. From the point of view of the minorities themselves, I venture to say that without weight age reservation is of no use. I think that if our hearts are freed from mutual suspicions and we gain each other's confidence then several provisions can be embodied which would help us in forging one nation. Governors and the President can be vested with the power of nomination in cases where minorities fail to secure their adequate place under election. If any such method is devised whereby reservation is done away with then it would be a test of the majority also, as well as a step forward towards forging one nation. We have seen how the reservation and separate electorates have worked under the British regime; instead of becoming one nation, the country had been torn to pieces. This treatment simply aggravated the malady. We should take a lesson from that; we should know what steps we ought to take for knitting the country into one nation. Majority community ought to find out the ways for filling up the shortage, if any, in the representation of the minorities.

With this end in view let us proceed in a way whereby one united nation may emerge. There is no time left; otherwise I had to say much more on this subject.

Mr. Vice-President (Dr. H. C. Mookherjee): I have received notice of an amendment from Mr. Naziruddin Ahmad to the following effect:

"That the Draft Constitution be referred to a Select Committee consisting of such members, elected or nominated by the Honourable the President in such manner as he thinks proper, to report thereon by such date as the Honourable the President thinks proper."

I rule it out of order on the ground that in the rules for the consideration and passing of the Draft Constitution there is no provision for reference to a select Committee. Acceptance of this amendment would amount to an amendment of the rules already framed. This cannot be done without reference to the Steering Committee. Not only that. Rule 31(4) says:

"The Chairman may disallow any amendment which he considers to be frivolous or dilatory".

I consider this a dilatory amendment. I therefore rule it out of order.

The Honourable Rev. J. J. M. Nichols-Roy (Assam:General): Mr. Vice-President, Sir, it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. They all deserve our best thanks.

To me, the structure of the Constitution depicted in this draft looks good though it requires certain modifications in some details and important matters. By this Constitution, India is to have unity in diversities. India with diverse races, colours, creeds, languages and cultures and with varied degrees of civilisation is being moulded into one Nation that will work together for the good of the common whole. This is not a small task. India is like the different States in the continent of Europe which have not been able to form a united sovereign country. But by the help of God and the wisdom given to our leaders India is having unity in the midst of diversities. This unity is not to be achieved by eliminating all diversities and putting all component parts into one mould by a stroke of the pen, for such an attempt will cause terrible revolution and great distress everywhere. The process for achieving the unity of India is by evolution as provided in this Draft Constitution.

The provisions for freedom of worship etc. etc. for minorities and for certain special areas and for hill tribes are the necessary stages for evolving unity in the midst of diversities. The wisdom of our leaders and of the majority community in acknowledging the necessity for allowing diversities in this unity structure is greatly appreciated and will be greatly appreciated by all. This is God's own method. God's own creation everywhere is unity with diversities. I thank Sardar Patel, the Chairman of the Advisory Committee for Minorities etc. He appreciated the needs of minorities and special tribal hill areas.

I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts. These hill districts, inhabited by tribal hill people, will under this Constitution be able to develop themselves according to their own genius and culture. The result, I believe, will be charming if these autonomous districts are nurtured to develop themselves in their own way without disturbing the main purpose of unity underlying the constitution presented in the draft. These tribes, though small in themselves, have been self-governing bodies from time immemorial. The India of tomorrow will surely stand to gain if the schemes for development of these areas are duly financed by the Government of India as proposed in the draft. Certain improvements in the Sixth Schedule will have to be made in the draft. I hope the House will accept the amendments which will be moved in due course.

While I fully appreciate the attitude expressed by Dr. Ambedkar and others as regards the strengthening of the Centre, I have to express that my views are very strong against the
unbalanced strengthening of the Centre at the cost of causing weakness to the component parts thereof. It will be like the picture of an unbalanced man with a very big head but with bony and lean limbs. Such a head in that very condition will not be able to stand.

In perusing the printed amendments to Article 131 it appears that the Drafting Committee wants that the Governor should be appointed by the President. Powers are therefore proposed to be centralised. I hope the Drafting Committee will revise their view and find it undesirable to move it. I think this country has long given up the idea of nominated governorship with discretionary powers. The Drafting Committee has also given an alternative proposal for the appointment of Governors from a panel of four candidates to be elected by Members of the Legislative Assembly of the State. The argument of some of the members of the Committee is that the co-existence of an elected Governor and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration; but at the same time the existence of a nominated Governor with discretionary powers might cause obstruction and deadlock. I have had experience as a Minister with eight nominated Governors. I am strongly of the opinion that an elected Governor will be a better substitute. This matter will be discussed at length when the amendments to Article 131 are removed in this House. I shall have occasion to say more about this then.

In the matter of Finance this draft is very unsatisfactory - particularly in reference to smaller Provinces. It does not give a fair deal to the Provinces. Poor Provinces like Assam and Orissa have reasons to be particularly disappointed. Those Provinces should not be weakened financially. Even one weak limb of the body will make the whole body weak. If India is to live and prosper, the States which are its component parts should function as healthy organs of the body politic of India. To come to the point, I want to say that the provisions of Articles 253 and 254 cannot be appreciated by us. They are couched almost in the same language as that of section 140 of the Government of India Act of 1935. The good wishes of the Government of India have so far remained a dead letter while the backward Provinces like Orissa and Assam remain where they were before. Even this year, Sir, our Assam Province is being greatly hit by the financial policy of the Central Government. We were in great hopes that our most essential needs such as building up of institutions for educating and training personnel in various nation-building activities would be satisfied, but we are told that these have to be postponed or delayed. The construction of strategic highways and roads absolutely essential for giving relief to our distressed people living on the border of Pakistan and for the protection of the country are proposed not to be pushed on with the same rapidity as it is essentially necessary to be done for we are told that not even one-fourth of the money required for these schemes for the current year will be available to us. The great Congress organisation has declared that our goal is a co-operative commonwealth, but when rural centres for an all round development of the villages are proposed to be opened on co-
operative principles, the money required for the fulfillment of the schemes in this connection is not forthcoming. Our Assam Government in order to raise the maximum finances it is capable of doing, within the provincial list, has exhausted all the sources of taxation; but our province is yet faced with a deficit of about a crore, while its substantial income is only over four crores. But Assam would have had enough to bear its own responsibilities without begging from the Centre, had not the Central Government taken away the export duty on tea. Tea and petroleum are produced in Assam. If the excise and export duties on tea and petroleum are allotted to us, which give about eight crores of rupees annually from Assam alone to the coffers of the Government of India, we shall have enough to finance our development schemes all round.

Why should not this export duty be given to Assam, at least the largest share of it, every year? An Expert Committee was appointed to investigate these questions and the Premier of Assam, Mr. G. N. Bardoloi himself led the deputation before the Committee. While the Committee conceded that a portion of the export duty on jute could be given to Bengal (a small portion of which comes to Assam also) and that a portion of the excise duty on tobacco might be given to the Province of Madras, the Committee did not consider it desirable to concede anything in favour of Assam on account of tea and petroleum produced in Assam. Is this just and equitable? Assam is kept under this system of eternal doles from the Centre. It passes our comprehension why this difference is made. Is it because Assam does not have a strong voice in the Centre? For many years during the rule of the British, Assam has been crying hoarse against this injustice committed by the central financial authorities in the past; but all our cries and condemnation of that injustice have gone unheeded by the Centre. Why reduce this producing province which could have had enough to support itself to a state of a beggar perpetually? Sir, I hope any strengthening of the Centre financially in this manner while robbing a province of its legitimate right will not be supported by any one. I believe that this just House with reasonable minds and sympathetic hearts will see that the province gets a fair deal. Facts should be faced.

I think myself that the authorities have been so busy with other matters that their attention could not be drawn in the past to this matter of life and death for Assam. We are today appealing to all the Honourable Members to come to our rescue at this time. Let it not be forgotten that Assam is a Frontier province which is subject to aggression from all sides. It is the duty of the whole Union to attend to this from the very beginning before evil days come. It is also very necessary for India to keep the bordering areas supplied with the necessities of life in order to keep them satisfied, otherwise adverse elements will cause great trouble which may cost India ten times more than the amount of money which may be spent during peaceful time. It will be a shortsighted policy to deprive our Assam province of its export duty on tea and to reduce its legitimate share of excise duties on tea and petroleum etc. In the past the bureaucratic Government overlooked the claims of backward provinces like Assam or
Orissa, but how can we imagine that this Constituent Assembly will allow the perpetuation of the same wrong which was by the alien Government? I hope, Sir, that when the amendments to right this wrong are brought before this House, they will receive full support from all the Members of this august Assembly.

Before I close, Sir, I must also say that adult franchise is necessary as the basis of election. The people everywhere must feel that freedom has come to them and that they have a share in the shaping of the administration of the country. This has been the hope given by the Congress in the past and any deviation from this principle will cause disappointment and arouse agitation in the country. It is true that the common man in the villages does not understand much, but it is the duty of the politicians to educate the common man in the right direction. We have adopted democratic principles, and the salvation of our country is to educate the common man and trust that he will be guided to exercise his right of franchise in the right direction.

I do not want to take the time of this House with other observations and criticisms which I would have liked to make, but before I conclude, I want to say that if we are going to build up a democratic State, we must make every one in this country, however humble and poor he may be, feel that he has a share in the making of a better country. We must cultivate the spirit of fraternity and this should have full sway in this country of ours so that every one of us, however humble and low we might be, can feel proud of this country to which we belong. God also will no doubt help us when we are saturated with this spirit of honesty and fraternity.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, I thank you, in the first instance, for having allowed me some time though almost at the last stage of this general debate. I shall touch only on a few of the points I wanted to place before the House and try to compress my ideas within the short time which I understand has been kindly allowed to me by you.

Sir, it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution to the House. For lucidity, for persuasiveness, impressiveness and logic I do not think that it could be beaten. All congratulations to him. But this does not mean that one is agreeing with everything that is said by him in the speech. For example, take the question of provincial autonomy, the relationship between the Centre and the States. He pleads more really for a unitary type of State. He says that a balance has been struck between federalism and the unitary type of Government. But I am inclined to think, when I go through the Draft Constitution, that the emphasis is too much upon the unitary nature of the State. In my view, this is not conducive to the happiness and prosperity of the country. Ours is a vast country of great distances and huge population. However much the Centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be drawbacks and shortcomings. This will naturally lead to
discontent, and conflict. It is for this reason that many political thinkers have been of the view that a federal type of Government is more suitable than anything else for such a country as ours. We in India need not be afraid of anything like disintegration or undue clashes and conflicts between the various parts of the country. The example of the United States of America has been cited. What has happened there really? This country which has got more than forty States, all autonomous, have, as one unit, stood two of the severest wars ever known to the history of mankind, and these States have also stood together and have dealt with and confronted successfully the stress and strain of post-war problems that faced them after the last two wars. Take again the case of Russia. The States of Russia are called autonomous Republics. It is said that they have got even control over external affairs. What has happened? That country with all these autonomous republics, has been able to withstand the deadly and terrible onslaught of the last war, and today she is as one big country, able to pull on in the face of so many hardships and difficulties. Therefore, it is not so much the type of Government, or the number of powers which we give to the Centre that really matters. It is the character of the personnel which runs the Government, and it is the character of the people that really counts in these matters. Sir, inspite of the Russian States being autonomous republics, what has fact, to be over-weighted with powers. The Centre has come, in actual fact, to be over-weighted with powers. That is human nature. Here, it is said, on occasions, our Constitution will become unitary. But, in the nature of things, when once it becomes unitary, the tendency will be to stay on the unitary type of Government. I say that the federal system is more suited to the conditions of our country than the unitary type.

The conditions in different parts of the country are different. Therefore they have to be dealt with by the people who are in more intimate touch with those conditions from day to day. In this connection, I shall just touch on one point. That is to say, when the province is deprived of so much of its autonomous powers, there is a proposal which does not agree with this framework, viz., that of the election of the Governor through adult franchise. The Governor himself is only a constitutional head if he is not a figure-head and to go through all the paraphernalia and trouble of having him elected by tens of millions of people in a province is not necessary and it really bristles, with possible difficulties and probable hardships apart from huge expenditure it would involve. The Governor must of course be elected by certain agencies in the provinces and States themselves and that is in keeping with the provincial autonomy of my pleading. Such an agency might take the form of an electoral college consisting probably of members of the legislature in a province members of the municipalities and district boards and I would even go, if friends would like it, to the extent of including members of the Panchayat Board as well. After all it may mean only about fifty or sixty thousand voters when the Governor is also elected by the people through adult franchise it is only natural that on
occasions he will come into conflict with the ministry which will claim to be the spokesmen of the people.

Regarding Fundamental Rights, the Mover of the Resolution said that the exceptions have not eaten up the rights, but as a matter of fact they have actually eaten up the rights. He says everyone of these exceptions can be supported by at least one decision of the Supreme Court of America. To say so is on a par with the argument advanced by the British politicians when the Government of India Act of 1935 was on the anvil of the Parliament in Great Britain. They said they were including in that Act things which were there and they had come into being and therefore it was that they were putting them into that Act. To say that the Supreme Court has decided in a certain way, has decided that certain exceptions are quite legal and all right and therefore such exceptions must come into our Constitution - to say that is different from saying that the people will have the freedom of going to Supreme Court or Federal Court whenever a fundamental right is in question in doubt. This freedom of the people to go to the Federal Court even as against the Government will really imbue them with a sense of real freedom and that will also have a salutary check on the Government which is very necessary in democracy.

Some of my friends claimed that Constitution is a political Constitution but really is it so - I don't know. It deals with untouchability, temple-entry and religious instruction. I don't blame the Constitution or its drawers for this. I say it is quite right in noting these things; but one important fundamental thing I want to refer to and that is regarding religious instruction. The Constitution says that religious instruction shall not be provided in any of the State schools. Taking this provision with the compulsory elementary education which is being introduced in almost all the provinces, it means that the Government is against religious instruction, it is against people getting instruction in their own religion even if they wanted it. Therefore until 15 years of age, up to which age the children have to be sent to these elementary schools, they shall not have an opportunity in these schools of having any instruction in religion. That right is not derogatory to the neutrality or secular nature of the State. The State would not impose any religious instruction upon people who do not like it. They only give facilities for the people if they want to give instruction to their children in their own religion.

Then, Sir, I have to refer to the question of minorities. Some friends said that reservation must go; some said it must go because it is not of much use and some said that reservation as such must go. They said that it was goodwill that was required and not reservation. It is really true that goodwill is required; it is essential even in the working of this elaborate bulky constitution and without goodwill any elaborate scheme will be of no avail. But on that plea goodwill might be taken as a substitute for many other provisions in the Draft Constitution; nevertheless, those provisions are there. Goodwill has to be grounded on something and it
can't believe on air. There has to be something for goodwill to be based upon and for it to grow and that is the elementary rights - fundamental rights and safeguards given to minorities. Therefore it is that my community wants this reservation though it alone does not satisfy their requirements. I don't mean to say that it satisfies the people who want representation in the legislatures. They want themselves to be given the right of really representing their views and the feelings and aspirations before the legislature. Will these people who are the occupants of these reserved seats under joint electorates be able to express the view of the community as such? When I say this we should not rake up the past and I don't want to refer to the past and kindle and stir up controversies and disputes. We should take up this question on its own merits - whether it is reasonable or not we should consider. In my view there should not only be reservation of seats but these seats should be filled up through separate electorates. I don't find any other alternative if you want to give the right to these minorities to express themselves before the majority community, before the country and before the legislature. This is all that is meant by this electorate. It is no barrier between one community and another and if there was any trouble in the past it was not due to this system of election, but it was due to other things. As I have told you, I don't want to enter into the past. Again, when we talk of these separate electorates communalism is brought forward. In this connection I would only give the House the benefit of a quotation from one of the Ministers, a Congress Minister in the Madras Assembly, about ten days ago. A question was put regarding communal representation for the admission of students to a certain college. One of the Members put the question to the Minister:

"How is the Minister justified in preserving and fostering communalism even within the ranks of the Hindusthemselves?"

Then the Minister for Education answers:

"It is not the Government that do it. It is there. The communities exist. It is an unwise man that does not take note of the things that exist. People are born and die in these various communities."

Then the Minister further added:

"The Government wanted to put an end to this communalism. But without giving equal opportunities to the various communities to come up that could not be done".

That is the view expressed by a Congress leader belonging to the majority community who is now working an important portfolio in one of the important provinces of the country.

Therefore, Sir, that is the position. There is no harm in recognising those communities and this is not a position peculiar to our country. When I was a young man I used to follow the national movement of Egypt. When they first wanted independence, a community called the Copts came up. This community started a counter-movement. They wanted to be assured of their rights under independence and then Zaghlul Pasha, the leader of Egypt called those
people and asked them to formulate their demands. The demands were brought forward in due course of time and he considered them. He then said that those demands alone would not secure the minority's rights and position; that they would not even give them the right or proper expression. He said that he was giving them more. That was how the minority was treated in that country. Until then, whenever there was anything about Egypt there would be something about the Copts as well. But all this changed. From that day of settlement until now we do not hear the name of the Copts at all. Now they are a contented people. They are all living today as one people. I hope the House will consider this question in a dispassionate manner, excluding any emotionalism or sentiment from the subject.

Shri Algu Rai Shastri: (United Provinces: General): Mr. President, as there is only one hour left at our disposal I would request that the time for discussion be extended by a day. Many members have expressed a desire to speak and so far no closure has been moved. It appears that the House wants to have more discussion on the subject. The issue is of great importance and, as Shri Diwakar said yesterday, it should not be disposed of hurriedly. At least one day's extension should be given for its consideration. Only some of those persons whose names are already with you would like to speak. I beg to make one more submission. Sir, the entire time today has been given by you to those whom you consider to be the members of minority communities. They have placed their viewpoint before the House. Will you not now give an opportunity to those whom you consider to be members of majority communities to place their views? Some reasoned reply to objections raised here must be permitted to be made here so that the world may be influenced to believe that whatever decisions are being taken in this House, are based on reasoning and not on a majority vote. If any one wants to meet the objections raised here, he must be given an opportunity to do so. There is the question of language, the question of our relations with Great Britain and other problems of this kind. These are very important matters and require through elucidation in the House. I would, therefore request you kindly to give us one day more for discussion. We must have at least one day more so that others also place their views on these matters.

Mr. Vice-President: You want one extra day Pandit Govind Malaviya: (United Provinces: General): May I support that request. I think we are discussing a very important matter, for which there will be no other opportunity and I think, even when three days have already been devoted to this, so long as there are a number of Members of this House who have yet to express their views before it on this matter, I think we shall be doing nothing wrong in extending the time.

The Honourable Shri B. G. Kher (Bombay: General): Tomorrow again a request will be made that one more day should be granted. There will be plenty of opportunities when amendments are moved and all these points could be brought out. We have been treated to a variety of views indifferent languages and sufficient light or darkness has been thrown on a subject
which has been before us for two years. I sympathise with Members who want to speak and to be heard, but I do submit that there ought to be some finality to such general discussion and when you have already extended the time by one day I thought that was enough. I suggest there should be no more extensions.

Shri Mahavir Tyagi (United Provinces: General): As long as there is one Member who wants to record his opinion on this subject, he should be given a full opportunity to express himself. I therefore submit, that not only one, but if tomorrow we want another day, then another day must be given.

Mr. Vice-President: I have here the names of about forty gentlemen who want to speak. At the same time I have to point out that I have been keeping a note of the principal items touched upon by the previous speakers, and I find that they concern more or less six different points. Already about thirty Members have spoken and they have gone round these six different points.

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* [] Translation of Hindustani speech

points. If the House is certain that the gentlemen who come hereafter will be able to do something more than cover these six points, then there will be some justification. But I am in your hands. I am perfectly prepared to extend the time, provided you can convince me that something new will be contributed.

Pandit Govind Malaviya: Would you like us to submit to you a precis of the points we wish to raise?

Mr. Vice-President: Perhaps you have misunderstood me and that deliberately. I have never suggested that I wanted a precis. But those who have sat down here and listened - you came only today and so you do not know the points that have been touched upon......

Pandit Govind Malaviya: But I have taken the proceedings home and studied them. Mr. Vice-President: the Members whose names are already with me, if they can convince me or convincethemselves that they have something new to contribute, then I am prepared to consider the proposition.

Mr. Hussain Imam: (Interruption)....

Shri Suresh Chandra Majumdar: (West Bengal: General) When there are forty names outstanding even a day's extension may not suffice. So you must go on for the whole week. Shri Vishwamber Dayal Tripathi: (United Provinces: General) I suggest two more days should be given for this discussion.

Mr. Vice-President: All right, I will give one day more. But I do hope the time will be used for some useful purpose.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, before making a few remarks on the Draft Constitution, I should like to join in the tribute of praise to the Honourable Dr. Ambedkar
for the lucid and able manner in which he has explained the principles of the Draft Constitution, though I owe it to myself to say that I do not share the views of my honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination.

Before I proceed to make my remarks on the Draft Constitution, in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members, I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestion for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft, for reasons of health, I could not take part in any of its deliberations, and I can claim no credit for the suggestions as to the modifications of the draft.

In dealing with the Draft Constitution, it is as well to remember that the main features of the Constitution in regard to several particulars were settled by the Assembly after due consideration of the reports of various committees; this Assembly is not starting afresh after two years of work. I doubt if even, some of the Members who animadverted upon certain features of this constitution settled by this House could disclaim responsibility for the decisions already reached. The federal framework of the Constitution with an over-riding power in the Centre, the need for a concurrent list and the items therein, the composition of the Houses, the relative powers of the two Houses of Parliament and in the provincial legislatures, the mode of election of the President and of the Governors, the relationship between the legislature and the executive, the constitution and powers of the Supreme Court and of the High Courts, the fundamental rights to be guaranteed to the citizen and a number of other matters relating to the constitutional framework, were settled by this House or considered by the Committees appointed by this House. Insofar as the Drafting Committee has embodied in the articles as framed the considered decisions of this Assembly, the Drafting Committee can in no way be responsible for the decisions already reached, while it may be quite open to the House to revise those decisions on special grounds. In regard to such of the provisions of the draft as have not been considered by this House, it is open to this House, to come to any conclusion,
consistently with the resolutions already reached and with the general framework of the Constitution.

The main criticisms on the Draft Constitution range under the following heads:

Criticism 1. - It draws largely upon foreign constitutions and there is nothing indigenous about it. There is not much force in this criticism when it is remembered that federalism in its modern form is of recent growth, since the American Revolution and America has furnished the example to all the later federations. It cannot be denied that there is a strong family resemblance between the several federations and that each later constitution has drawn upon and profited by the experience and working of the earlier federal constitutions of the world. In this connection, it is as well to remember that even the Soviet Constitution has not departed from certain accepted principles of federal government.

Criticism 2. - The Centre is made too strong at the expense of the units. In view of the complexity of industrial, trade and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation. I might point out in this connection that the U.S. Supreme Court, by the wide interpretation which it has put upon the General Welfare clause as well as on the trade and commerce clause in the Constitution, has practically entered into every sphere of state activity, so that it may be in a position to regulate the economic activities, the relationship between capital and labour, the hours of labour and so on, taking advantage of these two clauses.

Criticism 3. - The existence of a large list of concurrent subjects might lead to the Centre encroaching upon the provincial sphere and giving a unitary bias or character to the constitution. A study of the several items in the Concurrent List shows that they mainly relate to matters of common concern all over India. Whatever criticisms might be levelled against the British administration in India, the enactment of the great codes which has secured uniformity of law and legal administration has been its special merit. It is common knowledge that even the Indian States have adopted the great Indian Codes. Instead of not having a Concurrent List or curtailing the list of concurrent subjects, I would advocate the Concurrent List being extended and applied to the States in Part III. The existence of a Concurrent List in no way detracts from the federal character of the constitution, there being an independent provincial list of subjects.

Criticism 4. - The constitution does not give sufficient importance to village communities which are an essential feature of India’s social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters,
there is nothing to prevent the provincial legislatures, from constituting the villages as administrative units for the discharge of various functions vested in the State governments.

Criticism 5. - The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the constitution. The great problem in providing for and guaranteeing fundamental rights in any constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions recognised in any well ordered state. It cannot be denied that there is a danger in leaving the courts, by judicial legislation so to speak, to read the necessary limitations, according to idiosyncrasies and prejudices it may be of individual judges.

The problem of minorities has been solved by common agreement in a manner satisfactory to the various parties concerned, and the draft Constitution merely seeks to give effect to the agreement reached. As has been pointed out in the spirited address of our Prime Minister this morning, while regimented unity will not do, nothing should be done which will tend to perpetuate the division of the nation into minorities and to prevent the consolidation of thenation.

The next criticism is that the common man is ignored and there is no socialistic flavour about the Constitution. Sir, the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to involve any economic order and undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance. While from the very nature they cannot bejusticiable or enforceable legal rights in a court of law, they are none the less, in the language of Article 29, fundamental in the governance of the country and it is the duty of the State to apply the principles in making laws. It is idle to suggest that any responsible government or any legislature elected on the basis of universal suffrage can or will ignore these principles.

The financial provisions in the draft Constitution have also come in for strong comment from my Honourable friend Shri T. T. Krishnamachari. While an independent source of revenue is certainly necessary for the proper functioning of a federal government, there is a distinct tendency, however, in the several federations, for the Central Government to act as the taxing agency, taking care to make adequate provision for the units sharing in the proceeds as
also for the central or national Government granting subsidies. After all, it cannot be forgotten that the tax payer is the individual citizen or a corporation - whichever the taxing agency might be - and the multiplication of taxing agencies is not amatter of convenience to the citizens. I doubt whether in the present uncertain state of the country it is possible to overhaul the whole financial structure and attempt a re-distribution on entirely new lines. That is why a provision has been made for a Financial Commission at the end of ten years. Possibly the draft is defective in that special provision has not been made for the re-arranging of the lists in regard to financial matters in light of the recommendations of the Financial Commission without having recourse to the procedure as to Constitutional Amendments.

In regard to the subject of taxation, Professor Wheare makes the following observations in his recent Treatise on Federalism:

"There can be no final solution to the allocation of financial resources in a Federal system. There can only be an adjustment and reallocation in the light of changing circumstances".

We then had the criticism that the Constitution is too detailed and elaborate and contained more number of articles than any other known Constitution. This criticism does not take note of the fact that we are not starting a Constitution anew after a Revolution. The existing administrative structure which has been worked so long cannot altogether be ignored in the new framework. These second points that the critics have failed to take note of is that unlike other constitutions, the draft Constitution contains detailed provision as to the constitution and power of the Supreme Court and the High Courts and also Articles relating to the Constitution of the units themselves. If we could eliminate all those Articles, our Constitution also could be rendered simpler and shorter.

In regard to the Judiciary, the draft Constitution also recognises the importance of an independent judiciary for the proper working of democracy, and especially of a Federal Constitution. The Supreme Court, under the Draft Constitution, has wider powers than any other court under any Federal system in the world.

More than any other provision in the Constitution. I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country. For this institution to work properly too great care cannot be taken in the matter of the preparation of proper electoral rolls and a uniform principle being adopted in the different parts of India. I would commend for the consideration of the House the suggestions made by my friend, the Honourable Shri Santhanam, in the course of his speech yesterday.

There are other matters which require very close and critical examination by this Assembly before the Constitution is finally adopted, such as citizenship, the formation of new States, and the position of the Indian States which have been grouped together under the able leadership
and guidance of our Sardar. The position of the States which are not represented in the Constituent Assembly will also have to be considered and dealt with before the Constitution is completed as otherwise complicated legal questions might arise in regard to the relationship of these States vis-a-vis the Union of India.

There are two other points also which have been touched upon in the course of the debate. These relate to the emergency powers vested in the Government and to the ordinance-making power. One point that has to be remembered in this connection is that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' used in the Constitution merely stands for the fabric responsible to the Legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. It should be remembered too that during the last debate it was the representatives......

Prof. N. G. Ranga (Madras : General) : There is too much noise in the House. Another debate seems to be going on in that corner of the House.

Mr. Vice-President: Order in the House, please.

Shri Alladi Krishnamachari Ayyar: I may mention that during the last debate the representatives from the Provinces were more anxious, including the Ministers, than anybody else, to have emergency powers. It is they, having regard to the actual working of the administration, who wanted these emergency powers given to them. How exactly the emergency power is to be provided for, whether any changes are necessary, all that is another matter. So normally when the Assembly is not in session. If the Assembly is in session, I do not think that the representatives elected under universal suffrage are likely to be less insistent upon their rights than the Members of this House elected on a comparatively narrow ticket.

A brief survey of the draft Constitution must convince the Members that is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, Dr. Ambedkar was pleased to make a reference to the Indian States and made an appeal that so far as the units are concerned, there need not be any difference in the constitutional set-up between the Provinces and States. I am glad that such an opinion is given, I think, though for the first time. Hitherto, every State was allowed to have a Constituent Assembly of its own and even the Unions of States were
permitted to summon Constituent Assemblies for the purpose of framing their own constitutions. Many of us are wondering whether the Constituent Assemblies to be summoned in the States and Unions of States are free to make their own constitution, whether they were in consonance with the Indian Constitution or not. I want to suggest some ways by which we can attain the desired end.

In Mysore, Sir, the Constituent Assembly has done almost half of its work, and when it was about to appoint a Drafting Committee, it thought it fit that the opinions of the other Assemblies in the States and also the opinion of this honourable House may be of much value in coming to final conclusions. Therefore it has appointed a Committee of five members to get into touch with the representatives of other States' Assemblies and if possible with this House also. The personnel of the Committee has been announced. I hope the Members representing the States in this House will be able to sit separately together either officially or unofficially and evolve a policy acceptable to this House and to the country. The constituent assemblies in various States and Unions of States will no doubt take the advice that may be given to them by the States representatives in this House. But there are certain impediments in the way which I would like to point out.

The States, as you know, Sir, even under the British regime were enjoying a certain amount of autonomy more in degree than the provinces were allowed to enjoy and that autonomy, I might say, has never been misused. Every State, whatever the degree of its autonomy, has always had the interests of India at heart and acted accordingly. We, the States people, feel that the Units of the Federation may not have sufficient autonomy in the draft as it stands to manage their own affairs well and efficiently. The draft as it stands - I beg to differ from Dr. Ambedkar - is rather too much over-centralised. It practically makes the Indian Union a Unitary State and not a Federal State. In their anxiety to make the Centre strong, they have given too much legislative and financial powers to the Centre, and have treated the provinces and States as though they were mere districts of a province. This tendency, I am afraid, will not make for what is called the strength of the Centre. Let me tell all those who are concerned in drafting this Constitution that mere accumulation of files in the Imperial Secretariat does not make for the strength of the Centre. The strength of the Centre, if I understand correctly, consists in having a strong Army, a strong Navy and a strong Air Force and in the possession of sufficient money for these purposes, instead of it taking a begging bowl before the States and provinces. Beyond that, if they take too much power and accumulate their legislative lists, what happens is that the initiative that should come from provinces will not be there and the provinces will be reduced to mere automatons. I have read experts on constitutions and one of the accepted tests whether a country enjoys freedom is to see how far the units and the local bodies enjoy freedom and autonomy. Different people understand the
strength of the Centre in different ways and the Drafting Committee havemerely understood that the mere accumulation of files in the Imperial Secretariat makes for the strength of the Centre. This is a great impediment in the way of the States people agreeing to have a common constitutional set-up for the units. Before the States agree to come on a par with the provinces - I am talking here for all the units, States as well as provinces - they will have to be assured real autonomy, not autonomy to injure the interests of the States as a whole, but sufficient powers and responsibility to manage their affairs well and efficiently. We have forgotten whom we repeatedly call the Father of Nation. He said that the constitution should be a pyramid-like structure with the Centre occupying the apex. But the present set-ups is absolutely topsy-turvy. The fear is there in the minds of the States people, that the Centre is taking too much power.

There is one other matter which has not been brought sufficiently to light and I hope I would not be misunderstood if I say that the States Ministry as such has caused more dissatisfaction to the States people than even the Political Department did previously. I have heard it said by the representatives of the States people in the House that the States Ministry has failed to take the opinion of the States people into consideration at all. They are more after the Princes and their Dewans. The people are really nowhere in the picture. It seems as though the Princes and the Dewans get everything and the people nothing. If the integration of States has taken place today, it is not because the people in the States who participated in the freedom movement had created such a position that the Princes had no other course except to follow this line, and it is a sorrowful thing that we have forgotten the people in our anxiety to placate the Princes and their Dewans. This psychology of the States Ministry has to be reversed as soon as possible in order to make the people really feel that they are one with the rest of India and they are in safehands.

Then, Sir, the States have been enjoying in the matter of taxation much more latitude than the provinces. We have conceded three subjects and in order to meet the expenditure in connection with these three subjects, sufficient money may be provided. For example, most of the States collect income-tax just now. We have no objection if it goes to the Centre, but the other taxing heads ought to be left to the States themselves in order to meet their own expenditure. In fact the complaint is repeatedly made that the merging States today are not enjoying even as beneficent a Government as they were enjoying under the Princes. That is the opinion of the accredited representatives of the people. This is a very sorrowful feature. We expected that after the Princes went away and after the States were merged with the provinces they would get better amenities and better opportunities than they were accustomed to previously. It is a bitter feeling that is expressed by the States representatives. In the Orissa States and the Deccan States the administration under Congress Governments is not as beneficent as it was under the
Princes’ administration. I am not merely speaking as a representative of Mysore, but I have had occasion to talk with other States representatives and this is their opinion.

Then, Sir, Delhi happens to be the capital for the present. Most of us from the South, from Bengal and from other parts of the country, feel that Delhi is not suited to be the capital of India for various reasons. Historically Delhi has developed a course; it has got all the empires it had buried in its tombs scattered all about the place, and we do not want our new Government to go that way. I have got not a sentimental reason only. Here in Delhi excepting for two months either we have to sweat or shiver and in this extremity of climates, it is almost impossible to do any hard work. The capital of a country, it is reasonable to expect, should be in the centre of the country and we can locate our capital either in the C. P. or somewhere nearabout.

The Honourable Shri B. G. Kher (Bombay-General): Bombay is better! Shri K. Hanumanthaiya: Sir, I might say, after I have gathered the opinions of many of my colleagues, I am saying that C. P. is preferred. For example, it may be Betulin C. P. Sir, there is an argument that having expended so much money on Delhi, is it wise for us to expend further sums of money for another capital? In Delhi, we can still locate some of the Central offices. Now East Punjab is hunting after a capital and they want to make Ambala as its capital. We can make over half of our Government buildings here to East Punjab Government and take money from them. In the financial proposals I see that after the partition of the Punjab it has not been able to maintain itself and wants a subsidy from the Centre. If you make Delhi part of the Punjab, there will be no necessity for us to pay the subsidy, for it will then be a self-sufficient province. From this point of view and from the point of view of public opinion also it is better and in the interests of the country and its future, Delhi should cease to be the capital of India. We must be able to build a fresh capital in the Centre Provinces. Thank you very much, Sir.

Mr. Vice-President: Pandit Govind Malaviya.

Pandit Govind Malaviya: Since we are carrying on till tomorrow, may I have the privilege of speaking tomorrow?

Mr. Vice-President: I think you had better speak now.

Pandit Govind Malaviya: Sir, before I say anything else. I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend, Dr. Ambedkar, for the very excellent work which they have done in giving us this Draft Constitution. It was a difficult problem which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere.
The reason, Sir, why I requested you to allow me an opportunity to take a few minutes of this House was not to put before this House all the points about which I wish the draft was slightly different. In such matters, differences can remain, but after all they do not matter very much so long as a thing is tacitly good. For instance, in the Draft Constitution there are some things which personally I should have preferred to be slightly different. There is the election of the President, Sir, by proportional representation by single transferable vote. I do not feel happy about it; I should have preferred that it should have been by a straight vote. The proportional method might prove extremely unhealthy but I do not wish to take one moment more of your time than is absolutely necessary. I can only mention that by the way. There is, Sir, the right in the hands of the President to nominate fifteen members to the Upper Chamber; I should have felt happier without that. Then there is the federal judiciary about which we have a fixed minimum limit, but we have no maximum limit. I am sorry, Sir, I came only today. I did not know this discussion was continuing. I have not brought my papers, etc. I was not prepared to speak just now. I am just saying a few things as they strike me. There is the minimum limit but there is no maximum limit fixed to it. I can contemplate a situation where the executive, the Government of India, might abuse that provision by adding to the federal judiciary a number of new judges and getting the work done by them and in that manner bypassing any inconvenient older judiciary. I do not suggest that it will happen, but when we are framing a constitution for the future administration of the country, the more cautious we are the better. I should, therefore, have preferred that there should be an upper ceiling also to the number of judges of the federal judiciary.

Sir, there are many other similar things in the Constitution to which I might have referred, as I said, about which I should have felt happier if they were slightly different, but that was not the main purpose of my taking the time of this House and I shall not inflict that upon you. What I particularly wish to suggest, Sir, is about the Preamble to this Constitution. We shall be failing in our duty to our country, to the entire history of our country, to the entire culture and civilization of our country, to the entire ideology of our people if we adopt that bald preamble which we have put into the Draft Constitution.

I should very much like that we should have in it a reference to the Supreme Power which guides the destinies of the whole world. The reason why I make this suggestion is not merely that we have it in many constitutions of the world. It is not on that ground that I make that suggestion. As I said, the entire background that we have in this country demands that we should do it. I will make only one submission about it as I do not wish to take up the time of the House and wish to be as brief as possible. We sit here as representatives of the people of India. Today, in this country, if we were to devise some method of finding out as to what the views of the people are in that matter, I am certain that more than ninety per cent. of our
people, if not more, will be staunch believers in God Almighty. They will desire that our failing in our duty as representatives of our people if we, - even if some of us, even if all of us, do not believe in God - I say 'even', I do not say that it is so - but, even if that be so, I respectfully submit that we shall be failing in our duty to our people and to our country whom we represent here, if we do not bring that into the Preamble, because, as I said, more than ninety per cent. of the people of this country believe in God and would like to have a reference to the Almighty in the Preamble. The great point about our culture has been, the great point about our philosophy has been, the great point about our social structure has been that, while we have with complete tolerance allowed unmolested place in society to every school of thought to the atheist and the agnostic, yet, as a whole, as a people, we have always had a strong and fervent belief in the higher Power which guides us. An all-pervading, an active and living belief in, and devotion to God, has been, since the very beginning of our long and glorious history, the fundamental basis, the very foundation, the supreme essence of the very life of our people. Mahatma Gandhi's life, the life of the builder of our nation today, was one beautiful, unchequered sermon to that effect. He died with the name of God on his lips. Everyday, he practised Ramdhun and I submit that the glorious impression which our country has made everywhere in the world, in the international circles and gatherings, the great impression which our great Prime Minister has made recently in the Conferences where representatives of all the countries of the Commonwealth were present, is due to the philosophical background of our country, which has in the ultimate shape taken the form of our beloved Prime Minister's present brilliant and soothing policy which we have pursued under the leadership of Mahatma Gandhi. I submit, Sir, that we will be unjust to our people and to our country if we do not do that. I hope therefore that my friend Dr. Ambedkar and others will consider that aspect and will remedy that defect or omission as I feel it to be.

The other point that I should like to mention is that in our Constitution we should have our own name for our country. I cannot understand our having a Constitution in which our country should be called 'India'. I shall not suggest any particular name; I shall be content with any name which appeals to the whole House. But, what I submit is that it will be wrong to leave India as the name of our country. We may, for some time, if necessary, put down after our own name within brackets 'India'. or say, "(Known in English as India)", as the Irish have done. But, to put down India as the name of our country appears to me to be ridiculous. That is the second point which I wish to bring before this House for its consideration.

The third point, Sir, that I wish to submit is a little delicate. I hope no friend of mine will misunderstand me. In his speech, our friend Dr. Ambedkar referred to the question of minorities. He referred to the proceedings of the Irish Conferences about partition. But, he forgot that if there was a Cosgrave to say there, "To Hell with your safeguards; we do not want to be ruled by you," there was the entire English Government
to back him up. We have no one here now. I am certain that no minority now will genuinely wish to have any such separate State. Therefore, I have got one submission to make. I do not say that we should not provide safeguards for minorities. By all means, we should do so; we should give them every assurance possible, not only in words, but in actual deed; but what I submit, Sir, is that the Article in the Draft Constitution about reservation of seats should have one further clause added to it - I do not want to disturb it - I do not want in any way to take away from it; by all means let the minorities have that reservation. The clause as it stands today, says that the reservation shall automatically go after ten years unless otherwise decided upon. All I want, Sir, is that if the minorities themselves or any section of the minorities themselves desire, even before the lapse of those ten years, to do away with this reservation or special representation, then, that Article of the Constitution should not be allowed to come in the way. As I said, I hope I will not be misunderstood. It is not my desire in the least degree to take away from the safeguards which have been provided; I only want that the possibility of the minorities themselves desiring and deciding to give up that reservation should not be ruled out. I hope, Sir, this will be done.

Then, Sir, I wish to submit that, at the end of our constitution, we should have a provision for a statutory revision of it after a certain period. I know that the provisions for amending the Constitution have been prepared with great thought. But, notwithstanding all that has been said, I still feel that the provision is not of a very easy nature. I should like to make it clear that I am not a believer in very easy provisions for changes or amendments to a Constitution. I firmly believe that it should be a very difficult thing to get through any amendments to a Constitution. But, for the first time at the beginning, for once only, I should like that there should be a Statutory provision in our Constitution that after the experience of a few years, one review will take place, and as a result of that review, any changes which are suggested should be considered and dealt with by the method of simple majority. I should like to have that provision for only once. I am not didactic about the details of that suggestion. It may be after three years, five years or seven years. But, my purpose is that after we have experience of three or five years, once at least we should have a statutory review which should be there automatically and then after consulting the experience of people in the provinces and at the Centre, we should adopt whatever changes may be necessary. After that, I should personally like to make the provision for amendments to the Constitution as difficult and as rigid as may be possible. I am anxious, Sir, not to let your bell ring. I shall therefore stop here. These are the few suggestions which I wish to place before the House and I am grateful to you for having given me this opportunity to do so.

Shri R. K. Sidhwa (C. P. and Berar: General): Sir, before we adjourn, may I know the final programme regarding the motion under discussion.
Mr. Vice-President: After tomorrow nobody will have the face to say that more time is wanted.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock, on Tuesday, the 9th November 1948.
Tuesday, the 9th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Mr. Vice-President (Dr. H. C. Mookherjee): I take it as the unanimous desire of the House that the general discussion on the Honourable Dr. Ambedkar's motion should be concluded to-day. I have noticed endless repetitions of the same arguments and I appeal to those who will speak to-day that they will avoid issues which have been already dealt with.

Shri R. Sankar (Travancore): Sir, I must at the very outset congratulate the framers of the Draft Constitution on the very efficient manner in which they have executed their duty; and I must particularly congratulate Dr. Ambedkar on the very lucid and able exposition of the principles of the Draft Constitution that he gave us by his brilliant speech. I do not propose to go into the details of the Draft Constitution but will content myself with dealing with one or two aspects of it. I think the most salient features of the Draft Constitution are a very strong Centre and rather weak but homogeneous Units. Dr. Ambedkar made a fervent appeal to the representatives of the States to take up such an attitude as to make it possible for all the States and the provinces to follow the same line, and in course of time to establish homogeneous units of the Federation without any distinction between the States and the provinces. But I think there are certain things which differentiate the States among themselves, and the States as a class and the provinces. There are some which are very well advanced and others which are not only not so well advanced but are really backward. There are States in which literacy is less than 5 per cent. There are States in which literacy is more than 50 per cent. There are States which levy income-tax. There are others which do not levy income-tax at all. In fact, there is such a great difference between the States amongst themselves than between some of the States and the provinces that it is very difficult to find much in common between the States and the provinces as they are constituted at present. For an example of a State which is advanced, I might take the case of Travancore, which I have the honour to represent. Travancore is, I think, one of the most advanced States in the whole of India. In certain respects she is ahead even of the provinces. She has been able to work herself up to the present position on account of the fact that all her revenue resources had been tapped for along time and the Rulers had tried to develop the State from very early times. To-day, she is
one of the most highly advanced industrial areas in all India. More than 50 percent of her people are literate. Though a small State with an extent of only 7662 square miles, she has a revenue of nearly Rs. 9 crores. She spends about Rs. 2 crores on education now, more than half a crore on medicine and public health and as much on village uplift; and in other nation-building activities she spends very large sums. But if this Draft Constitution becomes law tomorrow, what is going to be the fate of this State? That is what concerns the people of the States as a whole and the people of Travancore in particular. Our customs revenue is nearly Rs. 1 1/2 crores. Our revenue from income-tax is nearly Rs. 2 crores and other federal items will come to nearly another crore. In other words, about 45 per cent of the income of the State will be central revenue from the day this Draft Constitution becomes law. The result would be that a State like Travancore will not be able to maintain, much less improve upon her present administrative efficiency. The States people now look at this picture more or less from this angle. The Princes, who were till now the stumbling block, have most of them decided to introduce responsible government in their realms, and the Ruler of Travancore has made no reservation whatever in this respect. The people are now anxious how they will be in a position to carry on the administrative functions of the State at least as it was carried on under the old irresponsible regime. I believe the Honourable Members of this House will see that it is a very hard case for a State like Travancore. Unless there be some provision by which a sort of fiscal autonomy is allowed to a State like mine it will be simply impossible for the State to maintain the high level of development it has been maintaining till to-day. The people after the long struggle are looking forward to the present responsible governments in the States to find a solution for the hundreds of problems, especially economic problems, that they are faced with, and if the States, instead of being in a better position, are in a worse position from tomorrow, they will certainly find it impossible to do anything and to solve any problem that they face. This aspect has to be borne in mind when this Draft is considered by this Body. Another thing about which I would like to speak one word is the linguistic affair. There appears to be very much enthusiasm on the part of Honourable Members from the North whose mother tongue is Hindi or Urdu to force it all of a sudden upon others who scarcely understand a syllable of it now. Though much work has been done in the field of propagating the national language, Hindi-Hindustani, in the South, if you go out to the villages you will find that not even 1 per cent of the population knows Hindi. Even if you take such an educationally advanced State as Travancore and another State which is educationally far advanced - Cochin - , not even 1 per cent of the population can even today understand either Hindi or Urdu. I would therefore request the members who are very enthusiastic about this thing - this common national language to wait for a time, to give an opportunity to the people of the South and the East to get themselves sufficiently acquainted with it. Hindi, of course, is
in favour everywhere. Only some time - probably a decade or two - will have to be allowed. In the meanwhile, English must continue to enjoy the position it does to-day. If that be done, I think there will be none from any part of India who will stand in the way of Hindi being recognised as the national language of India.

As my time is up, I close with these remarks.

Shri M. Thirumala Rao (Madras: General): Mr. Vice-President, Sir, as a new recruit to this Constitution-making body, I seek the indulgence of the House for the few remarks I have the privilege of making here presently.

We are now on the eve of great changes and we have been endowed with the power of shaping our future in a manner that suits our genius and tradition. Of course the past 150 years of British rule has made an indelible impression on the Constitution that has been presented to us. I do not want to go into the details of the Constitution. I want to deal only with one aspect of it, viz., whether this country should remain a part of the British Commonwealth of Nations.

Sir, the Objectives Resolution has clearly laid down that the basis of our State should be a complete Sovereign Independent Republic. I feel, Sir, that in the present set-up of world affairs, it is but meet that India should from the very first make an attempt to stand on her own legs and show that we are capable of developing our own institutions on the lines best suited to us. No doubt, British statesmen and all those people who are accustomed to be imperialists are looking askance at us wondering whether we will cut ourselves away from the British Empire. It is too late in the day to think of having any constitutional ties with the word 'Empire' which smacks so much of a feeling that had been engendered in the past. But one thing necessary is that we should not excite any jealousy on the part of powers like Russia or America by permanently tying ourselves to the apron strings of British Imperialism or British Commonwealth.

Now, whatever one may say, the balance of power is yet influencing world affairs; and India, strategically situated as she is in the Indian Ocean, midway between the Pacific and the Atlantic and the Mediterranean, has a special responsibility and an important role in maintaining world peace. Though we are a young nation, with very ill-equipped defences, it must be our duty to see that we estrange nobody in the world with regard to our position in international affairs. As such, if we make it plain that complete sovereign independence is our ideal and also the practical basis on which we are building up our Constitution, we may not estrange people like the Americans in the future.

In spite of all the tall talk that has been indulged in with regard to the Anglo-American Bloc, an under current of jealousy still persists in America against the British Empire. But they have realised - even Republican papers in America have realised - that they must make a little
sacrifice of their trade monopoly in order to strengthen India and build up a bulwark against the forces that are now sweeping the East from Russia. From that point of view I feel that we must have complete Republican and independent sovereignty in our Constitution and from that point of view, we may command some respect and also some assistance from countries which seek our help and co-operation in the near future.

With regard to other matters, we must borrow a lesson from the Australian and Canadian Constitutions where the provinces and Centre have evolved a sort of relationship which is still the bone of contention in their law courts. The recent instance in Australia where Nationalisation of Banking was attempted is an example: the Centre wanted to nationalise the banks but the provinces resisted. So also in our future development, the relationship between the provinces and the Centre has to be evolved in the best interests of the country. We require no doubt a strong Centre, but a strong Centre should not mean weak provinces. The provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes. They should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre.

With regard to Defence, we have been unfortunately split up by the machinations of British diplomacy. Whether it is Pakistan or India, India is one and indivisible as far as the defence of the country is concerned; Pakistan, which is separated on the north-east and north-west by long stretches of the Indian Union territory, is much too small to defend herself and will have to co-ordinate her defences with India. Our frontiers lie much further than Pakistan; our eastern frontier lies much beyond Assam and if we are to integrate these, we will have to keep the States well-knit and to enter into a sort of alliance with Pakistan by enclosing it within a super-federation of this federation.

Sir, I visualise a day when it will be impossible for the new States to remain as separate entities for long. There was wisdom in the proposal that these two States could combine for certain purposes like international trade, currency and defence. I will not rule out the possibility of such a combination in the near future, in the next decade, if we are to develop our Constitution on proper lines.

One more point, Sir. We have been talking too much of a secular State. What is meant by a secular State? I understand that a secular State may not allow religion to play a very important part to the exclusion of other activities of the State. But we must make it clear that the ancient traditions and culture of this country will be fully protected and developed by the Constitution and through the Constitution.

Mr. Vice-President, I see that my time is up. With your permission I will conclude in another minute.

Wherever you go, to the Mother of Parliaments or to other British Institutions, you find invariably the Church associated with them, with their universities, with their Parliament,
with their Courts of Law and so on. Although I do not want to impose our religion in our institutions to that extent, I do plead that we should protect our culture, our peculiar national characteristics and traditions. These should be protected by the Constitution. We should not forget, wherever we go, that we are not a hybrid nation or a disproportioned mixture of several cultures, but that we have a culture and a Government and a civilization of our own. This should be reflected in our Constitution.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I have sought this opportunity from you to speak during the discussion of the Draft Constitution, only because I felt impelled by a sense of duty that I should draw the attention of this august Assembly to two problems which I think are really constituting a grave danger to our newly-won freedom and to the unity and integrity of the Nation. I hope and wish that this Assembly, in order to safeguard the new and the nascent blossom of our freedom would provide adequate safeguards and provisions in the constitution for the protection of the Nation and of our hard-won liberty from two great perils. These perils, indeed, are too grave to be ignored. The perils I mean are the evils of "provincialism" and "communalism" which, inspite of the "supreme sacrifice", have yet not been laid quite low. By this "supreme sacrifice" I mean the martyrdom of the Father of our Nation. For the time being it appears that the demon of communalism has been definitely laid low, but even so I was a little painfully surprised when yesterday honourable Members like Mr. Ismail and Mr. Lari......

Nawab Muhammad Ismail Khan (United Provinces: Muslim): On a point of information. I never spoke yesterday.

Shri Raj Bahadur: Some of the Members of this House referred to the provision of proportionate representation and separate electorates. I mean to say Sir that, if we went to protect our freedom, we shall have to provide in our Constitution that just as we have said that there shall be no evil of "untouchability" in our body politic, so also we shall have to see that these tendencies, these idiosyncrasies which have been responsible for the vivisection of our mother-land shall not raise their ugly heads again. If I say this, it is because even to-day when we are finding that the effects of partition are still troubling our body politic, when we are not yet free from the evils of partition, there are people and forces in the country which are still trying to revive and perpetuate communal politics. It is absolutely necessary for us to see when we frame our Constitution that these evil forces do not imperil our freedom.

I may also say that there is another peril from which our country may suffer and that is "feudalism" that is still rampant in some of the States of Rajputana. Owing to the sagacity of our States' Minister, the problem of the States has been squarely dealt with, but may I still submit that the people in the various States of Rajputana are still under the thumb of these feudal landlords? The Jagirdari system is still there and the poor kisans for whom we have been clamouring for freedom are still not breathing the air of freedom. The reactionary
tendencies of these Jagirdars are still there and so I hope that, just as the problem of the States has been squarely dealt with, the problem of these feudal landlords will also be dealt with squarely and solved. When I talk of feudalism, that naturally takes me to the problem of the States. In introducing the Draft Constitution which has been placed before us by the Honourable the Law Minister for discussion and consideration, he (the Law Minister) spoke of a dual polity. But in this Constitution, I find that there is a "triple polity" provided therein, in as much as the States are allowed to have constitutions different from the constitution for the provinces. We see that the States are allowed to maintain their own separate armies. We see also that their Constitutions would be devised and adopted by their own separate Constituent Assemblies. They have also been allowed to have their own separate judiciary and the people of the States will not be allowed to appeal to the Supreme Court even in defence of their Fundamental Rights. These things, separate armies, separate Constituent Assemblies and separate judiciary, are things which cause great concern to us, the people who have come from the States, and I feel that it is high time that this disparity, this incongruity between the various units of the Indian Union is done away with. I would submit, Sir, that it can be safely assumed that the Princes just as they have relinquished their powers for the sake of the nation, so also would they favour the bringing of the States on a par with the provinces for the sake of the unification of the country. I feel that it will also be possible for the provision relating to Rajpramukhs to be made analogous to that of the Governors. They may have the same powers as the Governors in the different provinces, but I would support definitely my friend Mr. Vyas in his appeal that the right of being elected to the high office of governorship may be conceded to the ordinary man in the street also. I do not see any reason why the office or the high post of a Governor should be restricted only to the Princes and depend only on their choice in the case of the States.

Then I may also respectfully refer to another factor which has lately come to light in our body politic and that is about the criticism that we see being levelled these days against our Ministers in almost all the provinces. That criticism may not have any justification behind it but still the criticism is there that our Ministers are not following the Gandhian ideals in their life, that they are travelling by aeroplanes, maintaining stately houses and so on and so forth. So I feel that in the Constitution there should be a provision giving a code of conduct for our Ministers so that we may not in future find, when history gives its verdict on us, that we have failed in our duty.

Lastly, I would beg to submit, Sir, that the provision for a Council of States in the Constitution seems to me to be redundant because an upper House has always acted as a dead weight upon the progress of the people. This smacks of a slavish imitation of the West and is quite unnecessary.
I hope these suggestions of mine will be considered by the House in due course.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, I am sorry to find that the Members of the Drafting Committee have completely forgotten the very fundamental thing that was really responsible for bringing this Constituent Assembly into existence and for giving them this chance of drafting this Constitution for India. One would have thought that it would be their elementary duty to have suggested to us that this Constitution is being framed by the Constituent Assembly which has been brought into existence by the labours of the countless martyrs and freedom fighters in this country guided and led by Mahatma Gandhi, but not a word has been said in regard to this matter. Therefore I suggest that we should make it clear that this Constituent Assembly comes into existence after India has attained freedom under the inspiring leadership of Mahatma Gandhi, the Father of our Nation, and that we are grateful for the unremitting struggle of the countless men and women to regain the right of independence for our nation. This is the least that we can possibly say in appreciation of the services rendered by these martyrs in our freedom struggle, and I hope the House will make the necessary amendment later on in this Draft.

Next, Sir, I am most unhappy that Dr. Ambedkar should have said what he has said about the village panchayats. All the democratic tradition of our country has been lost on him. If he had only known the achievements of the village panchayats in Southern India over a period of a millennium, he would certainly not have said those things. If he had cared to study Indian history with as much care as he seems to have devoted to the history of other countries, he certainly would not have ventured those remarks. I wish to remind the House, Sir, of the necessity for providing as many political institutions as possible in order to enable our villagers to gain as much experience in democratic institutions as possible in order to be able to discharge their responsibilities through adult suffrage in the new democracy that we are going to establish. Without this foundation stone of village panchayats in our country, how would it be possible for our masses to play their rightful part in our democracy? Sir, do we want centralisation of administration or decentralisation? Mahatma Gandhi has pleaded over a period of thirty years for decentralisation. We as Congressmen are committed to decentralisation. Indeed all the world is to-day in favour of decentralisation. If we want on the other hand centralisation, I wish to warn this House that would only lead to Sovietisation and totalitarianism and not democracy. Therefore, Sir, I am not in favour of the so-called slogan of a strong Centre. The Centre is bound to be strong, is bound to grow more and more strong also on the lines of modern industrial development and economic conditions. Therefore, it is superfluous, indeed dangerous to proceed with this initial effort to make the Centre specially strong. In the Objectives Resolution that we passed in the beginning we wanted provinces to have the residual powers, but within a short period of two years public opinion rather has been
interpreted by those drafters to have swung to the other extreme, to complete centralisation at the Centre and strengthening the Centre over much.

I am certainly not in favour of having so many subjects as concurrent subjects. As Mr. Santhanam has rightly put it the other day, what you consider to be a concurrent subject today is likely to become an entirely federal subject in another five or ten years. Therefore, although I am quite ready to leave the residual powers to the Central Government, I certainly do not want the provinces to be weakened as this Draft Constitution seeks to do.

Sir, one of the most important consequences of over-centralisation and the strengthening of the Central Government would be handing over power not to the Central Government, but to the Central Secretariat. From the chaprassi or the duffadar at the Central secretariat to the Secretary there, each one of them will consider himself to be a much more important person than the Premier of a province and the Prime Ministers of the provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre. We know in parliamentary life how difficult it is for ministers to have complete control over all that is being done by these various Secretaries at the Secretariat. Under these circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy.

Sir, I am certainly in favour of redistribution of our provinces, but in view of the fact that the President of the Constituent Assembly has appointed a Linguistic Commission to enquire into the possibility of establishing these provinces, I do think that any detailed discussion in this House is not in order, when the particular matter, before they make their report, is sub judice; whether it is the top-most leaders of our country, the Prime Minister or the Deputy Prime Minister or any humble Member of this House - it is certainly sub judice for any one today to express any opinion for or against the redistribution of provinces on a linguistic basis until this Commission expresses its own opinion. Therefore, I do not wish to say anything more, although I have certainly very much to say in favour of these linguistic provinces.

What are to be our ideals? We have stated some of our ideals here in the Fundamental Rights chapter as well as in the directives. But is it not necessary that we should make it perfectly clear in one of these directives that it is the duty of the State to establish village panchayats in every village or for every group of villages in order to help our villagers to gain training in self-government and also to attain village autonomy in social, economic and political matters, so that they will become the foundation stone for the top structure of our Constitution?

Next, Sir, I do not want this distinction to be made between the provinces and the so-called Indian States. Why should it be that the Indian provinces should be degraded into a kind of District Board status while these India States would be given so much special power and
favourites? Why should these Indian States be allowed to have their own separate Constituent Assemblies and formulate their own separate constitutions? Either we should have very powerful states including the Indian States and the provinces or we should have weak provinces and weak States just as is being proposed in this Constitution. I am certainly not in favour of weak provinces or weak States; I am in favour of strong States and therefore, I suggest that my honourable friends from the Indian States also should pool their resources with us and then agree that all the provinces as well as the Indian States should be placed on the same footing and they should be made as strong as possible.

Sir, in these objectives, nothing has been said about all those people who are living in our villages. There is something here said about the industrial workers. The industrial workers, unfortunate as they are, seem to be much less unfortunate than the rural people. It is high time, Sir, that we pay some attention to this aspect also in our villages. Certainly the Bombay Resolution of the Indian National Congress of August 1942 lays special stress upon the toilers in the fields, in factories and elsewhere. But no such mention is made here; special mention is made only of industrial workers. I suggest, therefore, that whatever we want to do must be for the benefit of all those people in the villages, in the towns, in the fields, in the factories and elsewhere.

Sir, in regard to the minorities, I am certainly not in favour of the reservations so far as the great Muslim community is concerned; they certainly cannot claim any longer to be such a helpless community as to be in need of these. One of those friends have come forward to say that they do not want to have these reservations.

I am not in favour of second Chambers, in the provinces especially. These second Chambers will only retard progress. Some people seem to think that some check like this should be put in there; it will only give a special premium to conservatism and therefore we should not have it. Then there were some friends who said that this Constitution should be turned into a sort of rigid pole. I am not in favour of rigid poles; I am in favour of a flexible Constitution. If it had been found necessary within the last two years to swing from one side to the other, leaving the residuary powers to the provinces or keeping them with the Centre, then how much more it would be necessary in the next ten years for us to try to make the necessary constitutional changes in our own Constitution in the light of the experience that we would be gaining. So far we have not gained any experience. Our Constitutional Adviser has gone all over the world, he has consulted other statements and he has come back and suggested so many amendments. We do not know how many times we are going to amend our own constitution within the next ten years after this constitution is accepted and our new legislatures come into existence. Therefore, I welcome the suggestion made by the Honourable Prime Minister yesterday that we should try to make our constitution as flexible as possible and also to make it easier within
the first ten years at least to make the necessary constitutional amendments to our own constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patchwork of some of the old constitutions of the west, not even some of the modern constitutions of the west, with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into a whole. Dr. Ambedkar is not responsible for this; we alone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.

It is no doubt true that Dr. Ambedkar gave an analysis of the several provisions of the Constitution, and unfortunately emphasised certain aspects of it, and gave his own views upon village republics, village autonomy and democracy. He could have spared us and spared the Assembly controversy over these issues. Sir, left to myself, I would like very much that this Constitution must be based upon autonomous village republics. Democracy is not worthy of anything if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to this Assembly or that Assembly and thereafter disperse. That is the present state of India today. People in the villages have had absolutely no opportunity to train themselves for democracy. They have not shared responsibility with anybody; they are absolutely irresponsible. That was the view that was taken and that was the purpose of the British who ruled us for 150 years. They destroyed the elements of our freedom, of our decentralised economy and the village republics that we had. They wanted to centralise the Government and concentrated all power in the Governor General and ultimately in the British Parliament. It was in that view that they took steps to see that the villages did not govern themselves. We must see that the village is the unit for the social fabric that we are going to build. In the village itself, I would like that the family should be the unit, though for all-India purpose, the individual must be taken as the unit for voting. The village must be reconstructed on these lines; otherwise, it will be a conglomeration of individuals, without any common purpose, occasionally meeting and dispersing, without an opportunity to come together and rehabilitate themselves both economically and politically.

But, as we are situated today, is it at all possible immediately to base our Constitution on village republics? I agree this ought to be our objective. But where are these republics? They have to be brought into existence. As it is, we cannot have a better Constitution than the one that has been placed before us on the model of some Western Constitutions. Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various
Governments that may come into existence in the future to establish village panchayats, give them political autonomy and also economic independence in their own way to manage their own affairs. Later on, a time will come when on the basis of these republics or autonomous panchayats, a future Constitution may be built. I agree with our Leader, the Prime Minister, who spoke yesterday that this Constitution may be kept in a transitional form for a period of five years, so that in the light of whatever experience we may gather in this period, an Assembly which may be elected on the basis of adult suffrage may re-draft our Constitution or amend or alter it. With that safeguard, I would urge upon this Assembly to accept the Constitution as it has been placed before us by the Drafting Committee and finalise it.

There is another criticism that has been levelled, and according to me, it is a more serious one, against this Constitution. To the man in the street, political democracy is worth nothing unless it is followed by economic democracy. In the Fundamental Rights, the right to speak, the right to address Assemblies, the right to write as one likes, all these have been guaranteed; but the right to live has not been guaranteed. Food and clothing are essentials of human existence. Where is a single word in the Constitution that a man shall be fed and clothed by the State? The State must provide the means of livelihood for every one. Russia has addressed itself to this problem and has concerned itself with the growing of food and the feeding of every citizen of the country by nationalising the means of production. In England, the Government cannot be in the saddle even for a single day if it allows even a single citizen to die of starvation. We have not yet taken any lesson from the 35 lakhs of people who died three or four years ago during the Bengal famine. Are we to perpetuate this tragedy? Is there a single word in the Constitution that imposes on the future Governments the obligation to see that nobody in India dies of starvation? What is the good of saying that every man shall have education, every man shall have political rights, and so on and so forth, unless he has the wherewithal to live? In England, either the Government must provide every citizen with employment or give him doles so that nobody will die of starvation. It is very disappointing to see that we have not introduced a similar provision in this Constitution. I would urge upon this Assembly that even now it is not too late, and that that must be our first concern; the other things may stand over if necessary.

There is another important matter to be considered and provided for. Otherwise India may be engulfed in a war or internal unrest. Now war clouds are thickening. There are two ideologies fighting for power, fighting for the supremacy of the world. On one side, there is the political democracy of the West; but there is the economic dictatorship of America. We do not want economic dictatorship at all; but we do want democracy. In Russia, there is no political democracy; but there is economic democracy. The two powers are striving for the mastery of the world; on account of this a war may come at any time. Is there anything here in this...
Constitution to say that we stand for economic democracy along with political democracy? There is a vague reference in the Objectives Resolution that there shall be social justice and economic justice. Economic justice may mean anything or may not mean anything. I would urge, here and now, that steps should be taken to make it impossible for any future Government to give away the means of production to private agencies. We have seen what private agencies mean. So far as cloth is concerned, within a short time of the removal of controls, prices went up. Why should we not take charge of all the mills and produce the necessary cloth? Even in the matter of food, in spite of all the exertions of this Government as well as the previous Government, are we able to grow sufficient quantity of food and distribute it in the country? I would therefore say, the time has come in this country when we must make a departure. We should not follow the economic dictatorship of the West or the political dictatorship of Russia. In between, we must have both political democracy as well as economic democracy. If we have to stand out as the protectors of Asia, or chalk out a new line and avoid all wars in the future, this alone can save us. Let us not be complacent. Communism is spreading. In the north there is communism; it has come to our very shores. China has been practically swallowed up by the communists. And likewise Indo-china. Burma is also in the grip of the communists. I do not know to whom I could attribute the sabotage of telephonic communications in Calcutta. I understand that there is a movement there to destroy the water works and destroy the power house also. There is a rumour afloat that in Delhi itself, there is going to be a strike in the Water-works Department as also in the Electricity department. Unless we make up our minds to have economic democracy in this country and provide for it in the Constitution, we may not be able to prevent the on-rush of communism in our land.

The next important matter for which provision should be made is the effective consolidation of our country as early as possible. I was really surprised to hear the words of my friend Mr. Hanumanthaiya yesterday. The people in the States were anxious to fall in line with the rest of India. They wanted to get rid of the Rulers; we helped them; when once they regained freedom, they want to supersede these Rulers and become the rulers in their own States. Big States and small want to be separated from the rest of India. Why should they not adopt this Constitution which is framed for the provinces also?

Shri K. Hanumanthaiya (Mysore): On a point of personal explanation, Sir, I never claimed any separate status or independence for any of the States.

Shri M. Ananthasayanam Ayyangar: There is a view that so far as the States are convened, if they merge in India they will lose the peculiar privilege of having Prime Ministers in their small places. That is a disadvantage they have, I agree, but it is better to fall in line with the rest of India. Why should they not adopt the position in the rest of India and why should they reserve all the subjects for themselves and give only three or four subjects?

(At this stage Mr. Vice-President rang the bell.)
In the case of a Bill there is no question of time. Strangely enough you have imposed a time restriction.

Mr. Vice-President: You must set an example to others.

Shri M. Ananthasayanam Ayyangar: I will accept what you say; there will be ample opportunities and I shall clear up this matter later.

Shri Rohini Kumar Chaudhari: (Assam: General): Sir, I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed, I should like to pay my share of tribute to the Members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province, Assam, in the heyday of his youth are still remembered with affection and gratitude. Nevertheless, I must say that this Draft does not claim perfection and there are faults of omission and commission to which I must refer in the course of my speech. The first and foremost question which strikes me is whether they want to retain the State of Assam in the first schedule of this Constitution Act. The position has become somewhat difficult now, and you must once for all decide and provide in this Constitution measures which would enable Assam to be retained in India. I refer to the lamentable neglect to make any provision for finances so far as my province is concerned. It has been stated in the report that for five years the status quo must continue, which means that Assam at the end of five years will cease to exist as any province of importance. Sir, I must just go into a little detail. At the present moment there is a deficit of one crore rupees in that province and the total revenue of the province including what is obtained from the Government of India is to the tune of four crores only and already the expenditure has gone up to five crores. If you have to maintain the minimum standard of administration of an Indian province, at least an expenditure of eight crores is necessary. From where is this amount to come? We have said and urged even in the olden days that we must get a share of the petrol and kerosene excise duty, and a share of the export duty on tea; but nothing has been so far done even though the conditions are so desperate. The Drafting Committee does not make any exception in the case of the special condition of that province. Sir, we have gone to the maximum capacity of taxation. Our rate of taxation is far more excessive than any other province and we tax ourselves at the rate of 4.3 whereas the rest of the provinces tax themselves at the rate of 4.9. We had started levying tax on agricultural income long before the rest of the provinces and we had taxed ourselves for amusement and luxuries long before others and even now our conditions are so desperate as this, and I would appeal to this House that if you really want to retain Assam in India, you must make some special financial provision for her and you must pay some special attention, otherwise that province will become bankrupt. India is one body politic and if one finger of that India is rotten, the whole India will rot in the long
run. If you allow Assam to be ruined now, you will see that you will have to suffer ultimately for that.

I would like to refer to another point, and that is with regard to Article 149. Curiously enough, I find an amendment has been suggested which if given effect to will lay down a very dangerous principle, the principle of converting a general population into an absolute minority. I refer to the amendment which had been suggested by the Drafting Committee and which says:

"That in clause (3) of article 149, after the words 'save in the case of the autonomous districts of Assam' the words 'and in case of constituencies having seats reserved for the purposes of article 294 of this Constituted' be substituted."

If this is given effect to, it will mean that all communities with reserved seats will have constituency of less than 1 lakh population whereas the general population must be restricted to constituencies having only 1 lakh population. This will mean additional weightage being given to reserved seats which is not claimed or asked for by any of the communities. The proportion of the population in the province is as follows:

Hill tribes ... 18 per cent.
Muslim ... 17 per cent.
Scheduled castes ... 4 per cent.
General 34 per cent.

Where have you seen in a province where the general population is 34 per cent out of a total of 74 per cent that special weightages have to be given to communities ranging between 18 and 17 per cent of the total population? And yet if this is accepted it will mean that the general population will have to give up some of their seats and will get less than what they are entitled to on the basis of population. This is a dangerous principle, and though it refers only to one province it will create a situation in which the general population will be converted into a minority and weightage given to other people for whom seats have been reserved. Of course the proposition which I make will not affect the tribal population at all because they will have their autonomous districts. I certainly see that there are complications in the case of reserved seats if you adopt the formula of one lakh representation; but the best thing to be done in this matter would be to make an exception in the case of Assam in regard to having a constituency for a lakh of people.

I will refer to one other act of omission. In the Draft Constitution there is no mention of women. I think the peculiar composition of the Drafting Committee which consisted of people who have no domestic relations with women made them nervous about touching on that point. In this House there has been no mention of a special constituency for women. I know there are Members here who have unbounded faith in the chivalry of men and who consider that they will be quite competent to get seats even though no special constituency is reserved for them.
But outside this House that is not the feeling. Women generally have lost faith in the chivalry of men. The young men of to-day do not show respect to them even in the trams and buses.

Mr. Vice-President: The Honourable Member has reached his time limit.

Shri M. Ananthasayanam Ayyangar: Sir, on a point of order, I do not find in the rules any provision for a time-limit in respect of Bills of this kind.

Mr. Vice-President: That was done with the consent of the House. First it was 10 minutes, then it was extended to 15 minutes, and then to 20, and again it was brought down to 10 minutes.

Shri Rohini Kumar Chaudhari: Sir, from my experience as a parliamentarian and a man of the world I think it would be wise to provide for a women's constituency. When a woman asks for something, as we know, it is easy to get it and give it to her; but when she does not ask for anything in particular it becomes very difficult to find out what she wants. If you give them a special constituency they can have their scramble and fight there among themselves without coming into the general constituency. Otherwise we may at times feel weak and yield in their favour and give them seats which they are not entitled to.

Shrimati Renuka Ray (West Bengal): General: Sir, the main features of the Draft Constitution embody the principles of a democratic federation and as such should win the approbation of all. At the same time there are certain matters which I feel are not quite explicit or in which changes are required, if this constitution is to conform to those ideals which actuated India during its many years of struggle and which are embodied in the Objectives Resolution to which our Prime Minister referred yesterday. Sir, I agree with my Honourable friend Dr. Ambedkar that it is the spirit in which we are able to work it, that will make all the difference. Again, whatever constitution we may draw up to-day, it will not be possible for us to foretell how it will fit in with our requirements in its actual working and with the inherent genius of our race. It is therefore quite essential, as the Prime Minister said yesterday, that the Constitution at present should be flexible. I think amendments of the Constitution should be by simple majority for the next ten years so that there may be opportunities for adoptions and modifications in the light of experience.

Turning to the citizenship clause, I think there should be a categorical statement in it about a single uniform citizenship with equal rights and privileges. As rights involve responsibilities, so it is necessary that the obligations of citizenship should also be enumerated in this clause.

With regard to Fundamental Rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country and in view of some of the opinions expressed by the public - and the last speaker's chivalry touched us deeply - I think it is necessary to have an explicit provision that social laws of marriage and inheritance of the
different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is of course true that the right of equality includes this but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.

I will not repeat what my Honourable friend Shri Ananthasayanam Ayyangar said but I do feel that in regard to the economic rights of the common man there is a lacuna. Although I agree that the provision "that no person shall be deprived of his property save by the authority of the law" is alright, I do not at the same time see why underjusticiable rights one should have the second part of this clause which goes into details about compensations when property is taken by the State for public purposes in accordance with law. Surely if there is any need for putting this into the Constitution it should be under directives and not under rights which are justiciable and enforceable in courts of law. It is not right that we should commit the future to the economic structure of the present.

Turning to education, which I consider to be one of the most fundamental of rights, I feel there is a great inadequacy. I do not want to repeat what other speakers have said, but I would appeal to the House to include a proviso whereby a definite proportion of the budget is allotted for this purpose. This is nothing very new; it is already therein the Constitution of China which says:

"Educational appropriations shall set apart not less than 15 per cent of the total amount of the budget of the Central Government and not less than 30 per cent of the total amount of the provincial, district and municipal budgets respectively." If we are to progress and prosper I suggest that in the matter of the two nation-building services of education and public health there should be some provision in the Constitution of the type that is there in the Chinese Constitution.

With regard to the reservation of seats for minorities we have not of course in a secular State provided for separate electorates, but I do not see why we should have reservation of seats for minorities. It is psychologically wrong to lay down, as it has been laid down, that after ten years the right shall lapse unless extended by amendment. I am sure that if this privilege is conceded now there will be a clamour for its extension. It is not fair to the minorities; it is not self-respecting for them. If the House wants to ensure representation for minorities I would suggest multiple constituencies which cumulative voting. Some speakers have suggested proportional representation by single transferable vote. I think that is a difficult procedure particularly for India and I would not recommend it. But I think that multiple constituencies with cumulative voting has a great deal to recommend it. In the first place, it will give much better representation not only to the minorities without creating a separatist tendency. The last speaker Sri Rohini Chaudhuri the erstwhile champion and defender of women who is
against removing their social disabilities spoke about special electorates for women. All along the women of India have been against reservation of seats or special electorates. Before the 1935 Act came in we were against it and put forward our views in no uncertain terms, but it was forced upon us; and to-day, in spite of the chivalry of the previous speaker, Indian women will not tolerate any such reservations in the Constitution. I will not repeat what others have said about village panchayats. I feel that freed from the shackles of ignorance and superstition, the panchayat of the Gandhian village will certainly be the backbone of the structure of this country’s Constitution. I do not think there is anything in the Constitution that can bar it.

Coming to the allocation of powers between the units and the Centre, I think we must approach this subject dispassionately. There is a great deal to be said for giving as much provincial autonomy as possible. At the same time, where a country has a tremendous leeway to make up, particularly in the nation-building services, the unifying force must be strong and the Centre should be given some power of a supervisory and coordinating character, in regard to both Education and Health. I do not think the provinces should be crippled by taking away from them certain financial securities. They should at least be given 60 percent of the income-tax according to the recommendations of the expert committee, 35 per cent on the basis of collection, 20 per cent on the basis of population and 5 percent for hard cases. This is a very good recommendation and I hope this House will agree to embody it in the Constitution. I also feel that a Financial Commission should be set up immediately and not after five years.

Before I conclude, I wish to say something about linguistic provinces. Unity must be our watchword to-day and it is a fatal mistake to allow realignment of provincial boundaries on a linguistic basis at this juncture of our country’s history. It has already led to much bitterness and strife and will lead to more. There is no justice or logic if such a thing is allowed in one part of the country and not in others. For instance if you allow a province of Maharashtra to be formed, naturally there will be other parts which will want it. There is in Bengal a feeling of great bitterness that she who has sacrificed part of her territory so that the transfer of power could take place should be denied her rights, now. It was because of the political expediency of the British and to suit the purposes of an alien Government that Bengal was forcibly deprived of much of its territory when the movement for the freedom of India started here. I do not subscribe to the theory that we should have a reallocation on a linguistic basis at this time. It is to be done at all it should be done after ten years when passions have subsided. In any case, for administrative purposes there is no need for a linguistic realignment. Linguistic minorities in every province should have a guarantee that they will be given education in their mother tongue. I would urge that the Linguistic Boundary Commission should stop work or in any case it should be put off for ten years. I repeat that the overriding consideration is that of unity, if we want
that India should be strong and prosperous and should take its rightful place in the comity of nations.

The Honourable Shri Ghanshyam Singh Gupta (C.P. and Berar: General): Sir, it has been said that the language of the Union should be simple Hindustani, that the language of the Constitution, the language on which we shall frame our laws, should be Hindustani. I was in search of this simple Hindustani. I could not find it in C.P. I could not find it in the law books. I could not find it even in the official proceedings of this August House. The official proceedings of this House are published in three languages: English, Hindi and Urdu. I read English, I read Hindi and I got read Urdu with the idea that I might be able to find what they call simple Hindustani. I could not find it. Urdu was Urdu and Hindi was Hindi. There was no such thing as simple Hindustani. I thought that I might find it in the newspapers. 'The Tej', Limited, the Jubilee of which was celebrated the other day, publishes news in two languages, one in Hindi called 'the Vijay' and the other in Urdu, called 'the Tej'. I compared the languages of these two also. I could not find simple Hindustani. I would not waste the time of the Honourable House by reading from these publications. I have got a copy of 'Vijay' in my hand. It is all Hindi in 'Vijay' and all Urdu in 'Tej'. I found two books, elementary text in Delhi may have simple Hindustani. I found two books, elementary text-books in Geometry (rekhaganit). I could not find simple Hindustani in them also. I also looked at the Elementary Arithmetic books and also Elementary Geography. I could not find there what they call simple Hindustani. They were either Urdu or Hindi. I shall give you a few illustrations. Now, Sir, in elementary arithmetic multiplication we call (gunan) in Hindi. It is called (zarab) in Urdu. Multiplicand is (gunya) in Hindi, while it is (mazarab) in Urdu. Multiplier is (gunak) in Hindi and it is (mazarbafi) in Urdu. Product is (gunanfal) in Hindi, while it is (hasil-i-zarab) in Urdu. Divisor is (bhajak) in Hindi. It is (maksum-i-lah) in Urdu. Dividend is (bhajya) in Hindi. It is (maksum) in Urdu. Quotient is (bhajanphal). It is (kharf-i-kismat) in Urdu. L.C.M. (laghuttam samapvarta) in Hindi. It is (zuazaf-i-aqual) in Urdu.

I can multiply illustrations. I now take up elementary geometry. Radius is (trijya) in Hindi. It is (nisfaketur) in Urdu. Isosceles triangle is (samadvibahu tribhuj) in Hindi. It is (musallas-musvai-ul-sakin) in Urdu. Equilateral triangle is (samatribahu tribhuj) in Hindi. It is (musallas-musavi-ul-zila) in Urdu. Right-angled Isosceles triangle is (samakon samadvibahu tribhuj) in Hindi. While it is (musallas-musavi-saquan quamuzzavia) in Urdu.

I can quote hundreds of such illustrations. I could not find simple Hindustani even in these elementary text-books. I felt somewhat puzzled when ladies and gentlemen loudly proclaim that they can have simple Hindustani for our laws. It is only in the bazaar that I could find simple Hindustani. When we cannot have simple Hindustani even in the elementary school-books, how can our laws be made in it? I have done, Sir.
Shri Mahavir Tyagi (United Provinces: General): I thank you very much, Sir. I have been waiting for the last three days to speak on this Draft Constitution. I am glad you have permitted me to speak for a few minutes.

I must start by thanking and congratulating the Drafting Committee for the high level of legal language and phraseology which they have used in the Draft from beginning to end. I do not want to criticise the Drafting Committee. They have done their work very efficiently. They have collected together bits of the principles of Constitution that we lay before them in irregular instalments, and have given us a complete picture for our review.

Sir, when we sat for the first time to draw a picture of the Constitution of India, we had a blank canvas and many of us did not actually know which side to start from and what colour to fill. It is all due to the ability of these talented lawyers that we have now got a complete picture to look at. When you wish to judge an artist's work, you should take the opinion of a layman. If it appeals to the layman, it must be good. That is my criterion. The lawyers have finished their work and the complete picture is before us. I, as a layman, want to put before you my ideas about it. The circumstances have changed from what they were when this work was entrusted to the Drafting Committee. It is very unfortunate that, in the history of India, the lamp which lit our hearts with pleasures of freedom was put out suddenly and we were steeped in sorrow. Then again, populations have changed and the whole face of the country has changed. The ideology also has changed to a great extent. Now to give that old picture on the canvas will be making the picture a back number. We must keep in mind today the present environments, the present conditions and the growing ideologies. So, Sir, we must examine the picture in the light which gave us freedom. In fact, we must examine it from the point of view of Gandhiji, through his eyes. His eyes are not with us, but still there are persons in this House who have the glimpse of his eyes. We can all recollect what Gandhiji thought about Swaraj. It must not be forgotten that this Constituent Assembly is the fruit of the labour of those who worked day and night for about thirty years in their attempt to win freedom. It is their achievement. It is they who should have given us the Constitution. They alone are competent to draw up the Constitution. The Constitutions should have been the work of revolutionaries alone. But since this Assembly has been constituted by the British, we cannot think of the other possibilities and it could not be purely a Gandhian Constitution altogether. I admit this. But again, we are in the majority and we should see to it that the Gandhian outlook does not vanish from the country so soon after his death.

In this Constitution, I must confess, I am very much disappointed. I see nothing Gandhian in this Constitution. It is not the fault of the Drafting Committee. It is our own fault. When we decided upon the principles of this Constitution, we gave them certain basic principles to work upon. But conditions have since changed. When we decided about the representation of
communities, language and other controversial matters we had to reckon with the reaction our decisions would have in Pakistan. Now the situation has totally changed. Pakistan has been freed of its minority problems altogether; there those problems have vanished. Here also the thorny and the horny ones have migrated away from India; those who fought us under one pretence or the other have forsaken their mother-country and have gone over to the other side, and have adopted a step-mother. We have with us now only those Muslims, Sikhs and others who want a united India. India is united today and therefore the Constitution must be suitable to the present set-up of things.

So, Sir, from the Gandhian point of view when I look at this picture, I find one thing very prominently lacking. Gandhiji had always been keen on total prohibition in the country, but the Constitution does not say a word about it. Our promises to the electorate on this issue have been fulfilled only in Madras and in some other provinces. Gandhiji was anxious that in India as a whole there should be complete prohibition. I would suggest that this idea of Gandhiji should be taken in before we sign this Constitution.

Then, Sir, Gandhiji was very keen on cottage industries to be organised on the basis of self sufficiency. This item had a top priority in his 'constructive programme'. Here this is also lacking. I am an orthodox Gandhite and surely I am not a socialist and so I do not want to wipe away all the big industries. In the context of things to-day, the various industries in the country are very helpful, but if and when they are to be abolished, they should be abolished en masse. You cannot bring in socialism by stages, by socialising one industry after another. When socialism comes, it should cover everything, all at a time. If total socialism comes all of a sudden, there will be no loss to anybody, because the loss sustained by anybody on one count will be made upon the other count, because all property becomes absolutely socialised property. To say in the Draft Constitution that people shall not be deprived of their property without adequate compensation means that India will ever belong to the vested interests. To-day there is not even a blade of grass which does not belong to somebody or the other. There is not even one particle of sand which does not belong to somebody or the other. According to this Constitution, if the future generations want to socialise all property and all means of production, then every particle of sand and every blade of grass will have to be compensated for. I want to know, wherewith will they compensate this total wealth: it would all be in the hands of individuals who will demand compensation. So, compensation will be impossible. Gandhiji had said that the wealthy should consider themselves only as custodians of wealth. He never went to the extent to which we are going in this Draft Constitution. I therefore tell you, Sir, that before we sign this Constitution, we should see that we do not sow seeds of a bloody revolution in India. Only if revolution is meant to be avoided we should let the door remain open for coming generations, if they ever so desire, to socialise all vested interests and all means of production.
in the country. If we shut the door as we have done against future socialisation, by our Article 24(2), I submit, the youth of India will rise and knock at the door and smash it and the result would be a bloody revolution. (Cheers). Therefore, Sir, I would plead that we should scrap this sub-clause altogether and make it possible in future for the Parliament to socialise all property and all means of production without being compensated for. It is also a sort of mistake, Sir, to say that we are a sovereign body. I do not think we are a sovereign body in the sense in which a Constituent Assembly should be. The sovereignty that we enjoy is the sovereignty that the British enjoyed in India: It is a transferred sovereignty. Real sovereignty will belong only to the Parliament which comes after the introduction of adult franchise. That Parliament must therefore be more morally and constitutionally competent than us to decide issues of this nature.

I then come to the question of minorities. I am sorry that Dr. Ambedkar made the statement that minorities are an explosive force which if it erupts can blow up the whole fabric of the State. I say that these minorities can do nothing of the sort. The reason is simple: they are not factual, they are a mere fiction having no existence. I throw them a challenge. They have no right to be separately represented here. Whom will they represent? The fiction of minorities was a British creation. The Scheduled Castes are not a minority at all, simply because a few castes of the poorer classes have been enumerated together in a schedule, they have become a "scheduled minority". This minority is an amere paper minority. It is being perpetuated now because some of the opportunist families among them want to reserve their seats in the legislatures. Those people who took pleasure in calling themselves a minority have migrated away from here. It is only those who believe in one State that remain. Therefore, Sir, there is no minority now and there should not be any provision for minority representation here, because this has proved ruinous to the so-called minorities themselves. Take the Muslims. I had seen in Dehra Dun personally, and I know what their reactions are. They are an absolutely demoralised people today. Even the ordinary rights of citizenship they are not morally free to enjoy. They are so cowardly today that they cannot stand erect in India because of the wrong lead they had followed in the past. Therefore, Sir, I would ask the Scheduled Castes, the Sikhs, the Muslims and the other minorities and for the matter of that even Hindus not to ask for any kind of reservations for them. We are a secular State. We cannot give any recognition or weightage to any religious group of individuals. I could understand their claims as majority or minority if they had belonged to different races. Beliefs or creeds are a purely individual affair. I also refute Dr. Ambedkar's claim that the majority in India is "basically a communal majority". The majority party is Congress, which is purely political.

Then, Sir, a word about the villages. Dr. Ambedkar said that he was happy that the "Drafting Committee has not accommodated the village". He characterised it as "a sink of localism and a
den of communalism”. It is these sinks of slavery that were facing all sorts of repression in the freedom struggle. When these sinks of slavery that were being charred, burnt and tortured in Chimoor, the pyramids of freedom were applying grease on the back of the Britishers. Unless I raise my voice against the remarks which Dr. Ambedkar has made against villages, I cannot face my village people. Dr. Ambedkar does not know what amount of sacrifice the villagers have undergone in the struggle for freedom. I submit, Sir, that villagers should be given their due share in the governance of the country. If they are not given their due share, I submit that they are bound to react to this. I thank you, Sir.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, I am very thankful to you for giving me this opportunity to speak a few words on this motion. In the first place, I would just like to refer to the question of language. When I first entered this august body, I felt myself to be under a very great disability that I was not able to follow the proceedings that were going on. Then I found that a very considerable section of this House was in the same unfortunate position as myself and the idea struck me that the Constituent Assembly, which is going to determine the destinies of millions of this country for ever, is conducting the proceedings in a manner which does not bring credit either to this Assembly or to the nation. We have been going on speaking about very important and vital subjects without every one of us understanding each other. That is really a very unfortunate position. I raised my cry against it, but I must say that I did not succeed. Even now the disability continues, even though to a lesser extent and I am glad that, at any rate, there was some abatement in the matter of the extent to which that disability is suffered by us.

Now, Sir, in the Draft Constitution, provision is made that the official language shall be Hindi and English. I submit, Sir, that this also will create an anomaly. No doubt provision is made that arrangements may be made for giving the substance of all the speeches of one language in the other language, but to what extent and what is the method to be employed for that, it is yet to be provided for. I submit, Sir, that it is very necessary that for some reasonable period, it may be ten years, it may be fifteen years, - that is a matter of detail - there should be a provision that the official language should continue to be English. We have no reason to hate the English language. As a matter of fact we ought to be grateful to the culture that we have imbibed from that language. In fact for a great deal of our agitation for freedom and the freedom that we have obtained, large contribution has been made by the English language and by the culture which we imbibed from that language. Therefore, I do not think that there is anything which we should hate in that language; and particularly, when we have attained our freedom, we are entitled to adopt the best from any nation from any part of the earth. I shall also say that there is no proprietorship in language. The English language cannot be claimed by the Englishman as their own with any exclusive right for themselves nor can we claim Hindi as the exclusive language for ourselves. There are several languages in the world and therefore we
are entitled to use every language. So we are entitled to use the English language and we must adopt it until we are in a position to have one national language known to the generality of the public of this country. Until that position is attained, we must continue English as the official language so that every one who assembles in the Parliament may understand each other. Of course, there may be some stray cases in which the representatives may not be acquainted with English, but a very large majority of them will be acquainted with English and therefore, I submit, Sir, that the English language must continue to be the official language at least for fifteen years, by which time the nation may be prepared to have a national language for themselves.

Now, Sir, coming to the question as to what that national language should be, that is a matter to be decided by this august body. I must say at the very outset that I am not acquainted either with Hindi language or with Urdu language or with Hindustani. Therefore, I am taking an apathetic view of the matter. It is very difficult to say that it is possible for the people of this country to learn Hindi overnight. No doubt we must have a national language, but we must prepare the nation for it by making provision for their learning that language. Now if Hindi is to be made compulsory as the official language, the question will arise in the elections by adult franchise that knowledge of Hindi should be the primary qualification of a candidate for election. I think it will be detrimental to the interests of the country, if that happens, and the knowledge of Hindi becomes the criterion in electing their representatives. I do not want to dwell more on the subject as the time at my disposal is very short. I would only submit this. My suggestion is that this august body should decide in favour of Hindustani for no other reason than the fact that it is the solemn testament of Mahatma Gandhi, the father of the nation. He was one who was well acquainted with this controversy about these languages and he knew what the nation was and it is after mature consideration that greatman has suggested that Hindustani with the Devnagari script and the Persian script should be the official language and I hope that this august body will really revere the memory of that great man by deciding on Hindustani with Devanagari and Urdu script as the official language.

Now, Sir, if we do not abide by his advice, the world might say that after all the devotion and reverence we show to Mahatmaji is a lip-reverence and a lip-respect and it is not deeper than that. Let us not give occasion to the world to say that our reverence for Gandhiji is only lip-respect. Let us not allow ourselves to be accused of the grave charge that soon after the death of Mahatmaji his views and wishes were buried nine fathoms deep. At least for the sake of his memory, I appeal to you, Sir, and to all the Members of this body to vote upon Hindustani as the official language.

Now, Sir, I would just like to deal with another question, and that question is about the freedom of person. Recently we have heard so much about the power of promulgating ordinances that is being exercised by the various Governments. Particularly I am fully aware
of the circumstances under which the Ordinance rule was enforced in the Madras Presidency. The legislature was in session. All on a sudden, it is prorogued one evening and the next morning there comes this bomb of an Ordinance, even taking away the powers of the High Court to issue writ of Habeas Corpus under section 491 of the Criminal Procedure Code. I refer to this fact in order to show that if the power of making an Ordinance is preserved, there is every likelihood of the power being abused and the liberty of the subject being dealt with in a very reckless way. In pursuance of these Ordinances, hundreds and thousands of innocent people were arrested and kept in custody as if they were chattel, without their even being told what the charge against them was and why they were detained even as required by the very Public Safety Act. In this connection, I would only request this House to see that the powers of the High Court are not in any way taken away with reference to saving the liberty of the subject. Neither the legislature nor the Government should be allowed to pass any law or Ordinance which takes away the power of the High Court to protect the liberty of the subject. That is a very fundamental point. We were crying hoarse when the Britishers were ruling that they were keeping in custody persons without bringing them to trial. I say this is a sacred right and it must be provided in the Fundamental Rights that no man, to whatever religion, or to whatever political creed he may belong, shall be arrested or detained except after trial by a court of law. This is a sacred right of which a citizen should not be deprived. It is said emergencies may arise; even when emergencies arise, there must be power in the High Court to see that the man is brought to trial and he must be kept in detention only after proper trial. No power should be given either to make any laws or to make any Ordinance to enable the Legislature or the Government to deprive the citizens of their personal liberty without his being brought to trial before a court of law. I would therefore request this Assembly to see that provision is made in the Fundamental Rights that the liberty of every subject is protected and no man should be incarcerated without being brought to trial before a court of law.

One word more, Sir, and that is about the salary of the High Court Judges. This morning when the memorandum submitted by the Chief Justice of the Federal Court and of the Chief Justices of the various High Courts was circulated to us, I realised on going through that memorandum that they have made out a very good case for maintaining the present salaries. The salaries were fixed about 70 years ago. After that, everything has gone only in favour of retaining it and all circumstances are against reducing the salaries. The purchasing power of the Rupee has gone down; income-tax has been increased; modern life has become more costly. In order to maintain their dignity and to keep the Judges beyond temptation, it is very necessary that the present salary of the High Court Judges should be maintained, without being reduced.

Just one minute more, Sir. I shall just mention the point. I have maintained that the only way of protecting the rights of the minorities is by giving separate electorates. I do not want to
develop the point further. I know the matter has been discussed in this House before and the House was against it. I know the House will be against it even now. I am giving my honest feeling that it is the only right way of protecting the rights of minorities and I would appeal to the House to consider the question dispassionately. If for any reason that is not practicable, and if the House thinks that it cannot agree to that, reservation is absolutely necessary. I do not want to go into the reasons. In any case reservation of seats has to be retained. Election by proportional representation by the single transferable vote, or the creation of multiple constituencies with cumulative voting, may be some of the other remedies. I would only say that separate electorates is the proper remedy and the right method of giving protection to the minorities. In any case, if that is not practicable, reservation must be there, or in any case, the other methods may be tried. Election by proportional representation by single transferable vote will be a rather complicated method; otherwise, I would have preferred that.

I thank you, Sir.

Shri L. Krishnaswami Bharathi: (Madras: General): Mr. Vice-President, Sir, coming almost at the fag end of the discussions, I do not think I have anything novel or new to traverse. However, I felt I should discharge my duty by giving certain views of mine.

Dr. Ambedkar deserves the congratulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable Members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would tender its thanks for his labours in putting them in order.

I am sorry, Sir, that Dr. Ambedkar should have gone out of his way to make certain references and observations which are not in consonance with the wishes or the spirit of the House, in regard to his references to the villages, and his reference to the character of the majority and constitutional morality. Honourable Members have referred to the question of villages. I only wish to add this: He says: "I am glad that the Draft has discarded the village and adopted the individual as its unit." I would like to ask him where is the individual apart from the villages. When he says that the villages have been discarded and the individual has been taken into consideration, he has conveniently forgotten that the individuals constitute the village, and they number about ninety per cent of the population, who are the voters.

There is another matter which has been referred to by him; that is in regard to the character of the majority. He says, "the minorities have loyally accepted the rule of the majority which is basically a communal majority and not a political majority." I do not know what he has at the back of his mind. There was only one party which functioned on the political plane and on the
Governmental plane, the Indian National Congress, which was entirely a non-communal organisation and a political party. And yet Dr. Ambedkar says it is 'basically a communal majority', which is not true in fact. I must say it is wrong, mischievous and misleading. I want to touch upon four points, viz., the form of Government, the minority question, the language question and adult franchise and elections. I know with the limited time at my disposal I cannot develop those points at any length. However, I would like to touch upon certain aspects of the matter.

The Draft Constitution, Dr. Ambedkar said, is federal in composition. A careful reader of the whole Constitution would find that it is more unitary than federal. If I am to express my idea in terms of percentage, I am inclined to think it is 75 per cent unitary and 25 per cent federal. Many Honourable Members spoke strongly on the need for a strong Centre. I do not think there was any need for this kind of over-emphasis, for it is an obvious thing that the Centre ought to be strong, particularly in the peculiar context of the circumstances prevailing in the country. But I am afraid they are overdoing it. I feel a strong Centre does not, and need not necessarily mean a weak province. An attempt seems to be made and I find there is a tendency to over-burden the Centre and there is a tendency towards over-centralisation. I am glad Dr. Ambedkar has given a kind of warning. I am inclined to think that in actual working of the Constitution this course of taking more powers over to the Centre will be a fruitful source of friction. After all let it be remembered the strength of the chain is in its weakest link and the provinces should not be considered as a rival Governmental organization. The Centre is trying to chew more than it can digest. I find in the transitory provision there is an attempt for the first five years to take over even the provincial subjects. It is for the House to decide how far we can allow that.

Sir, coming to the minority question I am very happy to find that members belonging to the minority community are now coming round to the view that it is no good to have this kind of communal electorate even though in a diluted form in the form of a joint electorate. I am happy that Begam Aizaz Rasul has discarded this and does not want the separate electorate. Mr. Karimuddin also said the same thing but he wanted what is known as proportional representation through single transferable voting system. I am sorry to say that it is an attempt to come by the backdoor or side windows what is denied by the front door. This is not very proper and the suggestion that it may be done by proportional representation is absolutely unworkable and impractical, particularly in general elections where large masses of men and women who happen to be illiterates are concerned. Honourable Members may know that in that system the voter has to put numbers as 1, 2, 3 etc. against the names of candidates and it is very difficult and impracticable and therefore it is no good; and as Dr. Ambedkar said the minorities must trust the majority. There is one fundamental fact to be remembered. I am glad Mr. Tyagi emphasized that. Community should
not be made the basis of civic rights. That is a fundamental principle that we must remember. In a secular State the right to representation is only the right to represent a territory in which all communities live and if a member is representing in the Assembly, he has the right to speak on behalf of all those living in the territory, of all communities and classes, men or women. That should be the idea with which we must function. I must take this opportunity of expressing my great appreciation of some minority communities who have been nationalistic throughout and who have not clamoured for special provisions only on the basis of birth or community. I refer to that community to which you, Sir, Mr. Vice-president, have the honour to belong. I have had opportunities of coming in close contact with Christian friends and throughout they have not demanded any kind of separate electorate or special provisions, and I am happy over that. If some members of minority community now do not want reservation, I may not give all credit to them as they are only making a virtue of necessity - this great Christian community have never asked for special considerations. They have all along been of the view that special electorates are no good and after all we must all live together and I am glad the Parsee community also had not wanted this special representation.

Then Sir, one Honourable Member wanted reservation in services. I should think though it is not undiluted nationalism, we must for some time to come give them reservation in services also. But one thing you must have clearly in mind. There must be a time limit for all these peace or compromise moves and you must make it clear that after the lapse of a certain specified period all these special provisions must go. I particularly support Mrs. Renuka Ray's suggestion that the last portion in Article 306 where it is stated that after 10 years this may be continued may be removed. We must give our view emphatically and definitely that it is only as a necessary evil that we are tolerating reservations on communal basis.

I want to say something on the language question. Much trouble arises on account of not properly defining what is exactly meant by national language. There is no doubt whatever that India must have a national language but you must remember that India is not entirely a country with one language existing at present, and I am glad to find that the Draft Constitution has steered clear of all these controversies. They have simply said in Article 99 that in "Parliament business shall be transacted in English or Hindi". That is all. I do not think that the House need go into this question at present, as our Prime Minister said, of deciding upon a National language here and now. If at all we must have, let us have a language for the Central Government and then it must be made clear beyond a shadow of doubt that in the provinces the provincial languages and respective provincial languages shall be the official language for the territories comprised in the province. If that point is made clear beyond a shadow of doubt, much of the heat and much of the controversy will disappear. Let it be definitely understood that the regional language shall be both, in the legislatures and in the High Courts of the Provinces.
Sir, I have only one point more if you will give me twomore minutes. That is regarding the election under adultfranchise. Much doubt and apprehension is entertained in theminds of big constitutional experts like Mr T. R.Venkatarama Sastry of Madras about the efficacy of adultsuffrage; but it is decided and we cannot go back on it. Butthe most important point that I want to emphasize is thatthe elected representatives must truly reflect the will ofthe people. Unfortunately, Honourable Members know howelections are conducted. Today we find from the papers anHonourable Member of this Constituent Assembly went to pollto cast his vote at an election. He is told: "Your vote isalready cast." That is nothing surprising. That is happeningon a large scale everywhere. I stood for election in 1937and in two or three elections I was personally interested. Iknew actually twice the actual number of votes were notpolled correctly. Some arrangement must be devised by whichthis sort of corruption at elections must be stopped. I havea suggestion and I shall place it before this House forconsideration and leave it at that. Every voter must begiven what is known as an identity card. The identity cardmay contain - it is a matter of detail what the identity markshould be. I would very much like a photo of the voter to beput in a card which he might carry. In the post office weare given what is known as identity cards on a payment ofRe. 1. Our photo is put there and wherever we go we cancarry it. If such a system or something similar to it isdone, the voter must first present this identity card and onpresenting it he will be given the ballot paper and then hewill exercise his vote. I am prepared to discuss thedetails. This arrangement will be a great boon. If thissuggestion is taken up and put in the appropriate place, Ihave no doubt that the elected representatives would reflectthe true will of the people.

Shri Kishorimohan Tripathi (C. P. and Berar States):Mr. Vice-President, Sir, there has been sufficientdiscussion of the Draft Constitution and I have been verycarefully listening to the criticisms. There have been twotypes of criticisms. Some of the critics have criticizedthemselves rather than the Drafting Committee. They tookcertain decisions and all those decisions were embodied bythe Drafting Committee and where the Drafting Committeewanted to make its own suggestions it underlined the Draftand has tried amply to draw the attention of the House tothe suggestions and changes that it wanted to make. Criticshave criticised and in doing so, they have indirectlycriticised their own decision. There has been another typeto criticism which has gone rather astray and critics havetried to bring in things which we need not discuss whilediscussing the constitution of a country. I would not nowgo into the details of the Constitution, into the nature of the Constitution, into the economic or other provisions of the Constitution. Much has been said on those issues. But Itried to find out the place of the Chattisgarh States in theDraft Constitution; I looked into the Schedule enumeratingthe various units of administration and found their namesnowhere: whereas as a matter of fact the administration ofthese States has been integrated withthat of C. P. and administrative units, - Districts, - havebeen carved out of these States. I do not know
why these States have not been treated as a part and parcel of the province of C. P. in the Draft Constitution. I would request for this change; and when I say so I however do not want to say that as a result of this integration the people have felt something very advantageous. In the transitory stage of integration, there have been a lot of difficulties to people. They have, in fact, suffered. Their conditions have become rather worse, but I believe, - and believe honestly - that all those are only passing phases and they will go and in the long run these small States when merged and integrated with C. P. would derive their own benefit. They are not in a position to form a Union in any way; they have not got sufficient economic and other resources to develop themselves and therefore in no case should they be treated separately.

Secondly, I will draw the attention of the House to the necessity of including co-ordination of agricultural development and planning in respect of food, its procurement and distribution, in the Union list as a Central subject. When I say so, I want to draw the attention of the House to the reply the Honourable Minister for Agriculture gave while replying to questions in the House when functioning as the Assembly that for want of proper provision or power it is not possible for the Centre to deal effectively with the question of agricultural development of the country. When we think of the reconstruction of the economy of India, the first and foremost thing that should strike our attention is the agricultural economy in India. If you want a planned development in India including agricultural economy, it is essential that agriculture - its development and planning - should find a place in the Union List rather than in the Provincial List. The food problem in India is very grave. It is going to be a serious problem for years to come and we have been spending most of our dollar and other exchange getting imports of food from foreign countries and this has withheld and will be withholding our industrial development to a large extent. It is therefore very essential that a country-wide planning to develop agriculture to an extent where we can be self-sufficient in the matter of food should be treated as essential. I would therefore request the Drafting Committee to take into consideration this suggestion of mine and place the co-ordination of agricultural development as a Central subject. I am sure that the attention of the Drafting Committee has also been drawn to this subject by the Ministry of Agriculture also.

Then, I come to the question of India and her relationship to the Commonwealth. This question has yet been left undecided although references in the papers and in the speeches of Members have been made to it. I for one would like that India must declare herself an Independent Sovereign Republic. We should make no mention of our association with the Commonwealth in any part of the Constitution itself. Having declared herself a free and independent nation, India should then go to seek her association with one bloc or the other; but jumping from the present position of a Dominion to the relationship of the Commonwealth will inevitably mean that we are going to remain still a dependent country, dependent to the Commonwealth and the King of England.
Taking next the question of election in villages, much has been said about villages. There has been very sharp criticism of the view expressed by Dr. Ambedkar when he said that "the villages are dens of ignorance". There has been ruthless criticism. I know this criticism is because of a genuine feeling on the part of the House. The House desires that the villages should come forward and play their full part in the national reconstruction. Since the desire is very genuine, I would request the House to detail out the election procedure in the Constitution itself. While giving adult franchise to every citizen of India, the eligibility for election to legislatures should be restricted to such persons as neither pay income-tax nor hold land in excess of 100 acres. That, I am sure, would bring in most of the villagers to the legislatures and they will be able to play their best role.

I now come to the question of the linguistic provinces. It is said in examining this question that there distribution of provinces is essential only on the ground of language. That is a wrong theory to my mind. A province should be formed or carved out of India, bearing in mind its economic resourcefulness, so that it could give full opportunity of growth to every citizen in it. The discussion of linguistic provinces, the appointment of a Commission to consider the question only on the basis of language, has already created a sort of wild feeling in the country and even in the political parties this tendency has taken place. I heard the other day that the States of manipur, Tripura and a district of Cachar are demanding themselves to be a separate province in the Congress body. There are other small unions who desire to continue to be separate units. This is very harmful to the nation and must be prevented.

Then coming to the question of language, I am one who wants that Hindi should be accepted as the national language of India, but when I say so I do not mean the Hindi which we find in the translation of the Draft Constitution.

Mr. Vice-President: The Honourable Member has already exceeded his time.

Shri Kishorimohan Tripathi: Well, Sir, as I have no time, I close with these few words. I support the motion moved by Dr. Ambedkar.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, it is with a certain amount of hesitation that I am going to speak before you in English. It appears that a sort of misunderstanding has been created amongst a section of our Friends, particularly those from Southern India, that we speak in Hindi because we want to shut them off from our own ideas. I must assure them that it is not a fact. The real fact is - and I want to say so quite frankly - that we can express our ideas ten times better in Hindi than in English. This is he only reason why some of us always speak in Hindi. But in deference to the wishes of those friends I am going to speak in English.

To come directly to the subject matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the labour they have put in and also on the merits of the Constitution. I would not undergo that formality.
There is no doubt, of course, that they have put in a good deal of labour and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constituent Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.

But along with its merits we have also to see as to what are the defects or demerits and omissions in this Draft Constitution. We should then try to remove those defects and omissions.

Before I point out these glaring defects and serious omissions, I would like to draw your attention to certain observations made by the Mover of the Draft Constitution. I would not go into unnecessary details, because those points have been effectively dealt with by a number of previous speakers. But I cannot refrain from making certain observations. The one thing - and to me it appears very objectionable - which I wish to reply to is Dr. Ambedkar's remark that the Indian soil is not suited to democracy. I do not know how my friend has read the history of India. I am myself a student of history and also of politics and I can say with definiteness that democracy flourished in India much before Greece or any other country in the world. The entire western world has taken democratic ideas from Greece and it is generally regarded that Greece was the country where democracy first of all flourished. But I say and I can prove it to the hilt that democracy flourished in India much earlier than in Greece. I shall not go into the facts and figures, yet I would draw his attention to two or three points with regard to this matter. He might remember, as I know he has read history and he is also a scholar of Sanskrit, that even during the time of Buddha, democracy flourished in India. It is an oft-quoted phrase which I want to repeat here and it is this: that certain traders went from northern India to the south. The King of southern India asked them as to who was the ruler of northern India. They replied: "Deva, Kechiddesh Ganaadhinah Kechid Rajaadhina." It means: some of the countries in the north are governed as republics, while there are others which are governed by kings.

Then, coming down to the period of Alexander, we find that the historians of Alexander have praised very much the city-states of northern India which were governed on democratic lines as republics. There is no doubt that later on the course of political development was arrested for some time on account of invasions from outside. Yet we find that the same democracy continued to function in our villages under the name of village republics. This, the Mover himself has admitted in his address. It is very unfortunate that he should have made such remarks as are not borne out by the facts of history.
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As regards the defects in the Draft-Constitution I would now draw your attention to the Objectives Resolution itself. Even that has been sought to be changed. The word 'Independent' has been sought to be changed into 'democratic' and the word 'republic' has also been sought to be changed into 'State'. I think the Drafting Committee should not have done it. The very suggestion of such a change is repugnant to us and I hope that this thing will not be accepted by the House.

Then, coming to the Fundamental Rights, we find that while freedom of speech and freedom of association etc. have been given by one hand, they have been taken away by the other. The Clauses that follow have done away with all those rights which have been given in the first clause of Article 13. Similarly, if we look at the Directive Principles of State policy, we find the same thing. You will remember that I placed before you an amendment seeking to add the word 'socialist' before the word 'republic'. I am sorry that at that time Shri Seth Damodar Swarup did not think it properto support me. I am glad he had now come here as a champion of socialism. But at that stage, I am sorry nobody supported it and my suggestion was rejected. Anyhow, whether the word 'socialist' is used or not we must try to see that, when we incorporate political democracy, we also incorporate economic democracy in the Constitution.

So far as the Directive Principles of State Policy as given in the Draft Constitution are concerned, there are no grounds for thinking that they will at all affect the future structure of society in India.

There are certain other defects also which I shall point out when the amendments are moved and discussed.

But I would certainly like to mention some of the grave omissions in the Draft Constitution. There are three such omissions which are very grave and important, and they are: the omission of National Flag, the omission of National song and the omission of National language. I think these three omissions are very grave. The Drafting Committee ought to have seen its way to incorporate all these three subjects in our Constitution. So far as the flag is concerned, there is no controversy. This could have been easily incorporated in the Constitution.
There is some controversy about the National song between `Vandemataram' and `Jana-Gana-Mana'. I think "Vandemataram" which has been our song during the last 50 years or so and which has been the beacon-light in our struggle for independence will become the National song of our country.

Then there is the question of the National language.

Mr. Vice-President: If you go on speaking I will have no time to give to other intending speakers.

Shri Vishwambar Dayal Tripathi: I shall conclude my speech after a reference to the National language, Sir.

Our country is very big, and it has not therefore been possible so far to have one language for the whole of India. But, as an independent country, we have now to evolve some language which may become the national language of India. In this connection I make the following suggestions: - Firstly, in every province the work of the Government and of the people should be carried on in the language or languages of the masses. Secondly, English, although it has been imposed upon us by the foreigners, should remain for sometime for our inter-provincial relations. Thirdly, we must have Hindias our National language written in Devnagri character. (Cheers). So, it is here and now that we should definitely decide that Hindi written in Devnagri character is to be thenational language of our country; while English may remain an alternative language for some time till we are able to develop Hindi sufficiently both in northern and in southern India. As I said, in the provinces, the language of themasses should continue to be the language of the State. These are my observations about the National language.

The last point which I have to place before you is that we should, from cultural as well as from economic point of view, make provision for cow-protection. Our Congress party had already decided that this should be done. This was probably not known to the Drafting Committee. Therefore no provision with regard to this has been incorporated in the Draft Constitution. I hope the Constituent Assembly will see its way to incorporate this also in our Constitution.

With these few words, I hope the Assembly will consider the amendments on these subjects when they come up for discussion and try to remove the defects and fill in the omissions that I have pointed out before the House, Jai Hind.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I am opposed to federalism because I fear that with the setting up of semi-sovereign part-States, centrifugal tendencies will break up Indian unity. Provincial autonomy led to the vivisection of the country. Federalism will lead to the establishment of innumerable Pakistans in this sub-continent.

Our Ministers at the Centre have been at the helm of affairs since the last fifteen months. They know how difficult it is to secure the approval of provincial Ministers on any measure of
reform which they like to introduce. Much time is wasted in securing their approval, which is rarely obtained.

The existence of provincial governments does not benefit the common man in any special sense. Its abolition will not jeopardise his welfare at all. On the other hand, I am convinced that his lot will improve considerably. The professional politicians will of course be deprived of their means of livelihood. The average man in the provinces has to bear the burden of a costly administration. Salaries to Governor, Ministers, Parliamentary Secretaries and members of the legislatures swallow a large part of the revenue. The poor man is exploited in order to maintain the dignity of the State.

Federalism is a conservative force in politics. It checks the rise and growth of radical economic movements. It perpetuates economic inequality between one province and another and this accentuates provincial rivalries and bitterness which lead to the demand for the formation of linguistic provinces.

Federalism is entirely unsuited to the needs of a collectivist age. Vast plans of national development await immediate enforcement. It will be a crime against the people of India to set up obstacles and hurdles in the form of part-States in the path of the Central authority which has to tackle the fourfold problems of illiteracy, poverty, communalism and provincialism.

Those who talk of federalism, regionalism, provincial autonomy and linguistic provinces do not fully comprehend that they are talking the language of a bygone age. These concepts were appropriate to the needs of the 19th century when industrialism was in its incipient stage.

These instruments of political organisations suit the requirements of agricultural communities interspersed over a wide area. Today the picture is entirely changed. We are thinking in terms of a world State which must be vested with all powers to regulate the problems of migration of people from overpopulated zones to areas which are underpopulated. The world State will have all powers to regulate the entire economic wealth of humanity.

The existence of Nation-States has become an anomaly and a hindrance in the path of human progress and welfare. The dominant tendency of the age is towards greater concentration of power in the hands of some sovereign international authority. To talk of sub-national groups and federalism is to put back the hands of the clock. We do not know what will happen to India if a world war breaks out. If India gets an opportunity to build up the nation for a period of ten years at least, she will be in a position to meet the onslaughts of international powers. If India proceeds on collectivist lines unhampered by any provincial or federal part-States, she may be in a position to meet the challenge of the third world war. India lags centuries behind the Great Powers of the world. We must skip over certain stages of development and compress centuries into moments if we are to survive the forces of reaction both external and internal. By adopting parliamentary federalism we shall be playing into the hands of our enemies. A divided Germany, a vivisected Korea, pre-eminently fits into
the political plans of international gangsters. A divided India provides some security to those who have plans of their own. The incorporation of federal principles in that part of India which has been left to us will provide hundred percent security to those Jingoes and Junkers who survive on loot and plunder. No foreign power wants a strong Central Government in India. A strong Central Government in India will embarrass all. It is suicidal to divide powers into federal, concurrent and provincial. Any such division of powers will weaken the hands of the nation on all fronts.

Shri S. Nagappa (Madras: General): Can any Honourable Member read his manuscript speech?

Mr. Vice-President: I do not see any objection. Please go on.

Shri Brajeshwar Prasad: The Collector in the district and the Commissioner of the Division must be brought directly under the authority of the Central Ministry of Home Affairs. The Governors, Ministers and the provincial legislators must be asked to quit the scene. There should be only one Government in India. All provincial and State Governments must be abolished. The Constituent Assembly should vest all executive, legislative, judicial and financial powers in the hands of its President. He should have four advisers, Rajaji, Panditji, Sardar Patel and Moulana Azad. After having set up this system of government, the Constituent Assembly should be adjourned sine die. The Assembly should be summoned only to give its verdict in case there is sharp difference of opinion on any issue between the majority of the Advisers on the one side and the president on the other. If the President or an Adviser dies, the Constituent Assembly must be summoned to elect a successor. This system of Government should last till the end of the Third World War which may break out any moment. The present Government of India Act should be abrogated.

I have advocated the rule of philosopher-kings because Plato, whom I consider to be the Father of Political Science, considered it to be the best system of government. We look back with pride to the days of Raja Ram of Ayodhya and Raja Janak of Mithila. What Plato advocated in his Republic has always been practised in India. I have advocated the rule of philosopher-kings because this is the best system of government. I have more faith in living people than in the dead clauses of a written constitution. I do not believe in a permanent constitution. We are at the end of an epoch. It is very difficult for us to sense the needs of the coming century. The Americans framed their constitution at the beginning of the epoch of capitalism. We are asked to frame our constitution at the end of this epoch. The end of the third World War will decide the broad economic and political patterns of the coming age. Today we are in a state of ferment and decay. The whole of Asia is in the melting pot. The nation stands in need of spoon-feeding. We are passing through the birth pangs of a new social order. Any constitution which we may frame today may become completely out of date tomorrow. Power placed in the hands of the electorate may prove disastrous.
The traditions of the Khalifas of Islam - Abu Baqar and Shah Omar - are worthy of emulation. Germany, Italy and Turkey rose to grand heights under Hitler, Mussolini and Kemal Ataturk. The Soviet dictator has worked miracles. The days of Chandragupta Maurya, Asoka, the Guptas, Harshavardhana and Akbar were the best periods of our history when India enjoyed peace and progress.

There is no parliamentary form of government worth mentioning in the whole of Asia. There are some deeper reasons for this. Any attempt to foist parliamentarism on India will only spell our ruin and misery.

I regard the parliamentary system of government as the direct form of democracy. The system of government set up by Hitler, Mussolini, Kemal Ataturk and Stalin represent the indirect forms of democracy. The whole of Germany, Italy and Turkey were behind the dictators. What Pandit Nehru is tous, probably that or more is Stalin to the people of the Soviet Union. How can we call the Soviet rule undemocratic? The only conclusion to which we are driven is that the basis of all governments - both parliamentary and totalitarian - is democratic.

The essence of democracy is not franchise. Therepresentation of the real will of the people, as distinct from actual will, is the core of democracy. One man, whetherelected by the people or not, can represent the people as a whole if he stands for the real will of the community. The rule of the dictator is essentially democratic if he stands for the greatest good of the greatest number. The substance is always more important than the form.

One party rule is in perfect consonance with the ideal of democracy. This fact has to be grasped. We can have perfect democracy only in a classless society. It is only after war, and nation states and capitalism have been liquidated, that we can achieve perfect democracy. Friends may retort that one party rule will lead to Fascism. To this I would reply that parliamentary governments, as in Germany and Italy, facilitate the rise of Fascism if the people are not highly conscious of their political responsibilities. Are the people of India conscious of their political responsibilities? The vast majority of the people of India are sunk in the lowest depths of illiteracy, poverty, communalism and provincialism. Only philosopher-kings can tackle these problems. Both parliamentarism and federalism will aggravate the malady.

Critics may urge that power corrupts and absolute power corrupts absolutely. I do not believe in this maxim. Was Hitler corrupt? Is Stalin corrupt? The records of Mustapha Kemal and Mussolini are as good as that of the leaders of parliamentary democracy.

In this atomic age, the problems of the modern state have become so complex and baffling that more and more people are beginning to realise that the affairs of government can only be tackled by experts. Parliamentary democracy has outlived its utility.
If we want to meet the challenge of Anglo-American imperialism in Asia, if we want to meet the demands of international trade and commerce, if we want to meet the threat of the third world war which is looming large on the horizon, if we are to meet the onslaughts of international politics, we must hand over full power into the hands of our leaders.

It is not possible for our foreign friends to meddle in the affairs of Spain or the Soviet Union because they have hung an iron curtain around their frontiers. Parliamentary democracy facilitates foreign intervention into the internal affairs of a people. If we want to be free from the machinations of our foreign friends, we should not provide any opportunity to them. Our constitution must be fool-proof and knave-proof. Parliamentary democracy must be discarded.

Dr. Ambedkar said the other day that our Constitution is both federal and unitary. It is federal during times of peace and it is possible of being converted into unitary type during times of war. The distinction between peace and war is fictitious, because we are now living in a state of cold war. If we want to meet the onslaught of foreign powers, the type of democracy which we are trying to build will perhaps obstruct us. The demands of peace time are as urgent and insistent as that of war. If we have an unitary type of constitution now, we may be able to meet the demands of the third world war. I do not know whether there are more competent leaders than Pandit Jawaharlal Nehru and Sardar Patel. Then why are we wasting the time of the Government of India by all sorts of criticisms? We must build up our economy. If we are not able to meet the challenge of war, we may go down in history. I am not very sure what will be the outcome or the fate of this country if a war breaks out. The whole of Asia is in the melting pot; let us not try to weaken the hands of our leaders. They are the best people; they are the only people who can govern this country. Is it necessary that in order to keep them in control, we must be sitting in the legislature and talking all kinds of nonsense?

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

The Assembly re-assembled after Lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath (C.P. & Berar: General): Before we proceed, Sir, with the further consideration of the Motion, may I ask for a railing from you as to whether the use of the word "nonsense" to describe the speeches of Honourable Members of this House conforms to parliamentary practice?

Mr. Vice-President (Mr. H. C. Mookherjee): I do not think it is in order.

Shri H. V. Kamath: This arises out of the speech made by Mr. Brajeshwar Prasad. He did use the word 'nonsense' to describe the speeches of Honourable Members in this House. That is why I am raising this point.

Mr. Vice-President: Is he present here?

Shri Brajeshwar Prasad: I did not know it was unparliamentary; if it is so, I withdraw it, Sir. I would replace it by any other word which the honourable Member may suggest.
Mr. Vice-President: We shall now resume further consideration of Dr. Ambedkar's motion.

Shri Moturi Satyanarayana (Madras: General): *Sir, you will be surprised to know that a person from Madras has come here to speak in Hindustani. The general belief so far was that all the Members from Madras would like to speak in English. I am not surprised at this. It is my conviction that all the speeches in this Assembly should be delivered in Hindustani. It is, however, very unfortunate that even though people have worked for this cause for the last thirty years, Hindustani-speaking people have not secured election to this House from the south, the east and the west. It does not mean that there are no Hindustani-speaking people in these provinces. Only, Hindustani-speaking people have not been able to secure election to this Assembly. I see that even the Members from the north speak in English only. The reason may be that they want to have closer relations with the people of the South and other provinces. Whatever may be the reason, the fact is that they do speak in English.

The Constitution which is now on the anvil places before us provisions of many kinds. It appears to me from what I have been able to gather from these provisions that it is being built from above and not from below, the base. If it had been built from the base upwards, our Constitution would have first been framed in the languages of our country. The people know what that swaraj means for which we have been labouring for the last thirty years, and they are also conscious that the Constitution is being framed for them and not for anyone else. But only the international viewpoint, and not the national nor the swaraj, nor even the villagers' viewpoint, and not the national nor the swaraj, nor even the villagers' viewpoint is being given weight in the framing of this Constitution. We want that the Constitution for the whole country should first be framed in the language of the country, that the Constitution should be for the people of the villages so as to ensure food and cloth for them, as it was the lack of these necessities that led us to make our demand for swaraj. It would be very good for us if the Constitution is framed in the languages of the country. It may afterwards be translated into English or into the languages of the countries whose constitutions we have drawn upon, of those whose opinion we value. It would have been much better if we had seen to this matter in the very beginning. If this consideration had

* [] Translation of Hindustani Speech.

been kept in mind from the very beginning, we would not have had occasion to listen to all the criticisms that have been made today in this House - that this Constitution is not suited to the genius of our country, that it is not suited to the people of the villages, that it is not in the interests of the people of the cities and that it is not in the interests of the poor. We did not keep that in mind in the very beginning and that is why there is all this criticism.

I hold that if we have to provide food, cloth and shelter for our poor brethren, the villages and the village panchayats, should form the base of our Constitution. We should proceed with our
work keeping them in mind. It is because we havenot done this that we have to consider whether our provinces should be strong or weak, Whether our Centre should be strong or weak. These questions arise only because we havenot given due importance to our provinces and villages inframing our Constitution. The basic idea underlying the whole constitution is as to how our country will competewith Britain, Russia or America and what relations it will have with them. There is nothing in the whole Constitution to show that our intention was to do something for the inhabitants of our country, for our villagers and for our townsfolk, and for the poor people.

So far as production is concerned, there is nothing init that would make the village people work their utmost inorder to produce the maximum quantity of wealth. I think that it will be said in reply to this that later on when this Constitution would be enforced all these would be taken to be implied by its provisions and would therefore be put into practice but that these cannot be specifically included within the Articles of the Constitution. But I hold that just as the face is to a man’s character so also a mere glance at the Constitution should be sufficient to reveal the direction in which it tends to move the people. Therefore, I hope that at the time when the Constitution would be considered here clause by clause every attempt will be made to include in it provisions for all that we have been promising to provide to our countrymen.

For the last four or five days a very important problem - the problem of the relations that should subsist between the State or national language and the various provincial languages - has been engaging our attention.

There has been ample discussion as to what should be the position of the national language and the position to be given to the various provincial languages. I hold that unless we decide as to what would be the place of provincial languages, how they would be used in their respective provinces, no decision can be taken about the national languages. In my opinion, our provincial languages must not have a less important place that of our national language. If a decision is not taken in regard to this matter there will be a very powerful agitation in the country and many people will say that the people of northern India who hold Hindi as national language are trying to make their own language the national language. This will have a serious consequence in the provinces and they will oppose it and as a result the country will be split up into many divisions, as of old. To prevent this, it is very essential to make it clear that in no case the state language would take away the importance of provincial languages. If this is not done, there is a possibility of a very serious danger arising for the country. It must be averted. The purpose for which a State language is needed is to establish unity within the State. Another function it fulfills is to facilitate the carrying on of international relations. In my opinion it is very essential for us to build up a composite culture, a composite language and a composite society. The assimilation of the culture and the language and the dress of all those who come to our country has been a part of our tradition for centuries. We did this and
marched on the path of progress. We should adopt that practice for the future also. If we fail to do so, it is very possible we may not make such rapid progress in international matters as our Prime Minister has in view. On the contrary, it is quite likely that we may remain involved in our own internal disputes. It is better if we avoid it. Merely to hold this view is not sufficient. We must also act upon it. Therefore, I hope, Sir, that the language which is going to be made our national language, which is going to be used here, must be the link of a composite culture, must have a mixed vocabulary, a mixture of phrases and idioms and a composite script so that we may have mutual understanding within the coming ten or fifteen years, and thereafter be able to march forward together. Till that time we should not take any step to give up our composite culture. In short I would like to submit that our national language should be Hindustani and our culture should be Hindustani.

In regard to the national script I submit that until all our people have learnt to write in a common script - and today they use two separate scripts - both the scripts should be given recognition so that no one may have any occasion to complain that his script which he had been using for centuries was being suppressed after the attainment of freedom and that thereby his culture and religion was being suppressed. If we are prepared to continue to use the English language for the next fifteen or twenty years, I do not find any reason why the other current languages cannot be kept on for that period. Today some people complain that alien words are being imported into their language. But we should not only keep these words but should also extend their meaning. I, therefore, think that both from the viewpoint of justice as from that of expediency it is essential to be fully considerate in such matters.

I would like to discuss this subject much more fully and perhaps it is not difficult to speak at length on it. But there have been so many long-winded speakers since this morning - several of whom you pulled up rather sharply - that I do not wish to take any further time of the House and I now conclude my remarks. I would, if I get an opportunity, express my views at the proper time on the amendments that have been tabled.

Shri Suresh Chandra Majumdar (West Bengal: General): Mr. Vice-President, Sir, it is with deep humility in my heart that I rise to speak a few words on the onerous task which history has assigned to this Assembly namely, the making of a democratic Constitution for this great and ancient land whose civilization dates back to an age beyond man’s memory. No nation has had such varied experience of success and failure, of happiness and which our history is replete, there is one which in my opinion should command our utmost attention as we are engaged in settling the forms of our State and Government. It is this that throughout history your finest glories in whatever field they might have been achieved precisely during those periods when India, striving towards political cohesion was most successful and such cohesion always presupposed a strong unifying Central authority. The form of that authority was different at different times and of course we shall have to evolve one that will suit the conditions of the
present age but the truth remains that India's greatness depends as it has always done on the effective strength of a unifying Centre. I therefore want the Constitution to provide for a strong Centre and am glad that the Drafting Committee had kept this point prominently in their view. The time has now come to curb the bias in favour of the so-called 'provincial Autonomy' which arose from historical causes. When Alexander attacked India we understand that India was divided into 52 autonomous units and we know what consequences it produced. It might have had some justification when the Centre was irresponsible and completely under alien domination. Even so, 'provincial autonomy' encouraged provincialism and that the curse did not assume greater proportions was due wholly to the unifying influence and control which the All-India Congress exercised over the provincial ministries. Now there is no foreign power in the land and there should be no conflict between the provinces and the Centre; and as between the provinces themselves, possibilities of conflict can be best lessened by the Centre being given power to intervene effectively whenever and wherever provincial jealousies may threaten the unity, or impede the progress of the country as a whole. I therefore want that it is not only at times of war or other grave emergency that the States should function as a unitary State but that in normal peacetime also the Centre should have certain necessary overriding powers without which planned reconstruction of the country will not be possible.

While on the subject of delimitation of powers, I should like to make a very brief reference to Dr. Ambedkar's comments on the role of the village community in India's history. It is true that at times the village community stood still when history passed by. But this happened invariably in periods of national depression when everything was in a state of stagnation and the political life itself was disintegrating and the village community was indifferent to the main course of history. But there were other times - times of healthy national life - when the village community did supply strength. I believe the village community, if it is properly revitalised and made power-conscious, can become not only a strong prop of the State but even the main source of its strength.

India has been always proud - and I also share that pride - of her achievement of cultural unity in diversity, but in matters political it is essential today that we emphasize unity and uniformity rather than diversity. I therefore want a uniform political structure for the whole country. No praise can be too high for the wonderful work of integration which the States Ministry has done and is still doing under the creative, I should rather say, inspired leadership of our Deputy Prime Minister and I hope this work will proceed further to the point where the viable States and the States' Unions will have the same political and administrative organisations as the other units - I mean the present Provinces - within the over-all political structure of the country. In view of the basic character of these units as recognised by the Chairman of the Drafting Committee himself, I do not even like them to be called "States", because that may
create an impression that India is a Federation of the type of the United States of America. All units, the present Provinces as well as the integrated States, should be given the uniform nomenclature of "Province".

I am proud of the achievements not only of my own language but, as an Indian, also of those of the other major languages of India. I certainly want a lingua Indica for the whole country, but at the same time, it will be an irreparable loss if we allow the major provincial languages to languish by neglect. The lingua Indica that we may adopt should not be a kind of imposition. It will be willingly accepted by all if it is allowed to make its way gradually and naturally and without giving a rise to a feeling of imposition. The previous speaker, Shri Satyanarayana, is an outstanding example of this. Nobody imposed upon him Hindior Hindustani, but Honourable Members have heard the fluency with which he spoke just now. As regards English we need not ignore its usefulness as a medium of international exchange, and even in the sphere of internal use, I am not in favour of violently throttling it but would like to see its gradual replacement. It may not be wise to set a time limit in a matter like this.

It is unfortunate that the question of linguistic provinces has become mixed up with provincialism. The principle of linguistic provinces can be justified only on two grounds, namely, administrative and educational convenience and the development of our great major languages. It would be wrong to introduce any other consideration into this matter, which unfortunately has become a subject of violent controversy and even conflict. Possibly we are all suffering from the hang-over of our depressed condition which is only just over and under which our foreign rulers always emphasized and encouraged the spirit of division. I hope we shall be able to see things in their proper perspective after some time. It is essential that at this stage all internal conflicts should be avoided. If, therefore, the question of linguistic re-grouping of provinces cannot be settled without bitterness and conflict now, I think the question should be postponed for ten years. I would only urge that the Constitution should not contain any such provision as will make a settlement of this question too difficult in the future. At the same time, if I would appeal to all my countrymen meanwhile to behave in a manner so as not to prejudice the rightful claims of any language Hindi or Hindustani as the lingua Indica of India. It is due to my great love for all the major Indian languages as well as to the necessity I feel that all our countrymen should understand and follow the Constitution, that I have asked that the Constitution be made available in all the major Indian languages and approved by this Assembly before its final adoption.

One word more. I hope I will not be misunderstood in saying this in this Gandhian era. I want to say a few words regarding the right of the people to bear arms. We are passing the Constitution today. But so far as I can see there is no mention of that. I would like that the House may provide in the Constitution that as a fundamental right, all adults, irrespective of
whether they are men or women, would be allowed to bear arms for the defence of Mother India whenever she would be in peril Jai Hind.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. Vice-President, Sir, the Draft Constitution has been under fire for the last several days in the House. I would not deal generally with the Draft Constitution but would confine my observations to one particular aspect of the Draft Constitution, and that is what is incorporated in Part VII of the Draft Constitution. It deals with what are known as the Chief Commissioners' provinces under the present Government of India Act of 1935. At the very outset I would respectfully draw the attention of the House that in this particular case the Drafting Committee and its Chairman have been very unjust to the Chief Commissioners' provinces. In fact, in making the recommendations which the Drafting Committee has made in Part VII of the Draft Constitution, it has exceeded its powers. It is absolutely clear; if necessary, reference may be made to the resolution adopted by the House on 29th August 1947, which brought the Drafting Committee into existence. The powers of that Committee are specified in the Resolution that was adopted by the House on the occasion. It is simply to implement the decisions that have already been taken by the House. When the question of the Chief Commissioners' provinces came up before the House, from the Union Constitution Committee Report you will be pleased to find that in part VIII Clause 1 what was recommended by the Union Constitution Committee was that the Chief Commissioners' provinces should continue to be administered by the Centre as under the Government of India Act, 1935. When this clause 1 of part VIII of the Union Constitution Committee report was moved by the Honourable Sir N. Gopalaswamy Ayyangar in the House, an amendment to it was moved by my friend Mr. Deshbandhu Gupta and that amendment was unanimously accepted by the House. That amendment sought the setting up of an ad hoc committee consisting of seven Members of this Honourable House, which committee was to go into the question of the Chief Commissioners' provinces and to make suggestions for effecting changes in the administrative systems of these provinces on democratic lines so as to fit in with the changed conditions in the country. The fact that this amendment was unanimously accepted by the House clearly implies that the House stands committed to bringing about suitable administrative changes in the set up of these provinces on democratic lines so as to fit in with the Republican Constitution of free India. In spite of this mandate from the House, one is staggered to find the recommendation of the Drafting Committee in Articles 212 to 214 of the present Draft Constitution. My respectful submission would be that these recommendations are absolutely ultra vires inasmuch as the Drafting Committee could not set at nought the recommendations of the ad hoc Committee. The ad hoc Committee consisted of three very distinguished Members of this House, - Sir N. Gopalaswamy Ayyangar, Mr. Santhanam and
Dr. Pattabhi Sitaramayya. Inspite of this the unanimous recommendations of the ad hoc Committee have been set at nought by Articles 212 to 214. What Article 212 does is to provide that the Chief Commissioners' provinces shall continue to be administered by the President to the extent he thinks fit, through a Chief Commissioner. What the Drafting Committee has done in this Article 212 is simply to repeat the words of the Government of India Act, 1935 Section 93 (3). These were the very words, which by the acceptance of the amendment of Mr. Gupta, were set at nought by the House. Consequently, my submission is that the present Articles 212 and 213 are absolutely ultra vires and the House should not give any consideration to them. The ad hoc Committee after going into the question of the Chief Commissioners' provinces has incorporated certain recommendations to make certain administrative changes in the present constitution of the Chief Commissioners' provinces. In fact, in the modern age when India has attained the goal of full independence and when we have assembled here to draft a constitution befitting a free Republican India, it is impossible to think of a recommendation of the character incorporated in Articles 212 to 214. These recommendations seek to perpetuate a regime of autocracy. The Chief Commissioners' provinces have been enclaves of bureaucratic and autocratic regimes and even today, fifteen months after having attained full independence, we find there is undiluted autocracy prevailing there. For political and strategic reasons the British Government ignored the claims of the Chief Commissioners' provinces to responsible government. The only concession they made was in 1934 when a single seat was allotted in the legislature. Beyond this, the administrative set up in these provinces continue to be that of one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. Inspite of them, one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. Inspite of them, one man's rule is prevailing. Sofar as Ajmer-Marwara is concerned, the administration there is a hot-bed of corruption, nepotism, favouritism and inefficiency. How can this deplorable state of affairs be brought to an end until and unless the accredited representatives of the people are given a voice and a hand in the administrative set-up? The demand for the establishment of responsible government in these Chief Commissioners' provinces has been repeated from every one of them. No less than three Conferences convened during the last two years in Ajmer-Merwara have separated this demand for immediate establishment of responsible government. The Provincial Congress Committees have also done so in every place. Notwithstanding this, the autocracy has prevailed and these three Articles - 212 to 214 of the Draft Constitution - aim at perpetuating this system of autocracy. I appeal to this august House, how on earth can this state of affairs be eradicated by an Assembly which has assembled to draft a constitution for
free India? Yesterday there was reference made to One-Rajputana Union. We all want territorial integration and administrative cohesion of the different Rajputana States into one single unit and every one desires that this should be an accomplished fact as soon as possible, but till that takes place, why should the present administrative set-up be allowed to remain? We do not know what is going to be the future picture of Rajputana Union. If and when it comes, Ajmer-Merwara would always welcome any such move and Ajmer will be glad to join in any such Rajputana Union provided its historical, geographical and cultural place, which has always been its own since the dawn of history, throughout the Pathan, Moghul, Maharatta and the British periods, is retained in the future set-up of such Union. But because the existence of such a Union is a possibility or even a probability it does not mean that the autocratic system should be allowed to continue. To the other Chief Commissioner's province, i.e., Delhi, a reference was made about it yesterday. Regarding Coorg, its position is also identical and analogous. The Legislative Council there has only advisory functions and it has neither legislative power nor any voice in the day to day administration. There also the demand of the people has been the establishment of responsible government. I fail to understand what can possibly be the difficulty for this House to accept in toto the recommendations of the ad hoc committee. The ad hoc committee has been careful in its recommendations. It has recommended that, looking to the financial difficulties of those tracts, it will be necessary that the Centre here should have greater powers than it has in Governors' provinces. We, the representatives of the Chief Commissioners' provinces, in spite of our unwillingness, agreed to accept those restrictions only as a compromise measure. Fiscal autonomy is conceded only in name, because all the financial proposals will have to be previously approved by the President of the Union. Similarly, in the legislative sphere also what has been recommended is that every Bill before it becomes law must be assented to by the President of the Union. It has also been provided in the ad hoc committee's report that in case of any difference of opinion between the Lieutenant Governor and the Ministers, the President will have the final voice. Consequently there cannot be room for any apprehension in accepting the recommendations and granting some form of responsible government to Ajmer-Merwara and the other Chief Commissioners' provinces.

One argument that has been repeated often is that it is not a viable unit, that it is not self-sufficient and that it is a deficit province. I would respectfully ask who is to be blamed for this? Ajmer-Merwara people never wanted that they should be segregated and left as an island in the midst of the Rajputana States. It was the responsibility and the decision of the then Government at the Centre that Ajmer-Merwara should remain as a separate entity in order that it may be the citadel of the Centre to keep its clutch firmly on the neighbouring States. Therefore why should the people be subjected to any penalty now? As I said, it was
for strategic and political reasons that it was left as an island. That being so, may I ask why the Central Government was giving subventions to N. W. F. P. of about a crore of rupees and subvention also to Sind? Now if it decides to give today subventions to Assam, Orissa and also West Bengal and East Punjab, it is for strategic reasons and for protecting the frontiers. If that is the case, why should not Ajmer-Merwara also be given subvention? For the reasons placed before the House by me, Articles 212 to 214 are absolutely ultra vires of the powers of the Drafting Committee and the recommendations of the ad hoc committee appointed by this Honourable House, which already stands committed to a policy of accepting suitable administrative changes in the set-up of this province, should be accepted.

With these remarks I support the motion for the consideration of the Draft Constitution by the House.

Mr. Vice-President: There is an established convention that in the case of a Member who is not present when his name is called by the Chair to participate in the debate, he loses his right to speak. That happened to one of our colleagues at the beginning of today's sitting of this Assembly. He has explained to me that his absence was due to unavoidable reasons. If I have the permission of the House, I will give him a second chance to speak. As no one objects I give him permission to speak and call upon him to address the House.

Shri S. V. Krishnamurthy Rao (Mysore): Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its Chairman, Dr. Ambedkar.

An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. Of course no Constitution can be perfect and even our Constitution will have to undergo some modifications before it finally emerges from this House.

I shall first refer to the Directive Principles of policy. I submit that this contains the germs of a socialistic government. I submit that this Chapter should come in immediately after the Preamble. As objective principles of the Union, we will be giving it greater sanctity than to others and it will stand as the Objective Principles of the future Government. With certain modifications they can be adopted as a socialist programme for the future Parliament of India.

The next thing I wish to refer is the Fundamental Principles. I find certain conspicuous omissions here. In most of the democratic constitutions, the freedom of the press is guaranteed, but in our Constitution I find it is not there. Of course there is freedom of expression. But I feel in a country with 87 per cent illiteracy, our press has to play a very important role both in the political and democratic spheres in the education of the masses. I feel that a specific provision should be made in the Fundamental Principles guaranteeing freedom of the press. In fact in the Constitution of the United States of America it is enacted that the State shall not pass a law
restricting the freedom of the press. Similarly, the inviolability and the sanctity of the home should be granted. Similarly again, I feel that no citizen of India should be expelled from the State. Such a provision should find a place in the Chapter on Fundamental Rights.

One thing I would like to see omitted is the provision for freedom to propagate religion. This right which has been claimed by some has been the bane of our political life in this country. Probably it might have been thought proper to include it in the old set-up of things. In a secular State, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, is out of place in our Constitution and I submit to this House that provision should be omitted.

Then there is the question of the redistribution of provinces. I am not one of those who see something red in this question. If the linguistic provinces have been bastions of strength in our fight for freedom, I do not understand how they can be damned as showing fissiparous tendency when we ask for linguistic provinces. In fact, every citizen should feel that he has got freedom. I feel that the language of the Parliament of the particular region should be the language of that area. In fact there is no place for multilingual provinces like Bombay and Madras.

The provinces should be distributed on a linguistic basis. We are not going to break our heads over this question. It can be settled amicably by mutual understanding and co-operation. Similarly about language. The southern languages of India have borrowed freely from Sanskrit. We have got both Tatsama and Tadbhava words in our Dravidian languages. I feel that Hindi with the Devanagri script would be acceptable to us, but I think that it should not be forced on us all at once, especially the vast numbers of people inhabiting the Deccan peninsula. It should be gradually introduced. We are prepared to accept Hindi with the Devanagri script as the official language of India, but time should be given to us to pick up Hindi. This Constitution should reflect the cumulative wisdom of every section of this House. If you want to take us with you, we must understand your arguments, we must understand your points of view and we must hammer out this Constitution and make it acceptable to all. So also, these sections of the people who have got the Urdu script should also be given time to pick up the Devanagri script as Begum Aizaz Rasul suggested.

One other point I would like to touch upon is regarding the provisions in Part VII for the states in Part II of the First Schedule, that is, Sections 212 to 214. I think they should not be made a permanent feature of the Constitution. In fact, the policy of the Government of India has been to make the States into viable units. Sections 212 to 214 with the various amendments suggested by the Drafting Committee will simply increase the number of these uneconomic small States in the country. Provision is made for Lieut. Governors, Council of Ministers and so on. If these are allowed to remain a permanent feature of the Constitution, I am afraid they will divide the country into smaller units. Within a
short time these smaller units must be induced to merge with the larger provinces or States amidst which they are situated. Take for example the province of Coorg. It has an area of only 1,500 sq. miles and the population is about 160,000. I learn that ever since the Coorg budget was separated from the Central Budget, they have not been able to undertake any development project. They have not been able to repair a bridge which would cost only about Rs. 5,000.

Then about the capital of India, I agree with my Honourable friend from Mysore who stated that before vast sums of money are expended over the capital for the East Punjab and also the extension of Delhi, we should consider locating the capital in a more centrally situated place. There may be some justification for Delhi to continue as a Centrally administered area because it is the capital, but there is absolutely no justification to increase these Centrally administered areas. In fact the Central Government will be functioning in two capacities, one as the Central Government and the other as a provincial government for the Centrally administered areas. I do not see any justification for the Centre spending large sums of money on these uneconomic units.

Both Mr. Ananthasayanam Ayyangar and Professor Ranga asked why there should be Constituent Assemblies for the States. I submit that this is none of our fault. As soon as we came here in July last, some of us Members representing the States tabled a resolution before this august Assembly that a committee be constituted to evolve a model constitution for the States. If the archives of the Steering Committee are searched, such a resolution will be found there, but unfortunately this Assembly did not take any steps and things so developed that we had to demand Constituent Assemblies in our States when we fought for responsible government in our States. I do not see any harm in this because no constitution drawn up by these Constituent Assemblies can be at variance with the Constitution that is going to be adopted by this House. They must fit in with the all India picture. So long as they do this, I do not see why they should not be allowed to finish their job.

Another suggestion was made that there should be uniform powers both for the States and the provinces. In this connection, I would like to submit, Sir, speaking on behalf of States like Travancore and Mysore, that we are far ahead of some provinces industrially, economically and financially. In bringing about uniformity between provinces and the States, I would submit to this House that there should be no levelling down. There should be only levelling up. Mysore has co-operated in all all-India matters and is still co-operating, and I am sure it will co-operate also in bringing about uniformity, provided there is only levelling up and no levelling down. In fact, I am one of those who believe that there should be uniform powers both for the States and the provinces. I want the Supreme Court to be given appellate powers not only in constitutional matters but also in civil and criminal matters. I am glad that the Drafting Committee has made provision for this and I am sure that this provision will be taken advantage of by the States.
Another point I would like to touch upon is Section 258 as regards the financial powers of the President. Power is given to the President to terminate any agreement entered into between a State in Part III and the Union after a period of five years. I submit, Sir, that five years is too short a time. The clause itself says that such an agreement would be valid for a period of ten years. If such an agreement is terminated, after five years it may disturb the financial position of the State concerned. In fact, for longrange planning, five years is too small a period. I submit that it may be altered with the consent of the State. If, after the report of the Finance Commission the President feels that it is necessary to terminate such an agreement, he may do so in consultation with the State concerned. My point is it should not be one-sided, as this would work as a great financial handicap to the State concerned.

Then, Sir, as regards the power to amend the Constitution. I do not agree with my Honourable friend, Mr. Santhanam, that it should be rigid. It should be as flexible as possible because the integration of smaller units into bigger units is still going on and bringing about uniformity between the States and the provinces also is still going on. Perhaps it will take some time before there is some sort of uniformity between the various units of the Federation, and during the initial period it should be as easy as possible for the future Parliament to amend the Constitution to suit the circumstances of the time. The power to amend the Constitution should be made flexible, but even here a difference is made between the States and the provinces. I submit that this difference between the States and the provinces as regards the number of votes should be done away with. Equal rights should be given both to the States and the provinces so far as amendments to the Constitution are concerned.

With these words, I support the motion for the consideration of the Draft Constitution.

Shri N. Madhava Rau (Orissa States). - Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla whom will speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings, after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters, or in just the way, that we would individually have liked. Honourable Members have pointed out, for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation, the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention
even of God in the Draft Constitution. We have all our favourite ideas; but however sound
or precious they may be intrinsically in other contexts, they cannot be imported into the
Constitution unless they are germane to its purpose and are accepted by the
Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhian
philosophy and that while borrowing some of its provisions from alien sources, including the
Government of India Act, 1935, it has not woven into its fabric any of the elements of
ancient Indian polity.

Would our friends with Gandhian ideas tell us whether they are prepared to follow those ideas
to their logical conclusions by dispensing, for instance, with armed forces; by doing away with
legislative bodies, whose work, we have been told on good authority, Gandhiji considered a
waste of time; by scrapping our judicial system and substituting for it some simple and
informal methods of administering justice; by insisting that no Government servant or
public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit
finally fixed? I know some of the Congress leaders who sincerely believe that all this
should and could be done. But we are speaking now of the Constitution as it was settled by the
Constituent Assembly on the last occasion. Apart from the

Objectives Resolution (which is otherwise known as India’s Charter of Freedom) and the
enunciation of Fundamental Rights, the decisions of the Assembly dealt, sometimes in detail
and sometimes in outline, with questions relating to the composition and powers of the
Legislature, the executive authority and the judiciary of the Union and of the provinces,
the distribution of legislative powers and administrative relations between the Union and the
units, finance and borrowing powers, the amendment of the Constitution and soon. Is there
any instance in which a decision of the Assembly embodying Gandhian principles has not
been faithfully reproduced in the Draft Constitution? If it is the contention of these critics that
the decisions of the Assembly itself have fallen short or departed from those principles, that is
of course another matter.

Then those of our friends who wanted indigenous ideas of polity to be embodied in the
Constitution would have to admit that while (as has been pointed out by an honourable member
today) there might have been republics in northern India in the days of Alexander, by and
large, kingship was an integral part of Indian polity. At a time when the institution of kingship
is so unpopular, when even Indian rulers are barely tolerated although they have shed all
power, when formal elections and ballot boxes unknown to our ancestors are regarded as the
sine qua non and authentic symbols of democracy, it would be unreal to pretend to seek
guidance for our immediate task in the ancient political philosophy of India. A more
pertinent point is this. Why did not the exponent of these fine ideas press them on
the attention of the House at the proper time and secure their acceptance when the Constitution
was more or less settledduring the last session? Why do they not do so even now ifthey have any feasible suggestions to make? Why should theyblame the Drafting Committee for not incorporating in theDraft what can only be described as belated second thoughts?

There is undoubtedly a feeling among some Congresscircles and others that the National Government in theCentre and the people's Government in the provinces are bothdeparting from the principles of Gandhiji, that they arecarrying on the much the same bureaucratic way as theiralien predecessors and that the promised Ramrajya is nowhere near being realised. In these circumstances, "back toGandhi" has become a sort of militant slogan and a challenge tothe authorities. It might or might not be right, but ithas to be addressed to the proper quarter. To apply thatslogan in the context of the very restricted ask entrustedto the Drafting Committee seems to be entirely pointless. Iam reminded of a couplet written about an archaeologist ofthe name of Thomas Hearn. This is how it runs:

"Quoth Time to Thomas Hearn
What I forget you learnt."

"You learn what I forget" seems to be rather naiveadvice.

Shri B. Das (Orissa: General): On a point of order,Sir, Members of this House asked the Drafting Committee todraft the Constitution and each of us is giving out ourviews now. It is no use for a member of the DraftingCommittee to tell the House that we use slogans. I stronglyprotest against such language by a member of the DraftingCommittee.

Mr. Vice-President: Mr. Das, you do not propose tocurtail the liberty of expression allowable to a member of the Drafting Committee? You and I may not agree with him. Surely he is entitled to give out his views. Is it not?

Shri N. Madhava Rau: It is very unfortunate that a good deal of controversy arose in regard to village panchayats. Dr. Ambedkar's strong remarks on the subject were apparently based on his own experience. But, like Mr. AlladiKrishnaswami Ayyar, I wish to speak for myself in the light of my own experience. For over thirty years, the Mysore Government have put the revival of village communities and the improvement of the working of village panchayats in the forefront of their activities. A great deal of public expenditure has been incurred on this account. All officers concerned from the Dewan to the Tahsildar have, according to their lights, given personal attention to the condition of the villages. The present popular Government in Mysore, are, I understand, making still more intensified efforts in the same direction. The results are, in my opinion encouraging and in some cases, quite gratifying. It is true some villages are chronically faction ridden and indulge in petty tyrannies, or remain the strongholds of untouchability. A considerable number are apathetic or even moribund. But about thirty per cent could be classed as good; that is to say, they have held regular meetings, collected panchayattaxes, undertaken some optional duties and carried out works of public utility and weekly cleaning by voluntary labour contributed by the villagers
and had taken steps to ensure the vaccination of children and so on. The success that has been achieved such as it is, is largely conditioned by the initiative of a good headman or other influential land-lord. I am sure that experience in other parts of the country is more or less the same. In certain small Indian States, where the bureaucratic system of administration had not penetrated, I found remarkable self-help and organised effort in the villages. With sustained effort on the part of the provincial and State Governments, the resuscitation of village communities may well be hoped for. As the Members of the Assembly are aware, Gandhiji was very particular about constructive work in the villages. This is what he said on one occasion. "If the majority of congressmen were derived from our villages, they should be able to make our villages models of cleanliness in every sense. But they have never considered it their duty to identify themselves with the villagers in their daily lives." There is nothing in the Draft Constitution to prevent provincial Governments from developing the village panchayats system as vigorously and as rapidly as they are capable of doing. The only point which has now come into prominence is whether the electoral scheme for the legislatures should be founded on these panchayats. If the House comes to the decision that this should be done, two Articles in the Draft Constitution have to be slightly amended. But, before taking such a step, the Assembly will have very carefully to consider whether by throwing the village panchayats into the whirlpool of partypolitics, you will not be destroying once for all their usefulness as agencies of village administration.

In curious contrast with those Members who found fault with the Drafting Committee for not presenting to them a Constitution according to their own ideas, although they had not been approved by the Assembly, there were others who criticised the Committee for having exceeded its instructions. This is an aspect of the matter which will be dealt with by the next speaker. I have only to say, in view of the criticism of Mr. B. Das, that by accepting membership of the Drafting Committee, Members have not given up their freedom to express their views either from the committee room or the floor of this House.

The Draft Constitution is nothing more than a detailed agenda for this session, it is to serve as the basic working paper so to speak. There are other papers too, such as the Report of the Expert Committee on Finance and the Report of the Committee on Centrally Administered Areas. This is not the only paper before the House. If the Draft Constitution is viewed in this light, I am sure Members will appreciate that the charge that the Committee has, in any way exceeded its instructions is unfounded.

One of the honourable Members observed that this Constitution if adopted would become a fruitful source of litigation. So long as the Constitution is of a federal type, the possibilities of litigation cannot be excluded. It is all the more necessary, therefore, that all Articles and Clauses are closely scrutinised to ensure that litigation and consequent uncertainties of administration are minimised if they cannot be avoided.
Sir, there are one or two points which I should like to refer to in this connection. One is this: when any federal constitution is in the process of making, there are always two opposing sets of views, namely, the views of those who want to make the Centre strong, and the views of those who would plead for the utmost extent of State autonomy. The provisions of the Draft Constitution are necessarily a compromise, tentatively suggested, of these opposing views. My own feeling is that the scales have been tilted a little towards the Centre. If this feeling is shared by any large section of the House, it should be possible to adjust the balance in the direction desired. The second point, Sir, is that the provisions relating to the accession of States are meagre. There have been so many different kinds of mergers of late and the final pattern, so far as we know, has not yet emerged. The exact procedure by which the States will accede to the Union has to be determined at an early date so that the names of the acceding States may be mentioned in the appropriate Schedule and other relevant parts of the Constitution finalised.

There is a good deal of wisdom in the saying; "For forms of Government let others contest; whatever is best governed is best." However, things being what they are, unfortunately, we have to have some sort of written constitution and it has inevitably, to be a lawyer's constitution. If it is possible for any honourable Member to animate the Draft Constitution by a Promethean breath of ancient political wisdom or exalted patriotic sentiment many of us in this House would surely welcome such an effort.

Shri Biswanath Das (Orissa: General): Sir, May I have a word of elucidation from my honourable Friend, as to why the honourable Members of the Committee modified even decisions arrived at by the Constituent Assembly as also by Committees?

Shri N. Madhava Rau: I think if a specific instance is given, the next speaker will explain.

Shri T. Prakasam (Madras: General): The Honourable Mr. Madhava Rau said that the ballot box and ballot paper were not known to our ancestors. I would like to point out to him, Sir, that the ballot box and the ballot papers were described in an inscription on the walls of a temple in the villages of Uttaramerur, twenty miles from Conjeevaram. Every detail is given there. The election took place not only for that village but for the whole of India. This was just a thousand years ago. It is not known to my honourable Friend and that is why he made such a wrong statement - grievously wrong statement and I want to correct it.

Syed Muhammad Saadulla (Assam: Muslim): Mr. Vice-President, Sir, I rise with some diffidence to sum up this debate and general discussions of the Draft Constitution for I was a member of the Drafting Committee. I do not mean to cover all the grounds that have been advanced during the last four days on the floor of the House but I will speak generally on the trend of the criticism and try to show by facts why the Drafting Committee took a certain line
ofaction. Many honourable Members have been kind enough to give us a meed of appreciation
for the tremendous trouble we took in the task of preparing the Draft Constitution. Certain
honourable Members were not in a position to congratulate the Drafting Committee and I
welcome that also. For it is well known that in the midst of sweet dishes something briny,
something salty adds to the taste. I have listened very carefully during the last three days to
the criticisms that have been advanced. My task has been greatly lightened by the intervention
of my friends, colleagues in the Drafting Committee - I mean Sir Alladi Krishnaswamy
Ayyar and Mr. Madhava Rau - in this debate. The criticisms that were levelled against our
labours boil down really to three only, one that we have travelled far beyond our jurisdiction,
secondly that we have flouted the opinion expressed by various committees by not accepting
their recommendations, and thirdly, that we had made a discrimination between the provinces
and the Indian States. Sir,

if human memory is short, official memory is shorter still. The Drafting Committee is not self-
existent. It was created by a Resolution of this House in August 1947, if I remember aright. I
personally was lying seriously ill at the time and I could not attend that session. But, Sir, I
find from the proceedings that as the Drafting Committee has been asked to frame the
Constitution within the four corners of the Objective Resolution, we will be met with the
criticisms which we have heard now. Wise men even in those days had anticipated this and to
the official Resolution an amendment was moved by the learned Premier of Bombay, Mr.
Kher, wherein we are given this direction. I will read from his speech. He moved an
amendment to the original Resolution for Constituting this Drafting Committee and there he
said - "That the Drafting Committee should be charged with the duties of scrutinising the draft
of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to
the decisions taken already in the Assembly and including all matters which are ancillary
there to or which have to be provided in such a Constitution, and to submit to the Assembly for
consideration the text of the draft Constitution as revised by the Committee". This was his
amendment. In his speech he said:

"We have laid down a principle that all the action to be taken in the Provincial Constitution
will be taken in the name of the Governor. There are a number of things which have to be put
in order to give effect to this decision which the Assembly has taken and which have been
given a place in the Government of India Act. Then there are provisions which are ancillary
in the other constitutions and some other provisions which must usually find a place in the
Constitution. All these will have to be included in our draft even though they may not have
been discussed or decided here up to now. We have taken decisions on almost all important
points. Those will be given effect to but the draft will also contain things which are ancillary
to these and also, all such things as are otherwise necessary."
That was the amendment which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.

Shri Biswanath Das: Sir, May I know whether this direction includes the accepting of Committee's reports, modification of such reports and rejection of important recommendations of such Committees?

Syed Muhammad Saadulla: I would request the Honourable Mr. Das, ex-Premier of Orissa, not to disturb me during the course of my speech. I propose to meet his ground towards the end of my statement. I will also make the same request to other Honourable Members of the House, for otherwise I will lose the trend of my thought. I am not a seasoned orator like my friends here, and I speak from no notes. So I would appreciate their silence. If they want to ask me any questions, I will gladly reply to them if I can at the end of my speech.

The yard stick to measure the contents of the Draft Constitution is really the Objectives Resolution that was accepted by this House universally when it was moved by our learned Prime Minister. That Objectives Resolution contained only eight Articles, the last of which need not find a place in a Constitution. Let anyone here say that we have not conformed to the principles that are enunciated by that Objectives Resolution. We cannot say that those eight Articles form our Constitution: they gave us the barest skeleton. The Drafting Committee was charged with the duty of filling in the canvas and producing a complete picture of what the Constitution should be. At the time of moving that Objectives Resolution our popular Prime Minister said that this is an expression of our dream, this is the target of our aspirations and that it is nothing but a "Declaration". A declaration in such bold terms cannot form a Constitution. Therefore the Assembly, at the instance of Government - for the Resolution was moved by the then Chief Whip of the Government party - decided that the actual framing of the Constitution should be left in the hands of the Committee. I personally had no hand in my inclusion in that Committee. As a matter of fact, very strenuous attempts were made to oust me from the personnel of the Drafting Committee. I see from the proceedings that our stalwart friend Mr. Kamath raised a technical objection that I was not a Member of the Constituent Assembly at the time when my name was proposed. Probably he took that ground without knowing the facts. I was a Member of the Constituent Assembly from the very first. But he was correct that after the referendum in the districts of Sylhet, part of Sylhet was transferred to Eastern Pakistan, and the number of Members to be sent from Assam to the Constituent Assembly had to be reduced and there was a fresh election. But if I remember aright at this distance, we were electing Members of the Constituent Assembly, in the Provincial Legislative Assembly in August 1947, and, if I remember aright, I was again elected a Member at the time when Mr. Kamath had raised that technical objection.
Shri H. V. Kamath: On a point of personal explanation, Sir. My point was that my Honourable friend Mr. Saadulla had not taken his seat in the Assembly; he had not taken the oath nor signed the Register, and therefore he was not a Member of the Assembly technically.

Syed Muhammad Saadulla: Sir, in spite of my request Mr. Kamath has chosen to interrupt me.

Shri M. Thirumala Rao: May I know how all this is irrelevant to the subject under discussion?

Mr. Vice-President: Let us proceed with the subject.

Syed Muhammad Saadulla: Sir, what I was driving at was that these people of the Drafting Committee were really elected by the unanimous vote of the Constituent Assembly, and it does not lie in the mouth of anyone now to say that they are not competent, that they did not belong to a certain party, and that barring one none of the Members had the hallmark of jail delivery. How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, to produce a Draft which has been termed to be nothing but patchwork? But those who are men of art, those who love crafts, know perfectly well that even by patchwork, beautiful patterns, very lovable designs can be created. I may claim that in spite of the deficiencies in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed to one policy or the other. Where we had differed from the recommendations of Committees, or where we had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

As regards the Committees, we were in a difficult position. Some Committees' recommendations were placed before the House and there they were discussed and a decision was taken, but reports of certain other Committees—notably the Financial Experts Committee or the Centrally Administered Areas Committee—were not placed before the House. They could not be discussed by the Honourable Members and no decision could be arrived at. We have taken liberty in the Drafting Committee to put our own view on some matters. If we have done it, we have done it with the best of intentions. As regards two other matters, I will elaborate a little later, but please for God's sake, do not go with the uncharitable idea that the Drafting Committee were not amenable to the vote of this House.
The main point of criticism, at least in regard to those two Committees, is firstly that the Drafting Committee did not give any consideration to the recommendation of the ad hoc Committee on the Centrally Administered Areas. We had very able exponents from those areas - Delhi and Ajmer-Merwara. We listened with the greatest respect, but we have heard the criticism on the very floor of this House that India should not multiply very small localities and convert them into units of the Union. We had the recommendations of this ad hoc Committee before us but we were perplexed what to do with them. Take Delhi, for example. It has got a population of 20 lakhs. If it is converted into a separate unit - and it cannot but be separated into a distinct unit, call it Lieutenant Governor's province or put it under the Centre - in that case, what are we to do with the other localities which are now centrally administered, Ajmer-Merwara, for instance? According to 1941 census figures, Ajmer-Merwara had only 6 lakhs population, but Mr. Mukut Bihari Bhargava was good enough to tell me now that the population has increased to 9 lakhs. Let us put the present population at 10 lakhs. In that case, if we give a separate Lieutenant Governor's province to Delhi, how can we refuse it to Ajmer-Merwara? Then what about Coorg? It is another centrally administered locality with a population of less than 2 lakhs. Then again there is the Andaman islands which also boasts of a Chief Commissioner. Therefore, we thought it best that this matter should be left to be decided by the bigger body - the Constituent Assembly. Were we wrong in adopting this course? We drew specific attention of this august Assembly to this in Part VII of the Draft Constitution. In the foot-note there you will find that we have said:

"The Committee is of opinion that it is not necessary to make any detailed provisions with regard to the Constitution of the States specified in part II of the First Schedule which are at present Chief Commissioner's provinces on the lines suggested by the ad hoc Committee on Chief Commissioner's provinces in their recommendations. The revised provisions proposed in this part would enable the recommendations of the ad hoc Committee, if adopted by the Constituent Assembly, to be given effect to by the President by order." If we wanted to neglect these areas, if we wanted to give a cold shoulder to their aspirations, we would not have said that it is up to the Constituent Assembly whether they should give them a constitution on the lines recommended by the ad hoc Committee.

I now come to the greater charge - of practically refusing to accept the recommendations of the Experts Finance Committee. I can quite appreciate - may, sympathise - with all those members from East Punjab, West Bengal, Orissa and Assam who have criticised this part of our recommendations. But I would leave it to the decision of this august House to judge whether the provisions that we have made are not far better ultimately than the recommendations made by the Expert Finance Committee. I was surprised to hear one particular criticism from an Honourable Member from Madras that we were either careless in going through those recommendations or we were incompetent to appreciate the principles
underlying them. To both of these accusations I register an emphatic "No". On the other hand, we gave the closest attention to the recommendations of the Expert Committee. I will show from their report as well as by figures that if the recommendations of that Committee had been accepted, the provinces will stand to lose, especially the poorer provinces like Assam, Orissa and Bihar. Again, it is not correct to say that the Drafting Committee has not accepted the majority of the recommendations of the Expert Finance Committee. I have that Committee's report in my hands and anybody who has it in his hands will find that on 41, Appendix VI, the Committee recommended certain amendments in the Draft Constitution. I am glad to say that 95 per cent of those amendments have been accepted by the Drafting Committee and will be found in our provisions. What we did not accept is the figures that the Expert Finance Committee suggested that we should include in our recommendations.

Now, to turn to specific points, first I take the recommendation of the Expert Committee regarding the share in the jute export duty which is now available to the jute-growing provinces of India. This subject is very vital for the Republic of India. Jute, as is known, is the world monopoly of these four provinces only. I am glad to see from Press reports that attempts are being made to grow jute in Madras, but taking the position as it is, the undivided Bengal used to produce 85 per cent of the world's jute, Bihar 7 per cent, Assam 6 per cent and Orissa 2 per cent but these proportions have been changed by the partition of Bengal into East and West Bengal. East Bengal used to produce 75 per cent of the total jute produced in Bengal. Therefore the present West Bengal produces only 10 per cent or 12 per cent of world jute. This position has changed the percentages of Assam, Bihar and Orissa. Yet, what do we find in the recommendations of the Financial Experts' report? Their recommendation is that the share - which under the Government of India Act of 1935, is 62-1/2 per cent of the proceeds of the jute export duty which was given to this account to the provinces. But they realised that the poor provinces will be hard hit and therefore recommended that for ten years, the contributions should be made by the Government of India ex-gratia and in the following proportion:

- West Bengal - one crore,
- Assam - fifteen lakhs,
- Bihar - seventeen lakhs and
- Orissa - three lakhs.

Now, I request this Honourable House to consider seriously whether this distribution is just or equitable for a province like Assam or a province like Orissa or Bihar. Bihar has got its production ratio increased from 7 per cent to very nearly 35 per cent of the jute grown in India now. Similarly the percentage for Assam has gone up to 30 percent and proportionately for Orissa. Yet, the Financial Expert Committee wants to perpetuate the injustice that was done
during the bureaucratic days and divide the proceeds in the same fashion, giving West Bengal which produces only 10 or 12 per cent of the total jute production as much as one crore.

One argument advanced by the Committee is that jute maybe grown in the other provinces, but the mills converting the jute into finished products are situated in Bengal. It is perfectly correct that the export duty is levied not only on raw jute but also on the finished product. But consider the effect. West Bengal cannot increase its acreage. There, all the available waste lands are being requisitioned for refugees from East Pakistan. If any province can increase jute production it is Assam and Orissa. But if we do not get any return, if the share in the jute export duty is stopped, what is the incentive for Assam to increase the jute acreage? Jute is vital for India in the sense that all the jute produced in West Bengal is sold either to the continent of Europe or America by means of which we get the much-needed sterling or dollar exchange. If tomorrow the provinces of Assam and Orissa cease to produce jute, the jute mills in Bengal would not have anything to do and they will have to close down. It is on this account that the Drafting Committee thought that we should not accept those recommendations of the Expert Committee and let the status quo run.

The next recommendation of the Expert Finance Committee is that, in order to make up the loss which these provinces will suffer by the stopping the share of jute export duty, the Government of India which now shares on a 50-50 basis the income-tax from the provinces should increase the divisible pool of the provinces to 60 per cent or an increase of 10 per cent. Sir, most Honourable Members here do not know how unjustly and iniquitously this provision of division of income-tax has fallen on the poor provinces of Bihar and Assam. Bihar produces the raw material; Bihar has the gigantic steel works and offices, but their head offices are all in Bombay and hence the income-tax is paid in Bombay. Bihar therefore does not get any credit for this income-tax. Bihar has been crying hoarse to get this changed, but has been unsuccessful so far. In Assam, the condition is worse. Before Partition, Assam had some 1,200 tea gardens even after the removal of a large part of Sylhet to East Pakistan, Assam has got a thousand tea gardens. That is the only organised industry of Assam. But out of those 1,000 tea estates, the head offices or the offices of the managing agents of as many as 800 are in Calcutta or London. Up till now, Assam has been making insistent prayers to the Central Government from the time this system was introduced to change the system. The division under this system is on the basis of collection and not of origin.

Now, do you think, Sir, that if we accept this provision of the Finance Committee, justice would be meted out to Bihar and to Assam? We wanted revision of the entire system and the Finance Committee was compelled to accept the force of our arguments. But they tried to compromise and their compromises are put down in Section 55 of their recommendation.
They say: "We recommend that the provincial share, that is 60 per cent of the net proceeds, be distributed among the provinces as follows: -

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

Paragraph 56 says: "The third block of 5 per cent should be utilised by the apportioning authority as a balancing factor in order to modify any hardship that may arise in the case of particular provinces as a result of the application of the other two criteria."

Sir, of the present provinces, after the merger of the native States with Orissa, Assam is the least populated province in India. We had a population according to the 1941 census of 102 lakhs, but now the population has dwindled to 72 lakhs. The population of Orissa has increased. Therefore if twenty per cent of the divisible pool of income-tax is divided on population basis, we get very little. Rather, Assam would get a reduced sum.

Then they say that 35 per cent should be distributed on the basis of collection. This way both Assam and Bihar will suffer, because the place of collection in the case of Assam is Calcutta and for Bihar, Bombay and naturally the major portion of the 60 per cent will go away from the provinces concerned. Only a little 5 per cent is left to mitigate any hardships that may arise in the case of particular provinces. Ours has been a cry in the wilderness; our voices are never heard at the Centre. However hoarse we may cry and however much our Premier may try, we do not get a hearing. Therefore, the Drafting Committee thought that it is not in the interests of the poorer provinces to accept this recommendation of the Expert Committee.

Again, the Committee has stated that the excise duty on tobacco should be divided amongst the provinces on the basis of estimated consumption. That would not help either Assam or Orissa for want of numbers. Although the Expert Committee made a reference about this in their main recommendations, they omitted this from the list of amendments which they have put down in Appendix VI. Therefore when they themselves have not recommended this, no blame can be attached to the Drafting Committee if they have not adopted it.

Lastly, Sir, the Expert Committee recommended that there should be a Finance Commission appointed immediately to go into the finances of the provinces and the Centre. We have not accepted that it should be appointed immediately because we felt that the appointment of such a Commission at this juncture would be fair neither to the provinces nor to the Central Government. Moreover, they will have nothing to go by. The Expert Committee themselves have stated:

"In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on..."
the basis of a broad judgment, at any rate until the necessary data become available. We attach
great importance to the collection of these statistics and to connected research, and trust that
the Government will make the necessary arrangements without delay.......
An Honourable Member: For how long does the Honourable Member propose to continue? Is
there no time limit for him?
Syed Muhammad Saadulla: I am finishing in a few minutes, if my friends will allow me.
Mr. Vice-President: I think he is entitled to as much time as he wants in order to answer the
various criticisms that have been levelled against the Drafting Committee. Surely you should
give him time to do it.
Syed Muhammad Saadulla: We find that even on the recommendation of the Expert
Committee, there are no data available at the present moment. From the figures which
they have published at 27 of the brochure, we find that the Central Government's budget has
been a deficit one continuously since 1937-38. According to the revised estimate for 1946-47,
their deficit is a small one of about 45 lakhs, but I am sure, Sir, that when the final figures
published, the deficit will increase. That is the reason why, I presume, the Central Government
without consulting the provinces concerned, by a stroke of the pen, have reduced the share of
the Jute Export Duty to these four provinces from 62-1/2 per cent. to 20 per cent. They
would not have taken this extraordinary step if they were not hard-pressed for finance.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, the Drafting
Committee, I suggest, have nothing to do with the Government of India's financial administration. I think the Honourable Member should confine his remarks to the
Constitution itself.
Syed Muhammad Saadulla: But, Sir, the Drafting Committee has been charged with neglect in
this matter.
For the past ten years the Government of India themselves are having deficit budgets, and now
they are incurring very huge expenditure on the rehabilitation of refugees, the war in Kashmir
and the police action in Hyderabad. On account of these, they are not in a position to give
sufficient help to the provinces, whereas the provinces are crying hoarse over the financial
neglect from the Centre. Sir, I will just address one point about the particular position of
Assam, as Assam's position is not appreciated by most Members of the House. It is not merely
a frontier province of the Republic of India but it is a bulwark against aggression from the East.
(Interuption).
Sir, if you do not allow me to speak I am subjecting myself to your Ruling. But I wish to say a
few words as a Member coming from Assam.
Mr. Vice-President: You are speaking as a Member of the Drafting Committee.
The Honourable Shri B. G. Kher (Bombay: General): May I suggest that he may continue this
subject tomorrow, so that we may have more time?
Syed Muhammad Saadulla: I bow to your ruling, Sir, I thought that I have my three functions before this House, as a member of the Drafting Committee, also as a member from the neglected and benighted province of Assam and also as coming from the Muslims. I wanted to speak just two things about Assam and the Muslims, but I will reserve it for a future occasion.

Mr. Vice-President: I understand that Mr. Kamath had some kind of amendment. Is the Honourable Member pressing it?

Shri H. V. Kamath: I am not pressing it, as it is purely of a verbal nature.

Mr. Vice-President: The question is:

"That the Constituent Assembly do proceed to take into consideration the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947."

The motion was adopted.

Mr. Vice-President: I have to say something about our future programme of work. Naturally we shall get two days, tomorrow and the day after, for submitting amendments. I understand that a Member had written a letter to our President, asking for ten days' time. It is impossible to grant this extension of time without seriously jeopardizing the existing programme which we have set ourselves to fulfil. So the last date will be Thursday and the time 5 P.M. on the 11th.

I further understand that already three thousand amendments have been received and I am quite certain that within the next two days further amendments will come in. I take my courage in my hands and make a suggestion for the consideration of the House. It is this: that instead of trying to go through the amendments one by one on the floor of the House, it would be much better for those who have suggested these amendments to meet the Drafting Committee as a whole or certain members of the Drafting Committee and to discuss matters. In this way it is possible to expedite the work. It is for you to reject it at once without listening to my suggestion or to come to some sort of understanding. It may be that the Drafting Committee maybe persuaded to accept certain amendments; it is quite possible on the other hand that certain amendments will not need any further consideration. If this meets with your approval, then I suggest that the arrangement may come into effect from, say, Friday and the time fixed by 10-30 A.M.

Shri T. T. Krishnamachari (Madras: General): May I ask, Sir, if the Drafting Committee is in existence?

Mr. Vice-President: It may not be in existence, but the people in it are very much alive and they are prepared to take this trouble in order to reduce the work of the House.

Prof. N. G. Ranga: I dare say you are aware of the system that we have followed in the past. Anyhow so far as those people who belong to the Indian National Congress are concerned and those who are associated with it, we used to meet every day for three or four hours in order to
lessenthis work as you have suggested and make it easier for you to get through the allotted work. In addition to this, if we are to accept your suggestion it would mean that we would have to be sitting here with the Drafting Committee and beg them to accept this amendment or that. In addition we would have to meet again for three or four hours every day. Therefore, I wish to submit to you with all respect that this suggestion will not be very practicable and may not be quite acceptable to several of us. Therefore, we would like you to relieve us from this suggestion.

Shri R. K. Sidhwa (C.P. and Berar: General): I endorse the suggestion made by Prof. Ranga. The suggestion made is certainly not practicable and it is better to leave the Members to help expediting these amendments. I therefore suggest that the usual practice may prevail and the Members should be given the right to move their amendments in this House if they do not come to an agreement with the Drafting Committee.

Mr. Vice-President: If you do not agree, then you need not accept the suggestion. Further, the Drafting Committee is not defunct.

There is something more. Friday will be a closed holiday on account of Mohurram and the Honourable the President has given us Saturday to consider for the study of amendments, so that we shall meet on Monday the 15th at 10 A.M.

Shri H. V. Kamath: On a point of procedure, may I know whether the preamble will be taken first or last?

Mr. Vice-President: I am not in a position to give any decision on the matter.

The Assembly then adjourned till Ten of the Clock on Monday, the 15th November 1948.
Monday, the 15th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

1. Shri P. S. Nataraja Pillai (Travancore).

Mr. Vice-President (Dr. H. C. Mookherjee): Maulana Hasrat Mohani:

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to state that on the 6th November, I have notice of an amendment to this effect:

"That the consideration of the Draft Constitution clause by clause be postponed till after it has been finally decided which of the following three sets of words are to be incorporated in the Preamble of the same -

Sovereign Independent Republic,
Sovereign Democratic Republic,
Sovereign Democratic State."

It has not yet been decided which of these three sets is to be incorporated in the Constitution, and yet I understand that the Congress Party has decided to consider this Constitution, clause by clause, without deciding the most important question of what words should be there - Republic or State, in the Preamble.

I have a complaint to make. All the amendments of which notice was given to your office have been printed, but my amendment has been left out. May I know the reason why this has been left out?

Mr. Vice-President: I understand that this has come about as a result of the form of procedure, and the amendment is out of order. I am fortified in my decision by what I am told is the procedure adopted in the House of Commons where the Preamble comes last of all.

Maulana Hasrat Mohani: May I point out one thing, Sir? On a previous occasion, when the same thing was done by me, it was decided by the President of the Constituent Assembly, and he has definitely given a ruling that my amendment to this very effect which I have proposed today, was in order. He has definitely said so. I may read out his very words which have been printed in the official report -
"I think the amendment is in order. It is open to the House to throw it out."
So I have every right to propose my amendment. Of course, it is open to the House to accept it or reject it. So I say this thing has been settled by the President. If you like you may ask the President if it is a correct ruling or not.
Again, when the Union Constitution was presented before this House in July, on that occasion also, I raised objection to this very effect, and then also the President of the Constituent Assembly definitely said that my amendment cannot be ruled out of order. If you like, I may read out his exact words:
"I actually give a promise that whenever you move an amendment to that effect, it will not be ruled out of order."
So I request you not to rule me out of order, as it has been finally decided by the President that my amendment should be allowed. Of course, it is open to the House to accept or reject it, as on a previous occasion, when the Union Constitution was proposed by Pandit Nehru. It is very unfortunate that instead of Pandit Nehru, we have today Dr. Ambedkar. I think he has reversed the whole order of the business. I submit I have got every right to request you to protect my rights and allow me an opportunity to give my reasons for what I say. Of course, if the House is not willing to accept my amendment, the House can throw it out, as it did on a previous occasion. But I think I must not be discouraged in this way. My right to move any amendment must be protected.
Mr. Vice-President: I make a distinction between the time when the Preamble is to be considered and your right to move an amendment. When the time comes, you have, of course, every right to move your amendment. My ruling is that the Preamble is not to be taken up first of all. That is final.
Now we propose to take up the discussion of the Draft Constitution, clause by clause.
Shri Algurai Shastri (United Provinces: General): *[Mr. President, before you take up the consideration of this constitution, I want to draw your attention to an important matter. Have I your permission to do so?]
Mr. Vice-President: Please come to the mike.
Shri Algurai Shastri: *[Mr. President, I want to submit that two or three days back a report appeared in the papers that many Hindu Members of the Sind Assembly had been unseated because a large number of Sindhis had left Sind and had come over to India. Those people who have come to India appear to be fourteen lakhs in number and therefore, it appears to be necessary that these Sindhi brothers, who were compelled to leave their place and have come here leaving behind their homes and hearths, should find some representation in this Assembly. We are going to frame a constitution for the whole of India. In framing that constitution it is necessary that these brothers, who have been compelled to leave their homes, should find some representation. I want that some such arrangement may be made as may
enable those people who have come here from Sind to get representation in this House. If you permit us, we shall move a regular resolution to that effect so that those people may be represented in this House.]

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[*] Translation of Hindustani speech.

Mr. Vice-President: This question cannot be taken up here.

It seems that I made a mistake in the procedure to be adopted. What I have to say now is that Article I should stand as part of the Constitution.

I understand that there is something to be said on this matter by our friend Mr. Ayyangar. As regards the amendments, he has certain proposals to make.

ARTICLE 1.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I submit that amendments Nos. 83 to 96, both inclusive, may kindly be allowed to stand over. They relate to the alternative names, or rather the substitution of names - BHARAT, BHARAT VARSHA, HINDUSTAN - for the word INDIA, in Article 1, clause (1).

It requires some consideration. Through you I am requesting the Assembly to kindly pass over these items and allow these amendments to stand over for some time. A few days later when we come to the Preamble these amendments might be then taken up. I am referring to amendments Nos. 83 to 96, both inclusive, and also amendment No. 97 which reads:

"That in clause (1) of article 1, for the word 'India' the word `Bharat (India)' and for the word 'States' the word 'Provinces' be substituted."

So I would like all these to stand over.

Mr. Vice-President: Is that agreed to by the House?

Honourable Members: Yes.

Shri Lokanath Misra (Orissa: General): Of course I would have no objection, Sir, if you defer consideration of these amendments for two or three days, but I beg to bring to your notice that amendment No. 85, which stands in my name, does not only mean to change the name of India into' Bharatavarsha', but it means something more and I am afraid if you hold over this amendment those things would be inappropriate at a later stage. I am submitting that I may be allowed to move my amendment. Of course without committing myself to the change of the name of India to' Bharatavarsha' or otherwise. Though I am not insisting on the change of name just now, I ask that I may be allowed to move the other part of my amendment.

Shri M. Ananthasayanam Ayyangar: My request was that amendments relating only to the name may stand over and in his case on the understanding that the word 'India' be changed to some other name, he may move his amendment. I am not asking that the other portion of this amendment may not be moved.
Mr. Vice-President: So the Honourable Member may take the opportunity of moving the second part of his amendment at the proper place.

Now we shall go to the amendments. Amendment No. 98 stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

"That in clause (1) of article 1, after the words 'shall be a' the words 'Secular, Federal Socialist' be inserted."and the amended article or clause will read as follows:

"India
shall be a Secular, Federal, Socialist Union of States."

In submitting this motion to the House I want first of all to point out that owing to the arrangements by which the Preamble is not considered at this moment, it is a little difficult for those who would like to embody their hopes and aspirations in the Constitution to give expression to them by making amendments of specific clauses which necessarily are restricted in the legal technique as we all know. Had it been possible to consider the governing ideals, so to say, which are embodied in this Preamble to the Draft Constitution, it might have been easier to consider these proposals not only on their own merits, but also as following from such ideals embodied in the preamble as may have been accepted.

As it is, in suggesting this amendment, I am anxious to point out that this is not only a statement of fact as it exists, but also embodies an aspiration which it is hoped will be soon realized. The amendment tries to add three words to the descriptions of our State or Union: that is to say, the new Union shall be a Federal, Secular, Socialist Union of States. The Draft Constitution, may I add in passing, has rendered our task very difficult by omitting a section on definitions, so that terms like "States" are used in a variety of meanings from Article to Article, and therefore it is not always easy to distinguish between the various senses in which, and sometimes conflicting senses in which one and the same term is used. I take it, however, that in the present context the word "Union" stands for the composite aggregate of States, a new State by itself, which has to be according to my amendment a Federal, Secular Socialist State.

I take first the word 'Federal'. This word implies that this is a Union which however is not a Unitary State, in as much as the component or Constituent parts, also described as States in the Draft Constitution, are equally parts and members of the Union, which have definite rights, definite powers and functions, not necessarily overlapping, often however concurrent with the powers and functions assigned to the Union or to the Federal Government. Accordingly it is necessary in my opinion to guard against any misapprehension or misdescription here after of this new State, the Union, which we shall describe as the Union of India.
Lest the term `Union' should lead any one to imagine that it is a unitary Government I should like to make it clear, in the very first article, the first clause of that article, that it is a `federal union'. By its very nature the term `federal' implies an agreed association on equal terms of the states forming part of the Federation. It would be no federation, I submit, there would be no real equality of status, if there is discrimination or differentiation between one member and another and the Union will not be strengthened, I venture to submit, in proportion as there are members States which are weaker in comparison to other States. If some members are less powerful than others, the strength of the Union, I venture to submit, will depend not upon the strongest member of it, but be limited by the weakest member. There will therefore have to be equality of status, powers and functions as between the several members, which I wish to ensure by this amendment by adding the word `Federal'.

So far as I remember, this word does not occur anywhere in the constitution to describe this new State of India as a Federation and this seems to me the best place to add this word, so as to leave no room for mistake or misunderstanding hereafter.

Next, as regards the Secular character of the State, we have been told time and again from every platform, that ours is a secular State. If that is true, if that holds good, I do not see why the term could not be added or inserted in the constitution itself, once again, to guard against any possibility of misunderstanding or misapprehension. The term `secular', I agree, does not find place necessarily in constitutions on which ours seems to have been modelled. But every constitution is framed in the background of the people concerned. The mere fact, therefore, that such description is not formally or specifically adopted to distinguish one state from another, or to emphasis the character of our state is no reason, in my opinion, why we should not insert now at this hour, when we are making our constitution, this very clear and emphatic description of that State.

The secularity of the state must be stressed in view not only of the unhappy experiences we had last year and in the years before and the excesses to which, in the name of religion, communalism or sectarianism can go, but I intend also to emphasis by this description the character and nature of the state which we are constituting today, which would ensure to all its peoples, all its citizens that in all matters relating to the governance of the country and dealings between man and man and dealings between citizen and Government the consideration that will actuate will be the objective realities of the situation, the material factors that condition our being, our living and our acting. For that purpose and in that connection no extraneous considerations or authority will be allowed to interfere, so that the relations between man and man, the relation of the citizen to the state, the relations of the states inner semay not be influenced by those other considerations which will result in injustice or inequality as between the several citizens that constitute the people of India.
And last is the term `socialist'. I am fully aware that it would not be quite a correct description of the state today in India to call it a Socialist Union. I am afraid it is anything but Socialist so far. But I do not see any reason why we should not insert here an aspiration, which I trust many in this House share with me, that if not today, soon hereafter, the character and composition of the State will change, change so radically, so satisfactorily and effectively that the country would become a truly Socialist Union of States.

The term `socialist' is, I know, frightening to a number of people, who do not examine its implications, or would not understand the meaning of the term and all that it stands for. They merely consider the term `socialist' as synonymous with abuse, if one were using some such term, and therefore by the very sound, by the very name of it they get frightened and are prepared to oppose it. I know that a person who advocates socialism, or who is a declared or professed socialist is to them taboo, and therefore not even worth a moment's consideration......

Seth Govind Das (C.P. and Berar: General): It is absolutely wrong. Prof. K. T. Shah: Thank you. If the assurance given by some friends is correct, I hope the House would have no objection to accept this amendment. I trust that those friends here who are very loud in this assertion will induce others in the House to set aside party barriers, and support me in this promising description, this encouraging epithet of the State.

By the term `socialist' I may assure my friends here that what is implied or conveyed by this amendment is a state in which equal justice and equal opportunity for everybody is assured, in which every one is expected to contribute by his labour, by his intelligence, and by his work all that he can to the maximum capacity, and every one would be assured of getting all that he needs and all that he wants for maintaining a decent civilised standard of existence.

I am sure this can be achieved without any violation of peaceful and orderly progress. I am sure that there is no need to fear in the implications of this term the possibility of a violent revolution resulting in the disestablishment of vested interests. Those who recognise the essential justice in this term, those who think with me that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured, is the only order in which privileges of class exclusiveness property for exploiting elements can be dispensed with must support me in this amendment. It is the only order in which, man would be restored to his natural right and enjoy equal opportunities and his life no longer regulated by artificial barriers, customs, conventions, laws and decrees that man has imposed on himself and his fellows in defence of vested interests. If this ideal is accepted I do not see that there is anything objectionable in inserting this epithet or designation or description in this article, and calling our Union a Socialist Union of States.
I have one more word to add. As I said at the very beginning this is not merely an addition or amendment to correct legal technicality, or make a factual change, but an aspiration and also a description of present facts. There are the words "shall be" in the draft itself. I therefore take my stand on the term "shall be", and read in them a promise and hope which I wish to amplify and definitise. I trust the majority, if not all the members of this House, will share with me.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I regret that I cannot accept the amendment of Prof. K. T. Shah. My objections, stated briefly are two. In the first place the Constitution, as I stated in my opening speech in support of the motion I made before the House, is merely a mechanism for the purpose of regulating the work of the various organs of the State. It is not a mechanism where by particular members or particular parties are installed in office. What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves. This is one reason why the amendment should be opposed.

The second reason is that the amendment is purely superfluous. My Honourable friend, Prof. Shah, does not seem to have taken into account the fact that apart from the Fundamental Rights, which we have embodied in the Constitution, we have also introduced other sections which deal with directive principles of state policy. If my honourable friend were to read the Articles contained in Part IV, he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy. Now, to read only Article 31, which deals with this matter: It says:

"The State shall, in particular, direct its policy towards securing -

(i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"
(iv) that there is equal pay for equal work for both men and women;...."

There are some other items more or less in the same strain. What I would like to ask Professor Shah is this: If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be. Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment.

Shri H. V. Kamath (C.P. and Berar: General): Mr. Vice-President, the amendment moved by my honourable friend, Prof. K. T. Shah is, I submit somewhat out of place. As regards the words `secular and socialist' suggested by him I personally think that they should find a place, if at all only in the Preamble. If you refer to the title of this Part, it says, `Union and its Territory and jurisdiction'. Therefore this Part deals with Territory and the jurisdiction of the Union and not with what is going to be the character of the future Constitutional structure.

As regards the word `Union' if Prof. Shah had referred to the footnote on 2 of the draft Constitution, he would have found that "The Committee considers that following the language of the Preamble to the British North America Act, 1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure". I have the Constitution of British North America before me. Therein it is said: "Whereas the provinces of Canada, Nova Scotia, have expressed a desire to be federally united", but subsequently the word "federal" is dropped, and only the word "Union" retained. Similarly, in our Constitution the emphasis should be on the word `Union' rather than on the word `Federal'. The tendency to disintegrate in our body politic has been rampant since the dawn of history and if this tendency is to be curbed the word `federal' should be omitted from this Article.

You might remember, Sir, that the content of Federation has been incorporated in the Constitution and we have various Lists prescribed for Union, etc. So long as the essence is there in the Constitution, I do not see any reason why the word `Federal' should be specifically inserted here to qualify the word `Union'. I therefore oppose the amendment of Professor Shah.

Mr. Vice-President: The question is: "That in clause (1) of Article 1 after the words `shall be a' the words `Secular, Federal, Socialist' be inserted."

The motion was negatived.

Mr. Vice-President: I want to make one thing clear. After the reply has been given by Dr. Ambedkar, I shall not permit any further discussion. I have made a mistake once. I am not going to repeat it. (Laughter).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I move:
"That in clause (1) of Article 1 for the word 'Union' the word 'Federation' be substituted."

You, Sir, will remember that when Dr. Ambedkar moved the motion for the consideration of this Draft Constitution, when he was dealing with the form of Government, he stated that...........

Mr. Vice-President: We do not want a discussion of this nature. I appeal to the Honourable Member to speak only if he has something new to say.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar stated, when dealing with the form of government, that there are two forms of government, one unitary and the other federal.

Shri K. Hanumanthaiya (Mysore): On a point of order, Sir. We have already voted down the amendment of Prof. K. T. Shah. It contained the word "Federation" and the House has already given its decision on that question. If the mover of the present amendment moves his amendment, the House would be reconsidering the same question. Therefore, in view of the fact that this amendment, was already covered by the previous amendment and discussion and voting had taken place on it, I think he is out of order in moving this amendment. I hope the Chair will use its discretion in the matter so that we may do our work quickly.

Mr. Vice-President: I agree with you in thinking that the question has been discussed, but I think he is still in order if he insists on moving this particular amendment.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar asserted that in the Draft Constitution the government that is proposed is federal and not unitary, but subsequently he stated that nothing turns upon the term used, whether you call it a Union or a Federation. He further went on to say that the word 'Union' has been used advisedly so that the constituent parts may not have the freedom to get out. I take it that I am correct in interpreting the view taken by Dr. Ambedkar. Now, Sir, a Constitution is either unitary or federal, but if the framers of the Draft Constitution had in the back of their minds a unitary government and yet called it federal........

Mr. Vice-President: Since the time at our disposal is short, please confine yourself strictly to the point.

Mahboob Ali Baig Sahib Bahadur: If Dr. Ambedkar says that the word "Union" was used not with any great significance, there is no reason why we should not use the correct word "Federation", but if on the other hand the word "Union" was used with a purpose so that in course of time this federal form of government may be converted into a unitary form of government, then it is for this House now to use the correct word so that it may be difficult in future for any power-seeking party that may come into power easily to convert this into a unitary form of government. So, it is for the House to use the correct word "Federation" instead of the word "Union". This is my justification, Sir, for moving this amendment. If you mean that the government must be a federal government and not a unitary government and if you want to prevent in future any power-seeking party to convert it into a unitary form of government and become Fascist and totalitarian, then it is up to us now to use the correct word,
which is "Federation". Therefore, Sir, I movethat the word "Federation" may be substituted for the word "Union".

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. Vice-President: I now put the amendment to the vote.

The motion was negatived

Mr. Vice-President: Then Amendment No. 100 to be moved by Mr. Lari. I think it is covered by amendment No. 99. Does Mr. Lari insist on moving it? (Mr. Lari was not in the House).

Then we pass on to amendment No. 101. Mr. Kamath.

Shri H. V. Kamath: I am moving only the second part of it, Sir. At the outset may I submit to you........

Mr. Vice-President: What do you want to say, Mr. Ayyangar?

Shri Mr. Ananthasayanam Ayyangar: So far as this amendment is concerned, I do not want any postponement. I donot see any serious objection to the latter part of it being moved.

An Honourable Member: Amendment No. 104 is on the same subject, Sir.

Shri H. V. Kamath: At the outset, may I bring to your notice, Sir, that I originally sent this amendment separately as two amendments. Unfortunately the office has lumped them together into one. Had these amendments been printed separately, no difficulty would have arisen. The first amendment was to insert the word "Federal" before the word "Union", and the second was to substitute the word "Pradeshas" for the word "States".

May I now proceed to the amendment itself. The second part of the amendment only is before the House. I move, Sir:

"That for the word `States' in clause (1) of Article 1, the words `Pradeshas' may be substituted."

Shri C. Subramaniam (Madras: General): On a point of order, Sir. This is not an amendment. The word "Pradeshas" is only a Hindi translation of the word "States". If we accept translations of words as amendments, it will create endless complications. The Draft Constitution is in the English language and we should adhere to English terminology and not accept other words, whether they be from Hindi or Hindustani.

Mr. Vice-President: May I point out that it is not really a point of order, but an argument against the use of the word "Pradeshas"? Please allow Mr. Kamath, if he so wishes, to address the House.

Shri H. V. Kamath: I am glad, Sir, that several friends have already made their observations, because that shows how much interest the House is taking in this matter. So I now proceed fortified by that conviction. My reasons for substitution of the word "State" by the word "Pradesha" are manifold. Firstly, I find that in this Draft Constitution, the word "State" has been used in more senses than one. May I invite your attention and the attention of the House
to Part III, Article 7, of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India." Here we use the word "State" in quite a different sense. So the first reason for my amendment for the substitution of the word "State" by the word "Pradesha" is to avoid this confusion which is likely to arise by the use of the word "State" in different places in different senses in this Constitution. Secondly, Sir, - I hope my suspicion or my doubt is wrong, - but I feel that this word "State" smacks of a blind copying or imitation of the word "State" which you find in the Constitution of the United States. We have been told by Dr. Ambedkar in his first speech on the motion for the consideration of the Draft Constitution that we have borrowed so many things from various constitutions of the world. Here it strikes me that word "State" has been borrowed from the Constitution of the U.S.A. and I am against all blind copying or blind imitation. Thirdly, Sir, looking at our own history, at least during the last 150 years, the word "State" has come to be associated with something which we intensely dislike, if not abhor. The States in India have been associated with a particular type of administration which we are anxious to terminate with the least possible delay and we have already done so under the sagacious leadership of Sardar Patel. Therefore, this malodorous association with the British regime, which, happily, is no more, I seek to get rid of through this amendment which I have moved before the House. To those friends of mine, who are sticklers for the English language, who think that because this Constitution has been drafted in English, we should not bring in words that are our own, I should like to make one submission and that is this, that the bar to my mind is not against all words that are indigenous, that are Hindi or Indian in their etymological structure. I am reading from the "Constitutional Precedents", regarding the Constitution of the Irish Free State - it was adopted in 1937 - which was supplied to us a year and a half ago by the Secretariat of the Assembly. If we return to 114 of this Constitutional Precedents, we find there is a footnote on that effect:

"Also in the Irish language."

This means that the Constitution of 1937 was adopted firstly in English, because the footnote says it was adopted also in the Irish language. That means to say that originally it was adopted in the English language and later on adopted in the Irish language. If you look at the Constitution of Ireland, we find so many Irish words and not English words, words like - I do not know how they are pronounced in the English language - Oireachtas, Dail Eireann, Taoiseach (for the Prime Minister) and Seanad Eireann. All these words are purely Irish words and they have retained these words in the Irish Constitution adopted in the English language, and they did not bother to substitute the equivalent words in the English language. Therefore it is for this House to decide what words we can incorporate in our Constitution though they are Indian, Hindi or any other language of our country.
So, Sir, for the reasons that I have stated already the word "State" should never be used in our Constitution in this context. Firstly, because it smacks of blind imitation. Secondly, because of its association with a regime which, by your efforts and by the grace of God, we have put an end to. I will make one other submission, Sir. In the new integrated States - former States or Indian States which we have been able to unite into one unit - we have already used the word "Pradesh", and we have called the Himachal Union as the Himachal Pradesh and the Vindhya Union as the Vidhya Pradesh, and there is a movement afoot in Assam to call the union of States there as Purbachal Pradesh.

Another point is that we are going to constitute provinces on a new basis in the near future. Already the provinces of Madras, of C. P. and of Bombay have got merged in themselves some of the former Indian States and so the new provinces are going to be different from the old provinces and therefore the word "Pradesh" is much better and much more apt than the word "State".

Sir, the last point that I want to make is this. My friend Mr. G. S. Gupta has also tabled an amendment to this article. That would arise only if my amendment is adopted. If this fails, the amendment of my friend will not arise. If my amendment is adopted, then certainly consequential changes will have to be made throughout the text of the Draft Constitution.

Therefore, I move this amendment, Sir:

"That in clause (1) of Article 1, for the word `States' the word `Pradeshas' be substituted."

and commend it to the acceptance of the House.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, I would like to submit this with regard to my amendment. Mr. Kamath has given an amendment which only says that in clause (1) of article 1 for the word `States', the word `Pradeshas' be substituted. That would mean, that in other clauses, in other articles, the word may not be substituted. If that contingency arises, it may not be all right. Therefore, my amendment No. 104 may either be treated as an amendment to Mr. Kamath's amendment or I may be allowed to move it now, so that no further complication may arise. Because, it would be really absurd if the word `States' is changed into `Pradeshas' only in clause (1) of Article 1. Sir, I shall read Article 1. Clause (1) of Article I say: "India shall be a Union of States." This is the only place where Mr. Kamath has sought to change. It means instead of `States' we shall have, "India shall be a Union of Pradeshas." In clauses (2) and (3) and in other clauses, the word `State' will continue.

Mr. Vice-President: May I interrupt with your permission. If this amendment of Mr. Kamath is rejected, then, amendment No. 104 comes in. Even if it is carried, then, your amendment will come in subsequently and you will have a subsequent chance. I think that would economise the time of the House.
The Honourable Shri Ghanshyam Singh Gupta: Sir, the procedure that I suggest would really economise the time of the House. If I move my amendment as an amendment to Mr. Kamath's amendment, the time of the House will be saved. Otherwise a contingency may arise - I do not say it will. Suppose Mr. Kamath's amendment is carried and mine is rejected......

Mr. Vice-President: Do you want to move it now?

The Honourable Shri Ghanshyam Singh Gupta: Yes.

Mr. Vice-President: All right; you may do so.

The Honourable Shri Ghanshyam Singh Gupta: Sir, I move:

"That in Article 1 for the word `State' whenever it occurs, the word `Pradesh' be substituted and consequential changes be made throughout the Draft Constitution."

The reason why I want to make this motion just now is what I have already submitted. If Mr. Kamath's amendment is carried, then it will mean that only clause (1) of Article 1 will be amended, and the rest of it will not be amended. But, if my amendment is carried, then, not only in clause (1) of Article 1 we shall have substituted the word `Pradesh' for the word `State', but in the subsequent portions of Article 1 and throughout the Draft Constitution, wherever the word `State' occurs, so that it would be quite consistent. Otherwise, there would be some absurdity left. The reason why I want the word `States' in Parts I and II are really provinces and the States in Part III are what are called Indian States at present, none of which are States in the accepted sense of the term. One reason for using the word `State' may be to synchronise the two, and the other reason could be to follow the American Constitution. The American Constitution has no parallel with us, because, originally the American States were all sovereign States. Our provinces are not at all sovereign; they were never sovereign States. Our provinces are not at all sovereign; they were never sovereign of the Centre. The Indian States also are not sovereign. We want that India should not only be one nation, but it should really be one State. Therefore, I submit that it should be, "India shall be a union of Pradeshas." I avoid the word `provinces' because, it will not fit in with what are now called Indian States, we want that both may be synchronised. This word `Pradesha' can suit both the provinces and what are now called Indian States. Indian States are merging and merging very fast, thanks to our leaders. Moreover they themselves are choosing that word. For instance, they call the Himachal Pradesh, and Vindhya Pradesh. If we use this word for our Provinces as also for the States, all anomaly would be removed. This is all that I have to say.

Shri K. Hanumanthaiya: Sir, I have regretfully to oppose that amendments moved by friends Mr. Kamath and Mr. Gupta. I have to state that by whatever name the rose is called, it smells sweet. Here, the Drafting Committee has advisedly called India a Union of States. My friends want to call the same by the name of a Union of Pradeshas. I do not want that this occasion should be utilised for any language controversy. I would appeal to the House not to take
this question in that light. The word Pradesh, as admitted on all hands, is not an English word. We are considering the Draft in the English language. I would respectfully appeal to my honourable friends who have moved the amendments to show me any English Dictionary the word Pradesh. We cannot go on adding to the English language unilaterally all the words that we think suitable. The English language has got its own words. We cannot make the Draft Constitution a hotchpotch of words of different languages. Besides, the Constitution, I respectfully submit, is a legal document. Words have got a fixed meaning. We cannot incorporate new words with vague meanings in this Constitution and take the risk of misinterpretation in courts of law. I would therefore beg the mover and the seconder not to press this word to be incorporated in the Draft Constitution. If my friends are very enthusiastic about the Hindi language, we are not far behind them; we will support them. But, this is not the place, this is not the occasion to insert Hindi words in the Draft Constitution. Therefore, Sir, purely as a matter of convenience and legal adaptability, the Drafting Committee's word "State" is quite good. To substitute it by the word "Pradesh" would be to open the flood-gates of controversy, and if there are other amendments to the effect that Kannada words, Tamil words and Hindi words should be substituted in the different Articles of the Constitution then, as I said, the whole draft, as placed before the House, would be a hotchpotch of linguism. I would earnestly request the members not to press these amendments, because it is merely a translation, and not to introduce non-English words into an English Draft.

Pandit Lakshmi Kanta Maitra (West Bengal: General) Mr. Vice-President, I have very carefully listened to the speech just delivered by my honourable friend Mr. Hanumanthaiya opposing the amendment of my honourable friend Mr. Kamath. I must tell at once my honourable friend Mr. Hanumanthaiya that he need not have unnecessarily scented a sort of underhand effort to import Hindi linguism by this amendment. In the course of my speech on the general motion for consideration of the Draft Constitution I dilated at considerable length on the question of States. I pointed out then and point out even now that the expression 'State' has got a peculiar connotation in the Constitutional literature of the world. (Cheers). 'State' always connotes an idea of sovereignty, absolute independence and things like that. In the United States of America there was a States Rights School. It seriously contended that the States had independent status and the bitterness which was generated by the long drawn out controversy culminated in the bloody civil war. That is the evidence of history. Therefore when we want to describe our country as a Union of States, I apprehend that it is quite possible that the provinces which are now being given the dignified status of States, thenative States which had hitherto been under the Indian Princes, but have now either acceded to or merged in, the Indian Union may at a later stage seriously contend that they were absolutely sovereign entities and that the Native States acceded to the Indian Union ceding only three subjects, viz. Communications, Defence and External Affairs. In order to avoid all
these likely controversies in the future, I suggested to the House that best efforts should be made to evolve a phraseology in place of 'States'. We must eliminate the chances of this controversy in the future. I am prepared even now - let my friends ransack and find out a substitute. This word has an unsavory smell about it. In the absence of 'State' it has been suggested that the word 'Pradesh' should be substituted. Let me tell my friend Mr. Hanumanthaiya and those of his way of thinking that the word may be used in Hindi but it is a Sanskrit word. It is not an English word but there will be no difficulty if it is used. Here you describe in article 1 sub-clause (2) that -

('The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule.'

If you look to Part I of the Schedule, you will find the States that are enumerated there are the Governors' provinces of Madras, Bombay, West Bengal, United Provinces, Bihar, Central Provinces, Assam and Orissa, if you look to Part II you will find Delhi, Ajmer-Merwara, including Panth Piploda and Coorg. I seriously ask, are you going to describe the City of Delhi as a State? Are you going to describe Coorg as a State? Are you going to describe Panth Piploda as a State? Are you going to describe Ajmer-Merwara as a State? If you do it, it will be simply ridiculous. Therefore in the absence of any other suitable expression I do feel that the term 'Pradesh' which is of Sanskrit origin and which means a country of big area - would be quite suitable. There will be no harm if, in the first schedule, in the description, the words 'Pradesh' I know it is an English translation. There is some force in what my honourable friend said that in the English draft itself you should not introduce Sanskrit words. But my friend coming from Mysore should be the last person to describe his own territory as an Independent State. Does it require any argument? Has he not so far pleaded that these States should have no sovereign existence and that they should be merged with the Union? Therefore there ought to be no sanctity about the word 'State'. I am perfectly prepared if the Draftsmen or any body in this House could find an expression which would denote and connote what we want. We have always pleaded for a strong Centre. In the Draft we have a federal structure but the Drafting Committee has rightly imported to it a unitary bias. We appreciate it. If we are to give effect to that view we have got to find out an expression which will thoroughly embody the concept which we have in view. From this point of view I am convinced that nothing would be lost if we describe the States as Pradesh. In that case all categories of States, Governors' provinces, Chief Commissioners' provinces and what have hitherto been called Native States could all be included under 'Pradesh' and Pradesh could be enumerated in the First Schedule. I support the amendment to substitute 'Pradesh' in place of 'State'.

Shri Rohini Kumar Choudhari (Assam: General): Sir, in future I would ask you to allow me to speak from the nearest mike because the long distance which we have to travel from the seat to this place sometimes helps us to forget our ideas. (Laughter).
I want to oppose this amendment. First of all I oppose Mr. Kamath's amendment and it is very easy to ask the House to throw it out. He has asked the word 'Pradeshas' to be used in place of the word 'States'. How does he come to the conclusion that 'Pradeshas' if anything, it cannot be 'Pradeshas'. Therefore on that ground as well as on the ground that if you change the word 'Pradeshas' in article I and you do not touch the rest of the article, then it becomes meaningless. Therefore on these two grounds I oppose the amendment which has been moved by Mr. Kamath. But I must be careful when I go to oppose the amendment of a person like my friend Mr. Gupta who is the Speaker of the C. P. Assembly.

Nevertheless, I cannot understand the object of the change he proposes. There may be some sentiment behind it which I may understand, but not appreciate. Here, Sir, you have a Constitution in English and the same Constitution in the language called the National Language - call it Hindi or Hindustani. When you write the Constitution in Hindustani, it is but natural that you should use the word 'Pradesh' in place of the word 'State' or 'Province'. But when you are writing the Constitution in the English language, it is not conceivable why you should seek to change the word 'State' to 'Pradesh'. What is the object? That is what I would like to know. If the object is to acquaint people who are not acquainted with Hindi, with the word 'Pradesh', that I can understand. People from South India do not understand Hindi, and so first of all, let them begin by learning the word Pradesh in the Hindi Language. You start with the word Pradesh now, and next time you give them some other word to learn, and bit by bit bring the language on the people of South India. (Laughter). Is that the object?

Then again, it will be most unaesthetic as suffix to the word 'Pradesh' for the United Provinces or the Central Provinces. Would you call then United Provinces Pradesh or the Central Provinces Pradesh? And if you were to translate the word Province also into Pradesh, then there would be two Pradesh pradesh, and all this is rather odd.

Come to Bengal. What would you call West Bengal? Would you call it West Bengal Pradesh? Paschim Banga Pradesh. I can understand, but I cannot understand putting in the word Pradesh alone.

All these complications will arise if the word is changed. It will help nobody. On the other hand, it will not go against the sentiments of anyone if the word 'State' is used. So I would request Honourable Mr. Gupta to consider this point again.

If by any mischance, this amendment is carried, you, Sir, will kindly allow us time to make amendments in the First Schedule, because it looks very awkward to say U. P. Pradesh, or C. P. Pradesh. I would also like to change from Assam Pradesh to Kamrup Pradesh, because the word Assam jarson everyone's ears as I find now-a-days.

Mr. Vice-President: You must obey the bell.

Shri Rohini Kumar Chaudhari: I am short of hearing bellsounds, Sir.
Seth Govind Das (C. P. & Berar: General): First of all, Sir, I want to assure the honourable members of the non-Hindi speaking provinces, that our object in moving this amendment is not to force Hindi on any one. The language controversy need not have arisen so far as this amendment is concerned. We wanted to drop the word 'State', and therefore, this amendment is being moved.

I was rather surprised to hear the speech of my Honourable friend Mr. Rohini Kumar Chaudhari. He asked us, if Pradesh is accepted, what is going to happen to U.P. and to C. P.? I want to tell him that it would be Samyukta Pradesh or Madhya Pradesh. It will not be the U.P. Pradesh or C. P. Pradesh. Mr. Rohini Kumar, I think, knows Sanskrit well, and he will agree with me that even if we adopt the word Pradesh in our Constitution, it does not mean that the English word Provinces or Province would be used along with the word Pradesh. If we want to get rid of the word 'State' because it has got different meanings in different countries, the only way is to put in the word Pradesh there.

Now, as far as the word Provinces is concerned, another controversy is there. There are newly formed States or Unions of States which may not accept the word Province in the beginning. Though all the provinces would be treated alike in the future, in the beginning, to name these StateUnions as Provinces will not be a proper thing. Therefore, in view of these difficulties, we thought that the word 'Pradesh' would be the proper word. Even in the English version of the Constitution, I think there should not be any difficulty in putting the word Pradesh. There are many other words which have been taken in the English language, for instance words like 'bazaar' or 'Rajyas'. For these words, when we form the plural of these words, we add the letter 's', and say 'bazaars' or Rajyas' in English. Similarly to make Hindi word into its plural form in the English language you need add only 's'. I do not see what difficulty there is in adding 's' to Pradesh also and say Pradeshas when we want the plural form.

I hope, Sir, that controversy of language and other questions will not be raised here, and if we think the word 'State' should be dropped, and under the present circumstances, the word 'provinces' cannot be taken up, I think the best thing would be to put in the word 'Pradesh' both in the Hindi Constitution and in the English Constitution.

Sir, I support the amendment.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I do not wish to enter into any lengthy arguments on this question, but only wish to point out what my own reaction to this proposal is. When we met some time back in the two committees - the Union Constitution Committee and the Provincial Constitution Committee - we met jointly, and we considered this matter, and also as to what the names of the Houses should be. After considerable discussion, we came to the conclusion that one of the Houses should be called the House of States. So I say this matter was discussed then in various forms. Now I feel that at
the present moment, if any change is made in the name of a province, and it is called a Pradesh, personally I think it would be a very unwise change. (Hear, hear). For the moment, I am not going into the merits of it. It may be, we may have to change, but if so, there should be some uniformity about these changes all over the place. It is not right to push in one or two words here and there. They do not fit in aesthetically, artistically, linguistically or in any other way.

Apart from all this, the argument that was advanced, that "State" somehow meant something which we did not wish our units to mean, I think, was not a very strong argument. The example of the United States of America was given. A State is just what you define it to be. You define in this Constitution the exact powers of your units. It does not become something less if you call it a "Pradesh" or "Province". On the other hand "Pradesh" is a word which has no definition. No one knows what it means. With all respect, no one present in this House can define it because it has not been used in this context previously. It has been used in various other contexts. It is a very good word, and gradually it may begin to get a significance, and then of course it can be used either in the Constitution otherwise. At the present moment, the normal use of the word varies in hundreds of different ways and the word "State" is infinitely more precise, more definite, not only for the outside world which it is, but even for us. Therefore, it will be unfortunate if we used a completely improvised word, which becomes a linguistic anachronism for a Constitution of this type. Now, I can understand the position when our constitution is fully developed and we have it in our own language with all the appropriate words. Whether "Pradesh" is the right word or not, I cannot say. That is for the experts to decide and I will accept their decision. For the moment we are not considering that issue. We are considering what words should be brought into this present English draft of the Constitution and bringing in words which will undoubtedly sound as odd and inappropriate to many ears in India is not good enough. The use of the word in a particular context is foreign. One has to get used to it, especially in regard to the context, and the more foreign words we introduce, the more you make it look odd and peculiar to the average man. My own test would be not inputting up linguistic committees and scholars, but taking a hundred odd people from the bazaar and discussing the matter with them and just seeing what their reactions are. We talk in terms of the people but in fact we function often enough as a select coterie forgetting what the people think and understand. Obviously in technical matters you cannot go to the people for technical words, but nevertheless, there is an approach that the people understand. Therefore, I would beg this House to consider it from this point of view and maintain the normal English word in the English Constitution and later on consider the matter as a whole as to what other words in our language you will be putting in our own draft, which will obviously have an equal status. But putting it in this would be confusing, and looking at it from a foreign point of view, it would be very confusing because no one would be used to it and it would take a long time even to understand the significance of these changes.
For myself I am clear that there should be no difference in the description of what is now a province and what is now a State. There should be a uniformity of description in the two. The proposal is that the word "State" should apply to both, and the second House, if approved, should be called the House of States.

There is another matter. This touches, whether we wish it or not, several other points of controversy in this House. They may be linguistic or call it by any other word. I think it would be unfortunate if we brought in those particular controversies in this way, as if by a side door. Those have to be faced, understood and decided on their merits. There is undoubtedly an impression that changes brought about in these relatively petty ways affect the general position of those issues. I think in dealing with the Constitution, we should avoid that. The Constitution is a big enough document containing principles and deciding our political and economic make-up. As far as possible I should like to avoid those questions which, though important we could decide in the context of the drafting of the Constitution. Otherwise, what is likely to happen is that we shall spend too much time and energy from the constitutional point of view on irrelevant matters, although important, and the balance of our time and energy is spent less on really constitutional matters. Therefore, I beg the House not to accept the two amendments moved and to retain the word "State".

The Honourable Dr. B. R. Ambedkar: I oppose the amendment.

Mr. Vice-President: The question is:
"That in article 1 for the word "State" wherever it occurs, the word "Pradesh" be substituted and consequential changes be made throughout the Draft constitution."

I think the Noes have it.

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Shri H. V. Kamath: I ask for a division.

Mr. Vice-President: It seems to me that the "Noes" have it. It is not necessary for me to call for a division. I have the power not to grant this request. I would request honourable Members to consider the position. It seems to be quite obvious that the "Noes" have it.

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The Honourable Pandit Jawaharlal Nehru: May I suggest that instead of making our requests, we could raise our hands. That would give a fair indication how the matter stands.

Mr. Vice-President: Does the Honourable Shri G. S. Gupta admit that the "Noes" have it?

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The motion was negatived.

The Honourable Shri Ghanshyam Singh Gupta: On a point of order, Sir, you kindly put my amendment to the House and it was lost but Mr. Kamath's motion must be put to the House formally.

Mr. Vice-President: It seems to me that Mr. Kamath's amendment is covered by yours. He wants deletion in particular parts but you wanted it everywhere.
The Honourable Shri Ghanshyam Singh Gupta: Mr. Kamath's amendment is lesser in scope than mine. If the House has not agreed to cent per cent, they might agree to five per cent.

The Honourable Pandit Jawaharlal Nehru: It will probably take less time, Mr. Vice-President, to put the amendment to the vote of the House and it is the proper procedure that it should be put to the vote of the House.

Mr. Vice-President: The question is:

"That in clause (1) of article 1, before the word 'Union' the word 'Federal' be inserted and for the word 'States' the word 'Pradeshas' be substituted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg to move:

"That in clause (1) for the word 'States' the word 'provinces' be substituted."

Shri B. Das: (Orissa: General): On a point of order, Sir, in view of the fact that the previous amendment has been rejected by the House this amendment would be out of order.

Mr. Vice-President: The only thing that has happened is the rejection of the word "pradesh".

Shri H. V. Kamath: My honourable friend Mr. B. Das rose to a point of order to the effect that this is not in order. The amendment that has been thrown out by the House is the effect that the word 'Pradesh' be substituted for the word 'State', which does not rule out this amendment, viz., the substitution of the word 'State' by any other word, if the House so chooses. I have therefore moved my amendment that for the word 'State' in the article and wherever it occurs throughout the Draft in this context the word 'Province' be substituted. The formal amendment is that in this particular clause the word 'State' be replaced by the word 'Province'. When I moved my first amendment with regard to the word 'Pradesh' I made my position clear as to why I am against the retention of the word 'State'. I do not wish to repeat those arguments which I then advanced before the House. I might just recall them by saying that the word 'State' smacks of imitation as the word finds a place in the constitution of the U. S. A. Secondly the word 'State' has a bad connotation or bad odour about it, because of the association of the Indian States with the British regime which is now dead. I would therefore in all circumstances plead with this House the word 'State' should be eliminated at all costs and by all means and if the House is not in a mood to accept the word 'Pradesh' I would certainly entreat them to accept the word 'Province', as the lesser of the two evils. Our position today is that we have dispensed with or eliminated the old Indian States; and have we not already adopted the terms Himachal Pradesh and Vindhya Pradesh? We want to level them up to the position of the Indian Provinces and therefore in the new set up I feel that the word 'Province' is more happy and would express the meaning of the structure of the component units amendment and commend it to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.
(At this stage Shri Himmat Singh K. Maheshwari rose to speak.)

Mr. Vice-President: The Honourable Dr. Ambedkar has already replied to the debate and I am sorry I cannot allow any further debate on the motion.

Pandit Hriday Nath Kunzru (United Provinces: General): Sir, if after every motion is moved by a member and you ask Dr. Ambedkar whether he agrees to it and after allowing him to express his views you debar other members from speaking on the subject, it will be very hard on the House.

Mr. Vice-President: I am afraid Pandit Hriday Nath Kunzru has not realised exactly my position. I am always prepared to give every possible facility to every member here, which I need not demonstrate further than by reference to what I have done in the last few days. But just now we were pressed for time. After Mr. Kamath moved his amendment I waited for some time to see if anybody would stand up and nobody stood up and when specially I found that Mr. Kamath had repeated the arguments which had been formerly stated by him, I thought that I would not be going against the wishes of the House by asking Dr. Ambedkar the question whether he wished to reply. If I failed to understand the attitude of the House I am very sorry.

Pandit Hriday Nath Kunzru: You are perfectly within your right in not allowing discussion of a clause which you regard as trivial and on which you think there has been sufficient discussion. You have the power to stop discussion and ask the Member in charge to reply. If in exercise of this power you asked Dr. Ambedkar to reply, there can be no objection to what you have done.

Mr. Vice-President: Then I will put the amendment to vote. The question is:

"That in clause (1) of Article 1, for the word 'States' the word 'Provinces' be substituted."

The motion was negatived.

Mr. Vice-President: Amendment 108, Shri Mahavir Tyagi.

Shri H. V. Kamath: Division, Sir.

Mr. Vice-President: You are a little late.

Shri Mahavir Tyagi: Sir, I am not very keen to have all the words mentioned in my amendment inserted. I do not also want to make a speech and waste the time of the House. However, I want to make one point clear and with that end in view, I shall formally move this amendment:

"That in clause (1) of article 1, for the word 'States' the words 'Republican States and the sovereignty of the Union shall reside in the whole body of the people' be substituted."

In the Draft Constitution I find that the residence of sovereignty has not been described. Where sovereignty lies has not been definitely laid down. I want that this may go on record. I shall be content if the Honourable mover of the Constitution would place before the House either in connection with the Preamble or some other Article of the Constitution, an
amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people. The word 'State' has one meaning in one place and another meaning elsewhere. It will therefore not be satisfactory to say that the sovereignty should rest in the States. What does the Honourable Member suggest? Whether the sovereignty reside in the Union or in the States? From the Draft it is not clear. My amendment therefore seeks to lay down definitely where sovereignty resides or shall reside in future.

I want also to make one thing clear. If we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the King. I want to save the country from that danger. I want to make it absolutely clear that the sovereignty virtually, technically and practically resides in the whole people...........

Mr. Vice-President: May I point out that the proper place for an amendment of this nature is the Preamble?

Shri Mahavir Tyagi: It is neither defined in the Preamble in so many words. I want that it should be clearly defined. I am a layman. I would like to know from the expert draftsmen whether the Preamble forms part of the body of the Constitution. Since the Preamble is not an Article of the Constitution, may I know if it comes in the body of the Constitution proper? Can Preamble always override the law? I don't think it does. What I want is that sovereignty should be defined in one of the Articles of the Constitution. The Preamble mentions only casually that we are constituting India into a sovereign union. From this my friends of the Drafting Committee draw the conclusion that the sovereignty resides of in the "people". That does not satisfy me. We cannot depend on the implication drawn. I insist that sovereignty should be defined in the body of the Constitution itself. I want that sovereignty should reside in the whole people of the country, and not in State or Union. State may only mean to be a sort of Governmental structure in the Centre, or it may include the people as well, or it may be only the union or one or more states. The Provinces will also be known as States hereafter. Let us therefore define in unambiguous terms the actual residence of sovereignty for future. I may submit that in the Constitution of China it is stated that the sovereignty rests in the whole people. We may lay down the same thing in our Constitution also. I therefore beg to move this amendment.

Shri Gopikrishna Vijayavargiya (United State of Gwalior, Indore, Malwa: Madhya Bharat): Mr. Vice-President, I come from an Indian State and I have a particular interest in this amendment, and I wish the House accepts it. There are also Indian States coming in as states in this Constitution. We do not want the Rajpramukhs and othersto be there permanently. Of course, as the conventions have been signed, let them be there for some time. But, in the Constitution, we should lay down that even the common people can become heads of the provinces and States, and this will be one of the methods by which we will bring the States into conformity with the provinces. This is an important question.
This issue must have been engaging the attention of the States Ministry. This is therefore a very urgent affair. Even before we finish our labours at Constitution-making, we must make all attempts to see that the States do come on par with the provinces. This amendment can achieve that object. Sovereignty is a very important power and, as has been pointed out, it has been laid down in the Chinese constitution also. So there is no harm in accepting this amendment. I request the Honourable Members to vote for it.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, the amendment moved by Mr. Tyagi is a very important amendment. I have myself given notice of a similar amendment (No. 189) which runs as follows:

"That the following new Part be inserted after Part I and the subsequent Parts and articles be renumbered accordingly: -

`Part I-A
General Principles
6. The name of the Union shall be BHARAT.
7. Bharat shall be a sovereign, independent, democratic, socialist Republic.
8. All powers of government, legislative, executive and judicial, shall be derived from the people, and shall be exercisable only by or on the authority of the organs of the government established by this Constitution.
9. The National Flag of Bharat shall be the tricolour of saffron, white and green of pure hand-spun and hand-woven Khadi cloth, with the Dharmachakra of Asoka inscribed in blue in the centre in the middle stripe, the ratio between the width and breath being 2:1.
10. Hindi written in the Devanagri script shall be the National language of Bharat: Provided that each State in the Union shall have the right to choose its own regional language as its Statelanguage in addition to Hindi for use inside that particular State.
11. English shall be the second official language of Bharat during the transition period of the first five years of the inauguration of this Constitution.
12. The National Anthem of Bharat shall be the "Vandemataram" which is reproduced in the Second Scheduled.
[Note. - The subsequent Schedules be renumbered accordingly.]
13. The Arms of Bharat consist of the Three Lions above the pedestal and the Dharmachakra, as are depicted on the top of the Asoka pillar at Sarnath.
14. The capital of Bharat is the City of Delhi."

I personally think that this amendment should not be incorporated in this clause. There should be a separate Clause containing the substance of the amendment I have given notice of. In Chapter II they have defined sovereignty. In my amendment I have suggested how this should be put in. All powers of Government, legislative, executive and judicial shall be derived from the people and shall be exercisable only by one on the authority of the Government established
by this Constitution. So, the sovereignty shall reside in the people and all powers of the State, legislative, executive and judicial, shall belong to the people.

Sir, my friend from the States just now pointed out that the matter is a very important one because, if we do not say here that the source and the fountain of all authority is the people, the theory that kings have got divine rights will continue. Therefore, it is important that it should be stated in the Constitution that it is the people who have sovereignty. Here in our country where the States have been a standing sore which we hope to wipe out very soon, I think this provision should find a place in the Constitution. I would request my learned friend, Dr. Ambedkar to say, when he replies to this amendment, that he accepts this principle, I hope he will find a suitable place for its insertion in the Constitution. On the Irish model, I suggest that the next chapter should contain definite provision relating to the name of the Union, its language and other things. It may be stated therein that all power of government legislative, executive and judicial, is derived from the people. I think this is an amendment of fundamental importance and as such I hope that it will not be rejected summarily and that Dr. Ambedkar will insert it in some suitable place in the Constitution.

Maulana Hasrat Mohani (United Provinces: General): Sir, I rise to support the amendment moved by Mr. Mahavir Tyagi for the reason that it conforms to the spirit of the Objectives Resolution of this House. Our Prime Minister has repeatedly stated that the Constitution should be in conformity with the Objectives Resolution not only recently but from the very beginning. He stated - I am reading from this printed book -

"We are not changing the Objectives Resolution at all. The Objectives Resolution is history and we stand by all the principles laid down in it."

May I remind my friend, Dr. Ambedkar, that when a Committee was formed to frame the Constitution, it was expressly mentioned that they will have to conform to the Objectives Resolution. Now Dr. Ambedkar has gone out of his way. He has not conformed to the Objectives Resolution and I request all of you to see what he has done. Instead of drafting the Constitution in conformity with the Objectives Resolution, he wants to make the Objectives Resolution conform to what he is proposing now. This Draft Constitution is a bundle of inconsistencies and is worth throwing only into the wastepaper basket. He has gone his own way and therefore all his efforts are only waste of time and energy.

Mr. Vice-President: Please confine yourself to the amendment, Maulana Saheb.

Maulana Hasrat Mohani: I support this amendment because it is strictly on the lines of the Objectives Resolution. Instead of conforming to the Objectives Resolution, Dr. Ambedkar has changed the word "Republic" into a "State" and the word "independent" into "Democratic". This shows the way his mind is working. The Draft Constitution makes me sure that he wants to establish a unitary Indian Empire which will again be subject to the greater Anglo-
American Empire consisting of America and its satellites, the British Commonwealth and some of the Western Powers of Europe.

Mr. Vice-President: I will ask you again to confine yourself to the amendment.

Maulana Hasrat Mohani: Sir, I support the amendment of Mr. Tyagi and I oppose the whole Constitution. May be Dr. Ambedkar produced this Draft because as Law Minister he was asked to do it. But what he has produced is a wretched thing and therefore I think that he should make amends for the mistakes he has committed. With these words I support the amendment.

Shri Prabhudayal Himatsingka (West Bengal: General): Sir, I beg to oppose the amendment. It is absurd that an attempt should be made to put words here and there. The Draft Constitution is a complete framework and where sovereignty lies, what power is given to the executive and the legislatures, etc. have been defined by the different sections in it. To make an attempt to put in words here and there will be dangerous and if we accept such amendments, I think the whole Draft Constitution may upset and we do not know where we will be landed. Of course, if there is anything to be said on principle, that may be allowed, but to make verbal alterations in the Draft which has been considered by the Committee will mean a considerable waste of time and we should not accept amendments in this fashion.

Shri M. Ananthasayanam Ayyangar: I beg to oppose the amendment. In the preamble it is stated that "We, the people of India, having solemnly resolved to constitute, etc." We are the persons who have met to give a Constitution for ourselves. Unless we are sovereign, we cannot give a Constitution for ourselves. Hitherto it was the Parliament in the United Kingdom that framed Constitutions. The fact that we have been elected by the various legislatures and come here for framing a Constitution shows that sovereignty is inherent in the people.

Shri Mahavir Tyagi: Of course we are here as a sovereign body. But what about the future? This sovereignty has been transferred to us by the British, why do you not vest it back with the people?

Mr. Vice-President: Allow him to proceed.

Shri M. Ananthasayanam Ayyangar: I will answer Mr. Mahavir Tyagi. We have not come here on adult franchise, but we represent three hundred odd million people and are gathered here to frame a Constitution for ourselves. If we are in a position to give a constitution on behalf of the people, if follows that in future the House elected on adult franchise representing larger interests, will be even more sovereign. From this it follows that sovereignty rests with the people. Therefore I cannot find any difficulty in leaving it as it is and no such introduction as is contemplated in the amendment is necessary. I would only draw the attention of the House to the preamble in the Constitution of the United States which says:

"We, the people of the United States, in order to form a more perfect Union, establish justice, ensure domestic tranquillity......."
There are a number of articles in this Constitution. Lateron the constitution was amended. The framers of the Constitution or the people of the United States whosubsequently amended that constitution never saidthat there was a lacuna in the Constitution or that thesovereignty vested in themselves rather than with thepeople. Therefore, it is unnecessary. A doubt is created andto avoid that doubt an amendment is sought to be moved.There is another difficulty also. I want the sleeping dogsto lie. So far as the States are concerned, the Statesrulers in some places have been claiming sovereignty and weare trying to liquidate these rulers. Many of them have beenliquidated, and these rulers have come into these States. Inpart III of the 1st Scheduled the States are there with therulers in some forms or other. The people are alreadybeginning to assert themselves and the whole thing willdisappear even on that ground. I do not want the clause tobe inserted here as the amendment contemplates. It is enoughto leave the Preamble to itself and to work itself. We aresovereign and in that capacity we have gathered here and weshall give unto ourselves a Constitution. It is unnecessaryto create a ghost and then afterwards lay it. I oppose thisamendment, Sir.

Shri Lokanath Misra (Orissa: General): Mr. Vice-President, Sir, one of the honourable members of this Househas opposed this amendment on the ground that by theacceptance of this amendment, the whole structure and thewhole scheme of the Draft Constitution will be changed. Itseems to me that this is a bold statement and I will notlike to digest a statement like this. This structure of the Constitution will be changed as if we are committed not tochange it or we will abide by anything that will not changeit. It seems to me therefore to be a dangerous statement tosay that we will not accept because the structure of thescheme of the Draft Constitution will be changed. We arehere to change it, if need be. Indirectly, it means alsothat the very basis, the scheme, or the structure of the Constitution is such that it militates against the veryprinciple that underlies this amendment. If that is so, it is still more dangerous because this amendment clearly says--and no more than that - the sovereignty of India rests inthe whole body of the people of India.

Now, one of my friends has just said that it doesreally vest with the people of India and therefore it willnot be necessary. I submit it is a sort of a hypocriticalstatement, because I remember to have heard Dr. Ambedkar,while he was speaking somewhere that this sovereignty rests with the Government of India and I want to make adifferencebetween the Government of India and the people of India;they may be identical, they may be different. It might bethat the Government of India will be supposed to be onething and the people of India might be supposed to be another thing. They were so one day. Therefore, we must makeit clear where, after our freedom, sovereignty vests. In thepeople of India? In the Cabinet? In the Government? In thePresident or somewhere else? I therefore think that to avoidthis snag once and for all, we ought to declare that thesovereignty vests in each one of the citizens of
India and for that purpose at least this amendment is very appropriate. I do not want to insist that this amendment should be passed and put in here, but it must be clear that there need be no reservation in the minds of us that sovereignty does not lie in each one of the citizens of India. I therefore support the spirit of this amendment and reiterate that really India's sovereignty vests in each one of her citizens, however high or low, pandit or no pandit, fool or wise; it belongs to the people, each one of them, once and for all.

Mr. Vice-President: I shall now put this amendment to vote.

Shri Mahavir Tyagi: Mr. Vice-President, Sir, in view of what the learned draftsman has said namely that the sovereignty remains vested, in spite of this draft, in the people, I do not wish to press my amendment. I hope, Sir, Dr. Ambedkar agrees that his draft means that it vests with the people, and his explanation may well go down into therecords for future reference.

The Honourable Dr. B. R. Ambedkar: Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.

Shri Mahavir Tyagi: Then I beg leave of the House to withdraw my amendment.

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

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of Article 1, after the word 'States' the words 'equal inter se' be added."

In commending this amendment to the House, I would like to express my gratitude to the Chairman of the Drafting Committee for giving us a new version of what the Constitution is intended to be. It was somewhat new, to me at least, to hear that a Constitution is a mechanism for regulating the various organs of Government and their functions; and that any desire to include in it any aspiration of the people might be regarded as somewhat out of place. I am grateful for this view of the matter, as in the future I shall conduct myself in my amendments and in my speeches accordingly. I must, however, add that when reference is made to the chapter on the Directives I can assure Dr. Ambedkar that I too have read them, though perhaps not with as much frequency and intensity with which he may have read it. The 'Directives' are, in my opinion, the vaguest, loosest, thickest smoke-screen that could be drawn against the eyes of the people, and may be used to make them believe what the draftsmen never intended or meant perhaps. When those matters are brought before the tribunals for adjudication or arbitration, they might not be interpreted in the sense the people might believe those clauses to convey.

In proposing this particular amendment, Sir, I have no illusion about the actual state of affairs. In the States today, including both - what are called the Provinces and which have still to be called the States proper - I realise there is no equality, of population or possibilities, area or resources.
But I also recognise that even if equality of political status does not exist today, we have, at any rate, to strivetowards a state of affairs in which they would really and truly be equal amongst themselves, as members of a Common Federation. If this Union is to be a true federation, as we are assured it is going to be, if this Union is going to be a democratic federation, as we have also been promised again and again, then, I suggest that it is of the utmost importance that the constituent parts of the Union should be and must be equal amongst themselves.

This equality, I may assure the House, does not exist, and need not consist in area or population, in revenue or resources, in industrial or educational development. Unfortunately, we are all aware that the various parts of this country, politically divided or geographically demarcated, are not all equally developed and advanced. It must be the first task of the Union to see that those who have, for no fault of theirs, lagged behind, shall not continue to remain backward, and those who have had, for some adventitious reasons, some advantage over others and moved forward more than others, shall also not be so selfish as to insist upon retaining their position and keeping those who are backward still lagging behind. The country cannot progress, the ideals we have all in view regarding the future growth and prosperity of this country will not be realised, if any single part of it is not able to pull its full weight in the advance of the country. That is one reason why I suggest that we must, here and now, insert in the Constitution is properly framed and working, the units shall be regarded as politically equal amongst themselves. I mean equal politically, in the sense that if one unit, however large it may be has the power of taxation of a certain kind, other units, however small, shall also have that power; if one unit has the right to maintain and use its own police force, the others also would have it; if one unit has the right to maintain its exclusive army, then another unit also shall have it. This being my conception of equality of States inter se, the existing differentiation between those which have been called provinces and between those which have been called States, those States which have merged and those which have acceded will have to be abolished at the earliest opportunity, even though today it may be an unfortunate fact of our position.

This is not the only reason which actuates me in putting forward this suggestion before the House. I look forward to the day when this Union of India shall consist of a body of Village Panchayats, knit together amongst themselves as co-operative republics, which will combine together not only for the greater advancement of their own inherent resources, but also for the greater prosperity of the country as a whole. In this view of the destiny of this Union, in this view of the position and potentiality of each component part of the Union, I think it would be the greatest hindrance if any one is politically considered, or socially regarded as unequal to others. If it is thought that some only should have the leadership while
the others have the destiny of always being followers, it would be, I repeat, an untold disaster to the country. Just as we are resolved and are all agreed that we shall have amongstourselves, as citizens or individuals, equality before the law, just as we have thought that all distinctions of caste and creed shall disappear from the face of this land, so also, I submit, that this country must consist, as soon as we can manage it, of equal units, equal parts of the federation, each anxious, each competent, each equipped with the utmost possible means for development of the resources and the possibilities inherent in it; each also intent upon and each also willing to co-operate in the strengthening and development of the entire country, to the best of its possibilities. We have many parts in this country which are admittedly very backward in all kinds of material or moral development. It is towards them, it is for them, that I feel it necessary to insist that if they are non-equal inter set today, they shall be made equal at the earliest opportunity.

For this reason, the motion that was made just before, regarding the republican character of every component part of the Union, meets with my highest and heartiest approval. All these remnants, all these absurdities of economies, and all those anachronisms of history which are embodied in the so-called Ruling Princes, must disappear. It is only when we have got rid of these autocrats and plutocrats that we shall be able to design a humane and reasonable Constitution and try to attain the aims of life, which our great Teacher has placed before us.

It is for the same reason also that I have, in another part of this Constitution, tabled an amendment to the effect. I hope, Sir, that hereafter, at any rate, the Union of India shall consist of villages or groups of villages, which are each in themselves autonomous units, which are each in themselves republics, and each, if necessary, with the right to co-operate with their neighbours, so that as a result of their combined and collective effort, the Indian people just emerging from political bondage and economic slavery, may soon attain their rightful place in the role of the nations, and make their effective contribution to the progress of mankind.

I commend my amendment to the House.

Shri H. V. Kamath: Mr. Vice-President Sir, I rise to support the amendment moved by my friend Professor Shah. In view of the fact that the House has not accepted the qualifying word 'federal' for the word Union, I think it is necessary for us to define the status of the States. As my friend remarked, the provinces or States or Chief Commissioners' provinces certainly are not equal amongst themselves. Therefore, for the sake of clarity, for the sake of accuracy, for the sake of precision in constitutional terminology, it is essential for us to define the relationship or status of the States as between themselves. Therefore, the amendment of my friend Professor Shah is very apposite in my estimation. In a Constitution of this sort, which is essentially, as the footnote on page 2 says, federal in structure, there should not be one State superior to another, or one State inferior to another. There should not be any one State which
may be called primus inter pares, that is first among equals. We should avoid this in the future constitutional set up. Obviously, it is necessary for us to define that all the States as amongst themselves should be equal. All the States should have only an equal status amongst themselves. If at all there is a superior State or Government or a mechanism, it is the mechanism of the Union Government. That is, if I may say so, it may be a super State or a supra State so far as India is concerned. So far as the States themselves are concerned, they should be absolutely equal amongst themselves. I therefore support the amendment of my friend Professor Shah to the effect that India shall be a Union of States which are equal inter se.

Shri M. Ananthasayanam Ayyangar: Sir, I am not able to follow either the mover or Mr. Kamath who supported him. If we accept the amendment, it means that India shall be a Union of States equal inter se. What is this equality? Is it in extent or area or population or economic resources? In what are they to be equal?

An Honourable Member: States.

Shri M. Ananthasayanam Ayyangar: What are the States? So far as representation is concerned, most of the States in Part I of the First Schedule are equal; there is no difference made between the one and the other. So far as the States in Part III of the First Schedule are concerned, they have come in by certain agreements. We have accepted these agreements and until we are able to revoke the agreements or introduce different sets of agreements, we cannot make them equal. Even amongst ourselves, in all the Provinces or States which are included in Part I of the First Schedule, there cannot be an equality of the kind envisaged. This is absolutely an indefinite amendment. So far as the States are concerned, according to the population they have representation both in the Lower and Upper Houses. Therefore this amendment is ununderstandable, vague and impractical and ought not to be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendment.

Mr. Vice-President: I put the amendment to vote.

The amendment was negatived.

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

"That at the end of clause (1) of Article 1, the following be inserted:
`and shall be known as the United States of India'."

Sir, this is a non-controversial amendment. It gives a bigger, a more dignified and a more sonorous name to the Union. If any precedent is needed we have it in the "United States of America". I submit that in order to keep the balance between the Western hemisphere and Eastern hemisphere we should adopt this expression in India. India is the leading country in the East and we should have a very dignified name. As I have submitted it is a non-controversial amendment, and I ask the House to consider it on the merits.

The other amendment is an alternative to this. I move:
"That at the end of clause (1) of Article 1, the following be inserted:

`and shall be known as the Indian Union'..

Sir, I submit these are three alternatives. I would prefer the first but it all depends on the House as to what it thinks about them.

Shri H. V. Kamath: Sir, I rise to oppose the amendments Nos. 10 and 112. As regards amendment 110 the very argument that my friend advanced that we have a precedent in the United States, is itself an argument against accepting it, in my judgment. He said something to the effect that there should be a meeting of East and West or some words to that effect. I certainly stand for harmony, a synthesis of the East and West, but I certainly do not want any hybrid development. The amendment which my Honourable friend has moved before the House seeks to bring about such a hybrid development between the East and West and we do not want to be suspected at this stage when we are pursuing or supposed to be pursuing a neutral foreign policy. We do not want the faintest indication to be made here in this House that we are going to copy either the U.S.S.R. or U.S.A. As regards U.S.S.R., there is no effect or influence in this Constitution and as regards U.S.A., precisely because this will smack of copying the U.S.A. Constitution, I oppose this amendment which seeks to add "shall be known as the United States of India".

As regards No. 111. I support the amendment and we will thereby be eliminating or removing that hateful word 'State'. Just now the House was pleased to throw out that amendment and I do not want the 'State' to come in by the back-door again in describing the structure of the Indian Union and therefore I would support my Honourable friend Mr. Naziruddin Ahmad in referring to India as the Union of India.

As regards No. 112, once we accept the words 'Union of India' there is no need to consider the third amendment. I think from the point of view of language, sound and its reaction on the ears, the Union of India is a much more dignified expression than Indian Union. I therefore oppose Nos. 110 and 112 and support 111.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose all these amendments. With regard to the first amendment that India should be known as the United States of India, the argument set out by my friend Mr. Kamath is a perfectly valid argument and I accept it wholeheartedly. I have given my own views as to why I used the word 'Union' and did not use the word 'Federation'.

With regard to the other amendment that India should be known as the Union of India, I also say that this is unnecessary, because we have all along meant that this country should be known as India, without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the U.N.O. the name of the country is India and all agreements are signed as such and personally I
think the name of the country should not in any sense give any indication as to what are the subordinate divisions it is composed of. I therefore oppose the amendments and maintain that the Draft as it is presented to the House is the best so far as these amendments are concerned.

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

Mr. Naziruddin Ahmad: Sir, I beg to leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 113.

Mr. Naziruddin Ahmad: I am not moving 113. But I am moving 114. Sir, I beg to move.

"That in clause (2) of Article 1, the word 'The' occurring at the beginning be deleted."

Sir, this part really tries to define the words "The States". I submit the word 'The' is a definite article and not a part of the name or nomenclature. Though the word has been used in this context, the word has been used also in other combinations like 'A State' 'Any State' 'Every State' and all sorts of States.

The Honourable Dr. B.R. Ambedkar: Sir, I raise a point of order. My point of order is that this is not an amendment. Unless it changes the substance of the original proposition, it is not an amendment. I am trying to find out the reference in May's Parliamentary Practice. But I would like to raise this point at this moment. If my friend will forgive me,

I think he is in the habit of moving all sorts of amendments, asking for a comma here, no comma there and so on and I think we must put a stop to this sort of thing in the very beginning.

Mr. Naziruddin Ahmad: On the very threshold of independence, if I am to be stopped like this, I shall bow down and submit to the decision of the Chair.

Mr. Vice-President: What is your reply to the point of order?

Mr. Naziruddin Ahmad: My reply to the point of order raised is this. I want to remove the word "The" from the article and therefore it is an amendment. This is certainly a drafting amendment. It may be opposed on the ground that it is insignificant, illogical or purposeless or useless and so forth. But Dr. Ambedkar is not right in asserting that it is not an amendment at all. It cannot be ruled out on the technical ground that it is not an amendment. And with regard to my Honourable friend's remarks as to my habit of moving amendments like punctuations and other changes, I am happy to inform him and the House that I have ceased to follow that habit so far as this amendment is concerned. (Laughter).

Mr. Vice-President: You say it is a drafting amendment. Can't we leave it to the Drafting Committee and its Chairman for seeing to it at the third reading? I am sure they will accept these amendments if there is any substance in them.

Mr. Naziruddin Ahmad: In that case, it would be leaving the matter to the Drafting Committee, instead of leaving it to the judgment of the House. The spokesman of the
Drafting Committee has already given out his mind. Therefore, if I were to agree to leave it to
the Drafting Committee, it would be as good as withdrawing it. Therefore, I have to submit,
again, that the word "The" is not part of the name.
Mr. Vice-President: I am waiting to hear Dr. Ambedkar on this point.
The Honourable Dr. B. R. Ambedkar: Sir, I do not know why the Honourable Member objects
to the word 'the'. The 'is a definite article, and it is quite necessary, because we are referring to
the States in the Schedule. We are not referring to States in general, but to certain
specific States which are mentioned in the Schedule. Therefore the definite article 'the' is
necessary. It refers to the definite States included in the Schedule.
Secondly, I would like to submit this, it would be wrong - and I speak about myself - for any
Indian to presume such precise command over the English language as to insist in a dogmatic
manner that a comma is necessary here, a semi-colon is necessary there, or article 'a' is proper
here and article 'the' would be proper there and so on. But if my friend chooses to arrogate to
himself the authority of a prefect grammarian so far as English is concerned, I would like to
draw his attention to the Australian Constitution from which we have borrowed these words
and the definite article 'the' is used there. So I take shelter or refuge under the Australian
Constitution which, I suppose, we may take, was drafted by men who were good draftsmen
and who knew the English language and whom we cannot hold guilty of having committed an
error in the language.
Mr. Vice-President: I put the amendment to vote.
The amendment was negatived.
Mr. Vice-President: Amendment No. 119, Mr. Naziruddin Ahmad.
Mr. Naziruddin Ahmad: Sir, I beg to move:
"That in sub-clause (c) of clause (3) of Article 1, after words 'as may' the word 'hereafter' be
inserted."
Sir, I have moved this amendment after, I believe, taking great risks of having to displease the
Honourable Chairman of the Drafting Committee. But I have to submit most respectfully that
things which occur to Members should be placed before the House and the opinion of the
House should be taken.
Mr. Vice-President: There is no question of offending any one.
Mr. Naziruddin Ahmad: Sir, I beg to submit that the context indicates the word "hereafter" that
is, States which may hereafter be acquired. So the word 'hereafter' would be appropriate and I
beg the House to consider insertion of this word.
The Honourable Dr. B. R. Ambedkar: I say it is quite necessary, and I oppose it.
Mr. Vice-President: I put the amendment to vote.
The amendment was negatived.
Mr. Vice-President: Tomorrow, I understand, is a bankholiday. So we postpone further consideration of this to Wednesday 10 O'clock. We start from amendment No. 126.

The House then adjourned till Ten of the Clock, on Wednesday, the 17th November, 1948.

Monday, 15th November, 1948
Friday, the 19th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Article 28

Mr. Vice-President (Dr. H. C. Mookherjee): Shall we resume discussion of Part IV? If I remember aright, amendment numbers 831, 832 and 833 were disposed of yesterday. We start with amendment No. 834.

Shri Brajeshwar Prasad (Bihar: General): Sir, before we go clause by clause, I would suggest that the House may be given an opportunity to discuss the general provisions of State Policy.

Mr. Vice-President: I am afraid it cannot be done.

(Amendment numbers 834, 835 and 836 were not moved.)

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, the amendment which I am moving is:

"That in the heading under Part IV the word "Directive" be deleted."

Sir, it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law.

My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless. I would like to draw the attention of the Honourable Members to what Dr. Ambedkar has said in his own book, that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years. I find, Sir, in Article 31 the economic pattern of the country has been based on very vague generalisations. It is very necessary that the word 'Directive' should be deleted, and as Mr. Kamath has suggested, they should be made Fundamental Principles of State Policy. Therefore, my submission is that the word 'Directive' is unnecessary and meaningless. The provisions under this Chapter become only platitudes or pious wishes and it has been very rightly stated by Dr. Ambedkar that they are more or less only Instrument of Instructions. If they are really an Instrument of Instructions, why should they find a place in the Fundamental Principles to be embodied in the Constitution, I do not understand. Dr. Ambedkar has further said in his speech that we do not want to lay down certain principles because it would open to
the coming generations to have their own pattern - I do not want to read the whole speech. It is only stated in Article 31 that there will be improvement in economic, social and other things. What is the use of laying down generalisations as has been stated in Article 31? Therefore, I submit, it is no use treating these principles as Directive; such a course will not prove to be to the good of the people and to the State. It is very necessary that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.

Sir, I move my amendment, and reading my amendment with Mr. Kamath's amendment, it should be "Fundamental Rights".

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, if my friend Mr. Karimuddin follows Mr. Kamath, as Mr. Kamath has withdrawn his amendment....... 

Shri H. V. Kamath (C. P. & Berar: General): I have not yet withdrawn my amendment, Sir.

Shri M. Ananthasayanam Ayyangar: He is not moving, I think. The point is this. It is not as if Mr. Karimuddin does not want this Chapter. He only wants the word 'Directive'............

Kazi Syed Karimuddin: I want the Chapter; only, I want the word "Directive" to be deleted from the heading.

Shri M. Ananthasayanam Ayyangar: He does not want the Chapter to be deleted.

Shri H. V. Kamath: On a point of order, Sir, did we not agree yesterday that all the amendments to an article will be moved first, and then the article will be taken up for discussion?

Mr. Vice-President: Mr. Kamath is correct. I am sorry that this matter escaped my attention altogether. Discussion will be taken up later on.

The next amendment stands in the name of Mr. Kamath, No. 838.

Are you moving amendment No. 838?

Shri H. V. Kamath: Mr. Vice-President, I move:

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' be substituted."

Sir, while moving this amendment for the consideration of my Honourable friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same. Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights. But both are looked upon or regarded as right which are fundamental. I derive support from the report of the Honourable Sardar Patel. I am reading from the reports of the Committees Second Series, from July to August, 1947. Copies of this booklet were supplied to all the Members of the House in March of this year. I am reading from the Honourable Sardar Vallabhbhai Patel's Report which was presented to the Assembly on the 30th August 1947. There he says - and it is addressed to the President of the Constituent Assembly - in para. 2:
"We have come to the conclusion."

'We' means the Advisory Committee on the subject of Fundamental Rights.

"We have come to the conclusion that in addition to these Fundamental Rights, the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country."

And on page 48 of this booklet which contains there port of the committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV - "Fundamental Principles of Governance". I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee, why they have made a departure from the title given by Sardar Patel to these rights. That Committee gave the title of 'Fundamental Principles of Governance', but here the Drafting Committee have changed the title to 'Directive Principles of State Policy'. There is some force in Syed Karimuddin's argument that both these are fundamental - the justiciable and the non-justiciable rights; and in requesting the House to consider my amendment I would only say this in conclusion, that if this amendment in thrown out, you will be throwing out not my amendment, but the recommendation of Sardar Vallabhbhai Patel.

Mr. Vice-President: Amendment No. 839 - not moved. Is amendment No. 840 going to be moved?

Shri M. Ananthasayanam Ayyangar: No. 840 is the same as No. 838.

Mr. Vice President: Then, it seems to me that the amendments considered so far deal with the heading of this chapter. Members who wish to speak on this may please do so now.

Shri M. Ananthasayanam Ayyangar: Sir, the object of differentiating certain rights as justiciable and non-justiciable rights is well-known. Those here are non-justiciable rights as has been laid down in paragraph 29. They shall not be enforceable in a court of law. Mr. Karimuddin wants that these also should be justiciable rights. I do not know if Mr. Karimuddin is a lawyer. But let him consider one or two suggestions. In Article 26 it is said that the State should within a period of ten years introduce free compulsory education. Take this as an instance. Let us assume that the State does not do so, then can any court of law enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the High Court or the Supreme Court enforce it? Is it open to the Supreme Court to change such a government? With its authority, can it by an officer of the Court, an Amin or a Sheriff, imprison all the Ministers, and bring into existence a new set of ministers? In the nature of things, these are only directives and cannot be justiciable rights at all. So there is no purpose in removing the word directive. These are principles which the Government must keep in mind, what ever government may be in power, and they must be carried out. We have incorporated them in the Constitution itself because we attach importance to them. But to
classify them as Fundamental Rights as in Part III would be to take away the difference between the one set and the other, and making all the rights justiciable, which, in the nature of things, is impossible. There is no use being carried away by sentiments. We must be practical. We cannot go on introducing various provisions here which any Government, if it is indifferent to public opinion, can ignore. It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years elections will take place, and then it is open to the electorate not to send the very same persons who are indifferent to public opinion. That is the real sanction, and not the sanction of any court of law.

Therefore, this amendment is mis-conceived, and I would request the House not to accept it.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I support the amendment to drop the word "directive". It is not only the heading but the entire chapter which is misconceived. Only the other day Dr. Ambedkar enunciated a very important principle by way of reply to Prof. Shah's amendment (No. 98) by which he wanted to introduce certain words into the Constitution to which Dr. Ambedkar said that pious expressions are not proper things to be embodied in a Constitution. He said, "the Constitution is a mere mechanism and no political principles or policies need or should be incorporated in it." He further said that "political principles or policies should be dictated by the people themselves through their votes and posterity should never be fettered by an announcement of policy or principle." These are important words coming from such a high authority. I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made justiciable. Dr. Ambedkar further said that to introduce pious expressions would be "taking away from the people their right to vote" and these things would be "superfluous". I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken on the 2nd of January. I submit that these pious wishes are so obvious that they need not be enunciated at all. If you state them you might also say that people should get up from their bed early and be kind to their neighbours, and so forth. Sir, I submit these are not proper things to be embodied in the Constitution and the amendment of Syed Karimuddin should be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I am sorry I cannot accept either of the two amendments: Mr. Kamath's amendment is really incorporated in the phraseology as it now stands; the word "Fundamental" occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental in already achieved by the wording of this Article.

With regard to the word "directive" I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the
future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word "directive" is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words "fundamental" and "directive" are necessary and should be retained.

Mr. Vice-President: The question is:
"That in the heading under Part IV, the word 'Directive' be deleted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg leave of the House to withdraw my amendment.

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

Mr. Vice-President: We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled out of order.

Since the Member concerned is not here, Amendment No. 842 falls through.

Amendment Nos. 843 to 846 - Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I shall be moving Nos. 843, 844 and 846 I shall not be moving No. 845.

Sir, I move:
"That in article 28, the words 'unless the context otherwise requires' be omitted."
"That in article 28, for the word 'requires', the word 'indicates' be substituted."
"That in article 28, for the words 'the State', the word 'State' be substituted."

With regard to my first amendment for the deletion of the words "unless the context otherwise requires", I beg only to submit this. There are only a few articles in this part. This article attempts to define "the State" to mean States in part III of the Constitution. I submit that there is here no difficulty or any confusion. If we say "unless the context otherwise requires" it would indicate that the meaning that has been definitely given by article 28 to the expression "the State" is subject to fluctuation in accordance with the context, that is in accordance with the individual approach of each man. This would create an uncertainty and a very needless uncertainty in the context. I would submit that the word should be precisely defined. In fact the word "State" has been defined in so many places to mean so many things that there has already been a sufficient amount of confusion in the understanding of the word "State" and the introduction of these words "unless the context otherwise requires" would introduce
further complications. I therefore submit that these words should be removed and, if necessary, doubts in any particular context should be met by a proper change in draftsmanship.

The second amendment is merely verbal, and I want to change the word 'requires' into the word 'indicates'. I do not wish to say anything further in this connection.

With regard to the third amendment, that for the words "the State" the word "State" be substituted, I have to submit that the word 'State' is the proper word in the context. If we define the expression as "the State" it will lead to difficulties in the clauses in which this expression occurs. I should submit that the word "State" should be more appropriate and I shall attempt to show why.

The Australian precedent which has been cited in another connection by the Honourable Dr. Ambedkar, I think, should better be discarded. The reason why I submit this amendment is this: That in the context the expression "the State" appears in articles 29 to 40. In those contexts the words "the State" are inappropriate. It should be remembered that the words "the State" are attempted to be defined as "State" within the meaning of Part III of the Constitution. It is enough for me to point out that there are more States than one included in Part III of the Constitution. Therefore the words "the State" in the following articles - 29 to 40 - would be inappropriate. If there is one individual State which we want to indicate, the words "the State" would be proper in the context. But we have in mind not one State or "the State" but several States in the different contexts. So I have suggested the expression "State". It is for this reason that I want to remove the word "the" which to my mind is absolutely unnecessary. It is a grammatical article which need have no place in the definition itself. If we tie down the definition to the word "the" the words become inseparable and therefore a forced use of this expression in the succeeding articles becomes absolutely compulsory. Therefore, this will need careful consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendments of my friend, Mr. Naziruddin Ahmad. The words "the State" in Article 28 have been used deliberately. In this Constitution, the word "State" has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of which in certain parts of the Constitution are spoken of as "State". But the word used there is in a collective sense. Here the words "the State" are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with article 7 of the Constitution, he will see in what sense the word "State" is used. In this part, unless the context otherwise requires, "the State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village panchayat or a district or local board would be a State also. In order to distinguish the sense in
which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say:

"No title shall be conferred by the State;
No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that there tention of the words 'the State' in Article 28 is in consonance with the practice we have adopted in drafting this Constitution.

Mr. Vice-President: I shall now put these three amendments to vote. The question is:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 28, for the word "requires' the word 'indicates' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 28, for the words 'the State', the word 'State' be substituted."

The amendment was negatived.

Mr. Vice-President: I shall put Article 28 to vote. The question is:

"That article 28 form part of the Constitution."

The motion was adopted.

Article 28 was added to the Constitution.

Article 29

Mr. Vice-President: The House will now take up Article 29 for discussion.

Amendment No. 847 for the deletion of Article 29 is out of order.

Professor K. T. Shah may now move his amendment.

Prof. K. T. Shah (Bombay: General): Mr. Vice-President, I beg to move:

"That for article 29, the following be substituted:

"29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws."

In submitting this motion to the House, I would in the first place express my sense of keen appreciation of Dr. Ambedkar's remarks made a few minutes ago, wherein he notonly insisted that we should not leave such matters as merepious principles, but also should make them a
sort of directive, which, though the word mandatory is not used, may amount to that state. I was a little unhappy when, on a previous occasion, the learned Doctor was pleased to say that the Constitution was not a document for embodying such principles. It seems that the course of conversion operates very swiftly with a brain so alert, an intelligence so sharp, a mind so open to new ideas as that of the learned Doctor. That is why I am very happy to express my sense of keen appreciation for the rapid conversion that he has exhibited today in agreeing to find a place for enforcement in the Constitution. In fact he has gone a step further; and, though he does not admit their place in the name or designation of the Constitution, he has been pleased to make that as a positive thing, the enforcement of such principles, fundamentals as they are recalled, in the Constitution.

Having expressed this, Sir, I hope that Dr. Ambedkar would also see the advisability of accepting my amendment that this article 29, which I regard as an insult to the entire Constitution, be substituted by what I have suggested.

Sir, article 29 makes it quite clear, in the opening phrase, that no court can enforce these ideals. That is to say, the only authority that we are going to set up in the Constitution, to give effect to whatever hopes and aspirations, ambitions and desires, we may have in making these laws and in laying down this Constitution, is from the very start exempted, exonerated and excused from giving effect to one of the most cardinal, important and creative Chapters of this Constitution. We have suffered from a hundred years of exploitation; we have suffered from a hundred years of denial and exclusion. Now that we are coming into our own, we insist - I hope the House will join me in the intention - that the night of darkness shall pass away and that from the very first rising of the sun on the horizon, even from the first glimpse of dawn, we shall makeup our minds, we shall gird up our loins to give effect to all the hopes that our leaders in the past have expressed.

Sir, certainly it would not be in consonance with such a hope as this to lay down, at the very outset, in a Chapter like this, that no court shall be entitled to give effect to our hopes and aspirations. If I may say so without any offence, it is a kind of provision which encourages the Court and also the Executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability, and go on with it. It looks to me like a cheque on a bank payable when able, viz., only if the resources of the Bank permit. I do not think that any authority connected with the drafting of this Constitution would approve of such a provision being incorporated in the Negotiable Instruments Act authorising the making of a cheque payable when able. It seems to me that unless my amendment is accepted, this Chapter would be nothing else, as it stands, but a mere expression of some vague desire on the part of the framers that, if and when circumstances permit, conditions allow, we may do this or that or the third thing. There is nothing mandatory, - with all deference to those who have spoken in support of the retention of the word 'directive' in the title of the Chapter - or
compulsory, included in the various provisions. Sir, in the absence of any such mandatory direction to those who may have the governance of the country hereafter, it is quite possible that all these things for which we have been hoping and striving all these years may never come to pass, at any rate within our lifetime. This is an attitude which no lover of the people would care to justify, would dare to justify.

I suggest, Sir, that many things look impracticable until they are tried, and become practicable if they are tried. Nothing in practice is practicable until it is tried. Take even the elementary right to education which every civilized Government is now undertaking to provide for the children of the nation. Even this right to compulsory primary education has been provided for in such a clumsy, half-hearted and hesitating manner that one wonders whether the framers of this Draft were at all anxious that the curse of ignorance that has rested upon us all these years should be removed at all. The provision made here just permits the State, even within the period of ten years, only to "endeavour" to give effect to this aspiration. Even there it is not compulsory, even such an elementary right as the right to primary education for every child in the nation is not mandatory. As such I feel Sir, that unless some change is made, unless you make these preemptory obligations mandatory duties of the State, the State or the constituent parts of it may not at all attend to these duties of the State. These are most elementary duties in my opinion, duties which are most primary duties, if I may say so, most sacred that no one should try to insult this House by suggesting these are not practicable.

Then, Sir about the absence of any sanctions as another learned friend put it. An old English writer - it was Walter Bagehot, I think, - who wrote in a classic chapter of his book on the English Constitution that Parliament votes every year large sums of money to the Crown, but there is no sanction or authority for anybody to compel the Crown that the sums shall be spent. I agree. There is no constitutional authority laid down so far in the unwritten Constitution of England that the sums voted shall be spent. But does anyone think that because there is no legal sanction, any Minister in his senses would for a moment suggest that these sums need not be spent, or that the so-called prerogatives of the King like dismissing any officer of the State would be used now arbitrarily as they had been in the past?

I mention this illustration, Sir, merely to emphasize the fact that it rests with you whether or not you are resolved that no longer shall the courses that have rested upon us so far will continue, for a moment longer than we can afford or than we can possibly help. It is no use putting down these mere pious hopes and aspirations or general directives that may be enforced if and when circumstances permit. It is possible that circumstances will never permit until you compel them to permit you. That is why from the very start I would lay down that these shall be mandatory, compulsory obligations of the State, which every citizen will have the right to demand should be fulfilled, and if today you think of no sanction, if today you can devise no
means by which they can be enforced except perhaps by the periodic general elections when Ministries may be turned out for not fulfilling these duties, then it is up to you to devise something. Where there is a well - to - repeat the trite old saying - there will always be a way. It is either bankruptcy of intelligence if you say that you cannot find a way; or it is really a genuine lack of desire to make good what we have been hoping and striving for.

There may be many in this House - I am sure Dr. Ambedkar is the foremost amongst them - who will remember that when the late Gopal Krishna Gokhale first brought forward the Bill for compulsory primary education, the then officials of the then Government of India gave all sorts of reasons why such a step was simply impracticable. One of the arguments was that an expenditure of three crores spread over ten years, that is rupees thirty lakhs a year, was too heavy a burden for the Government of India's finances at that time to bear. But within four years of that, however, they were wasting not three crores but more than thirty crores over the war in which we had no concern and about which we were not consulted.

That was the case when we were powerless, when we were helpless in our own country. That position, however, is changed today, and I hope the Ministers of the new Government of India, the Ministers of the Government of free India, the legislators of the Republican India, will not now rest content with merely expressing these pious wishes. If there are difficulties in the way, they are only meant to be overcome. These difficulties should not be allowed to stop our progress at any cost. Hence it is that I would like to invite the House to agree with me that the provisions contained in this Chapter must be regarded as the Obligations of the State towards every citizen and vice versa. Every citizen should have the right to compel the State to enforce these obligations by whatever means may be found practicable and effective, and conversely the State also should have the right to see that every citizen fulfills his obligations to the State.

There is only one more word that I have to say and I have done. My Honourable Friend Mr. Rohini Kumar Chaudhary expressed his keen sense of appreciation yesterday for the gang of thieves who are operating between Calcutta and Delhi, and he warned me they may do so also between Bombay and Delhi. I am deeply grateful for the solicitude that he had expressed on my account as well as on that of another Honourable Member. I can only assure him that his apprehensions are groundless, because I am not in the habit of just travelling in a railway compartment with my amendments in an attache case under my head. I carry them mostly in my own head. Unless therefore the thieves take a highly expert surgeon with them, who can remove the amendments from my brain, they cannot take away my amendments; and the House will not be spared - certainly Mr. Rohini Kumar Chaudhary will not be spared - the necessity of going through these amendments. May I also add without any offence that the loss of these amendments is not the loss of Mr. Naziruddin Ahmad or myself. It is the loss of the
House, because those of us who have come here and put forward these amendments are not doing them for fun or mischief, but have put brains and intelligence into them.

Mr. Naziruddin Ahmad: I wish to speak on my amendment, though I do not wish to move it.

Shri M. Ananthasayanam Ayyangar: A similar amendment for substituting the words "every State" for the words "the State" was moved and negatived.

Mr. Naziruddin Ahmad: It depends upon the context.

Mr. Vice-President: If you insist on speaking, you may do so.

Mr. Naziruddin Ahmad: I won't take more than one minute, Sir.

Shri M. Ananthasayanam Ayyangar: I submit that the President has always got the right to disallow in order to avoid frivolous amendments. This matter has already been considered by the House. It has been disposed of and except for the purpose of taking the time of the House, there seems to be nothing else behind it. I submit that there is no substance in Mr. Naziruddin Ahmad's amendment, and if it is still being persisted, then I want your ruling.

Mr. Naziruddin Ahmad: I very much regret that my attempt to explain is being regarded as dilatory.

Mr. Vice-President: I suggest you proceed without paying any attention to what he says.

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

"That in article 29, for the words 'the State', the words 'every State' be substituted."

I fully admit the force of the remarks of Mr. Ananthasayanam Ayyangar, but I am compelled to place before the House a certain difficulty. Article 29 says that it shall be the duty of the State to apply these principles in making towns. The State means one State, but here there are a large number of States.

**The Honourable Shri K. Santhanam** (Madras: General): May I ask the honourable member to see Article 29 where "the State" has been defined as wring the same meaning as in Part III of this Constitution. Therefore in article 29 also the State is the same thing.

**Mr. Naziruddin Ahmad**: I was pointing out the difficulty in the draft. We have already been placed in a straight jacket by accepting the words "the State" and the straight jacket is pursuing us in the clauses. I should say the words 'every State' are more appropriate. The fact that we have accepted the definition does not prevent us to avoid the absurdities in the following articles. I submit that the expression in the context is absolutely absurd.

**Prof. Shibhan Lal Saksena** (United Provinces: General): I am not moving my amendment, but I want to speak on the Article as a whole. Sir, this Article
has been the subject of many amendments and the purpose of most of the amendments is that this Chapter should have some sort of binding force. I have also given notice of an amendment which is No. 861 in the printed list and which says that "After a period of ten years, these directive principles of State Policy shall become the Fundamental Rights of the People and shall be enforceable by any Court". After a very careful consideration of the various Articles in this Chapter, I feel that it will not be proper to lay down such a tall order. In fact, the Drafting Committee has itself laid down a period of ten years for compulsory Education up to fourteen years of age and three years for separation of Executive from Judiciary and some such other things. So something has been done in this direction. What I really want is that these Directive principles in this Chapter should not merely remain a pious wish. My Honourable friend, Prof. K. T. Shah, also wanted that these fundamental principles should guide the state in their legislation. I wish to assure him that the very fact that this chapter forms part of the Constitution, gives such a guarantee and it will surely be open to every legislature to point out when an Act is brought before the Assembly that it is in conflict with the principles laid down in this Chapter. So, the mere fact that they are being included in the Constitution shows that every legislature will be found to respect these directive principles in the Constitution and therefore, any act which offends the directive principles shall be ultra vires. Although every citizen will not be able to go to a court of law for enforcement of these principles, yet the President of every Assembly will be within his rights to rule out any Bill and say that this Bill cannot be moved, because it is against the fundamental directive principles of the Constitution itself. I therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles. A perusal of articles 31 will show that very many high principles have been enunciated here and I hope Prof. Shah will also admit that if these principles are acted upon in both the Union Legislature and the State Legislatures, we shall have a State which will almost be acting as if these principles were fundamental rights which were enforceable by a court of law. Of course, every individual will not be able to go to a court of law to get their enforcement, but every legislature will be able to rule out any Bill which offends these principles. I therefore, think that my amendment which was intended to put a sort of time limit to make the State go on with their implementation at a rapid pace, so that all these directive principles may become incorporated in Acts of Parliament in ten years, may create
difficulties by its rigid time limit. I hope ray purpose will be realized by the
fact that this pan shall be a part of the Constitution and every legislature will
be required to respect the principles contained in it and to see that no Act is
passed which is against the principles enunciated in this chapter. I therefore,
think that those friends who term this Article merely as a chapter of pious
wishes are not correct. This is a very important chapter which lays down the
principles which will govern the policy of the State and which, therefore, will
ensure to the people of the country the realisation of the great ideals laid
down in the preamble. I therefore hope that the opposition which my friend,
Prof. Shah has voiced through his amendment will not be pressed. Sir, I
therefore support this Article.

Mr. Hussain Imam (Bihar : Muslim) : May I ask if there will be no
discussion on these amendments except by the movers?

Mr. Vice-President: If you had caught my eye, I would have given you an
opportunity.

Mr. Hussain Imam: I thought that after the amendments have been disposed
of by putting them to vote, discussion would be allowed.

Mr. Vice-President: No. It was decided yesterday that honourable members
can speak both upon the amendments as well as on the article.

Mr. Hussain Imam: By a discussion other members of the House will also
get an opportunity.

Mr. Vice-President: Why did you not stand up ?

The question is :

"That for article 29, the following be substituted :

‘29. The provisions contained in this Part shall be treated as the obligations of
the State towards the citizens, shall be enforceable in such manner and such
authority as may be deemed appropriate in or under the respective law
relating to each such obligation. It shall be the duty of the State to apply these
principles in making the necessary and appropriate laws.'"
The motion was negatived.

Mr. Vice-President: The question is:

"That in article 29, for the words 'the State', the words 'every State' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That Article 29 stand part of the Constitution."

The motion was adopted.

Article 29 was added to the Constitution.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim). Sir, I said that I will speak on this Article. I stood up, Sir.

Mr. Vice-President: I did not see you. Can you not speak on Article 30?

Mahboob Ali Baig Sahib Bahadur: Article 29 is the most important Article.

Mr. Vice-president: I am unable to go back. I shall give you an opportunity to speak on Article 30.

Shri Asniyo Kumar Ghosh (Bihar : General): Sir, may I know the correct procedure? When a clause is nut to the House, is it not the right of a member to speak either in favour of the clause or against it?

Mr. Vice-President: Certainly.

Shri Amiyo Koniar Ghosh: But, I think, Sir, no such opportunity has been given in this case. The amendments were put to vote. When the clause was put to vote, several gentlemen stood up to oppose the entire clause. I think the correct procedure is, after the amendments have been put to the vote and they are lost, the entire clause is put to the House. At that time a member has got
the right to oppose it or support it; he may speak on the entire clause. That is
the correct procedure.

Shri M. Ananthasayanam Ayyangar: Sir, yesterday you gave a ruling and
it was accepted that instead of having two different sets of discussions, there
may be one discussion once for all both on the amendments and the Article,
and that after the amendment are put to the vote, the Article may be put to the
vote without any further discussion, and declared carried or otherwise. That
was your ruling and we have been following it. Separate discussions, one for
the amendments and another for the Articles are not necessary.

Shri Amiyo Kumar Ghosh: That was not a ruling for the entire
Constitution that was specially meant for Article 3. I think Mr. Ayyangar is
laying down a new principle.

Mr. Vice-President: That was the procedure adopted. (Interuption.) Kindly
allow me to speak. Shall I proceed? (To B. Pocker Sahib Bahadur, who stood
up) Do you want to say anything? I am prepared to make way in your favour.

B. Pocker Sahib Bahadur: Sir, I am very sorry to note that Mr.
Ananthasayanam Ayyangar is taking upon himself very frequently the duties
of the Vice-President himself. (Interuption).

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: Sir, he has been giving instruction to the Chair
every now and then. In fact......... (Interuption).

Some Honourable Members: Withdraw.

B. Pocker Sahib Bahadur: I am quoting a fact, Sir. Just now......

Shri K. Hanumanthaiya (Mysore) : Sir, he is casting aspersion on an
honourable member.

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: I am just quoting facts. He has said just now that
the ruling of the Chair is that the questions on the amendments and also
questions opposing the clause itself should all be discussed together. As a matter of fact, when Mr. Mahboob Ali Baig came here and wanted to speak against the clause itself, he was told by the Chair that the proper time for him would be when the clause itself is before the House after the amendments are over. Whatever it is, it is for the Chair to decide the question.

Shri Biswanath Das (Orissa: General) : Sir, on a point of order. It is to be very much regretted that an honourable member jumps up and goes on to draw the attention of the Vice-President and the honourable members of the House to certain questions which should have been noticed by the Vice-President himself. The very fact that the Vice-President has not taken notice of these goes to show that either he himself desired them or they were his rulings. It is none of the business of the Honourable member to point out to this House or to the Honourable the Vice-President the way in which he should have acted himself. I am sorry to say that it is a reflection on the Chair. Therefore, I would request you, Sir, not to tolerate, much less to allow such disturbances of the proceedings.

Mr. Vice-President: May I suggest that Mr. Ayyangar merely repeated a procedure which had been adopted with the approval of the House in conducting our proceedings. I do not consider that Mr. Ayyangar was wrong in reminding us about what had passed yesterday. I deeply regret that these things should not have been appreciated in the proper spirit by the honourable member speaking. I want that we should work together in complete harmony and that no misunderstanding should spring up. We must come here with clear and open hearts, prepared to trust one another. In democracy it always happens that the minority can only put forward its point of view and try to persuade the majority, and submit to the ruling of the majority. That is what democracy means as I understand it in my poor and inadequate way. Surely, the business of the House can hardly be conducted unless certain rules are followed and followed faithfully, in the spirit and not merely in the letter. As I have already said, if Mr. Mahboob Ali Baig had caught my eye, I would have surely given him an opportunity to speak. In fact, if honourable members will only scrutinise the way in which I have tried to conduct the proceedings of the House, they will find that I have gone out of my way in affording facilities to certain groups which at the present moment feel that they were not sufficiently strong to make their voices heard. That has been
my policy, and in that policy, I am grateful that the majority community has lent me its unstinted support. In these circumstances, I would beg you, Mr. Pocker Sahib, to kindly resume your seat and allow me to conduct the business of the House in the way that seems best to me and not to cast reflections, which pain me, either on Mr. Ayyangar who is there to help us, or on myself, who am trying my very best so far as my poor abilities go, to conduct the business to the entire satisfaction of the House. Will you please resume your seat?

B. Pocker Sahib Bahadur: Sir, I do not want to say anything more except to thank you for the kindly way in which you have expressed your anxiety to give every facility to people who are in the minority. I must also apologise to you if you take it that I in any way meant any reflection on you or on Mr. Ayyangar. I only wanted to bring to your notice how we misunderstood what you stated and that we thought that we had further opportunities after all the amendments are discussed. I am thankful to you, Sir, for the way in which, you have expressed your anxiety to give opportunities to the minority to express themselves.

Mr. Vice-President: May I make one suggestion? When such a kind of understanding has been given by me namely that an honourable member will speak on a particular occasion, for the tune being, he may occupy a front seat so that he may not experience much difficulty in catching my eye. Let me assure the House once again that I shall do whatever lies in my power to give every possible facility to the members of the minority communities.

Mr. Hussain Imam: May I ask for elucidation of your ruling, as I was not present when this ruling was given. Therefore I want for the guidance of the House that it should be elucidated first. My own impression was that by your ruling what was meant was that members who were speaking on amendments should not claim a second right of speech on the main motion itself. it was never meant that as soon as an amendment is moved and the mover of the article says whether he accepts or rejects it, the discussion ends. That only means that the discussion as far as that particular amendment is concerned is ended, but the discussion on the main article can continue and in that connection I will remind you that I stood up as soon as Dr. Ambedkar had intimated his opinion on the amendments and therefore I was perfectly
justified—and I had caught your eye—to express my opinion on the article. It is on that restricted line that I want your ruling as to whether my understanding is correct or I am wrong.

**Mr. Vice-President:** Let me explain it. First of all the amendments are moved and members moving them can also speak on the clause as a whole. Then there is opportunity given to Honourable members to discuss the amendments as well as the article itself and after that Dr. Ambedkar replies and that closes the discussion. That is how I have tried to understand it and that will be the procedure which will be followed hereafter.

**Mr. Hussain Imam:** It is not clear whether the discussion on the general article itself closes. The discussion on the amendment can close, not the general discussion.

**Shri Ram Sahai** [United State of Gwalior-Indore-Malwa (Madhya Bharat)]:

> *[Mr. President, I would like to submit that many members do not like to express their views on the amendments that are moved here and to participate in the debate on them, because they consider them to be meaningless, useless and devoid of any utility. If it continues, the result would be no discussion on the original clause. Therefore, I submit, Sir, that since members do not like to speak on the many amendments that are being moved here, they simply fall through. In my opinion, it is much more necessary to speak on the original clause and consider it fully.]

Therefore I would submit that the amendments that are useless and are moved for no reason should be ruled out and we should devote ourselves to a fuller consideration of the original clause.

**Mr. Mohamed Ismail Sahib** (Madras: Muslim): Mr. Vice-President, Sir, while I appreciate the consideration you have been showing to the House, to the various sections of the House, I want this point to be made clear. Now suppose several amendments are being moved to a certain article. Then those amendments are discussed and afterwards replied to by the Honourable Mover of the Resolution. I want to know whether after the reply is given by the Honourable Mover I mean the Law Minister, the article is not before the "House for general discussion. Because the amendments may relate only to certain parts of the article. There may be other parts on which honourable
members might have something to say. Therefore I request you to make it clear whether after all the amendments are disposed of, Members have got a light to speak on the article itself.

Mr. Vice-President: What I said was this; suppose there are four amendments. They are moved one after another. Between the moving of the amendments and the reply by the Chairman of the Drafting Committee there is an interval during which other members may participate in the discussion and they might talk not only about the amendments but about the clause itself.

Mr. Mohamed Ismail Sahib: My point is after the amendments are disposed of by the House, whether the members have not got the right to speak on the articles as amended or not as amended—that is what I want to know. The members should in fairness be given an opportunity to speak on the article.

Mr. Vice-President: They have that opportunity.

Shri M. Ananthasayanani Ayyangar: Mr. Vice-President, that opportunity means once again after Dr. Ambedkar has spoken?

Mr. Vice-President: No.

Shri M. Ananthasayanam Ayyangar: It is rather strange that persons who have been in Legislatures should make this objection. We know that the Resolutions are first moved and then all amendments are asked to be moved on the particular clause or resolution. Then both the resolution and the amendments are open for discussion. Thereafter the amendments are put to vote and then the clause is put to vote. There is no scope for a general discussion once again on the clause. There should be no departure from this practice which is followed in the Dominion Legislature.

Mr. Vice-President: I do not think it is profitable to continue the discussion. The ruling is final. I shall not permit further discussion.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): After the amendment has been moved. ........
Mr. Vice-President: I am afraid you fail to appreciate the fact that the decision has been given. I am not prepared to reopen the discussion.

Nawab Muhammad Ismail Khan: In order to facilitate discussion, after amendments have been moved the Chair may please say that the article is now open to general discussion so that people may rise to speak on the motion.

Article 30

Mr. Vice-President: The motion before the House is:

'That article 30 form part of the Constitution'.

The first amendment stands in the name of Mr. Naziruddin Ahmad. This is out of order. The second amendment is in the name of Mr. Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move that for article 30, the following be substituted:

"30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the State shall direct its policy towards securing:

(a) the transfer to public ownership of important means of communication, credit and exchange, mineral resources and the resources, of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

Sir, my reason for submitting this amendment is that I feel that as it is worded, the article is somewhat indefinite and vague, and does not convey any clear indication as to the economic nature of the social order to be established. We all know that the society in which we now live is of a capitalistic order or character and in this society we see the exploiter and
exploited classes both existing side by side; and the exploiting class is naturally the top-dog and the exploited class the under-dog. In such a society we clearly see that the real welfare of the masses, of the toiling millions can neither be secured nor protected, unless the society is made clear of the exploiter class, and that can only be possible when we establish a socialist democratic order, and transfer to public ownership the "important means of production, communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;" bring about the municipalisation of public utilities"; and "the encouragement of the organisation of agriculture, credit and industries on co-operative basis".

So far as I know, the Indian National Congress in its election manifesto promised the transfer of ownership of the means of public utilities, communication, production, credit, exchange, to the ownership of the public. The Economic Committee's Report of the Congress also accepts this principle. Without that, we are not going to establish a social democratic order in which the real welfare of the masses will be secured. Let it not be said of us, Sir, that we made promises simply to break them, as was done by the British Government. Here we talk too much about democracy and the welfare of the masses. But in practice, we see actually that there is little or no democracy. The will of the ruler even to-day prevails, in the form of the law. If we really want that something should be done for the masses, and their real welfare secured, that can only be possible through a socialist, democratic order. And if we are really keen to establish such an order, we should lay down in this Constitution that the order which we are going to establish will be a socialist democratic or democratic socialist one. The wording should be as clear as possible so that its meaning may not be changed when it is in the interest of the ruling classes to do so.

With these words, Sir, I submit this amendment for the acceptance of this Assembly.

Mr. Vice-President: No. 864 is the same as No. 863. Therefore it need not be moved. Is 867 moved?

Mr. Nariruddin Ahmad: Yes, Sir, I move it. I beg to move:
"That in article 30, the words "strive to" be omitted."

Sir, the article in the passage runs to this effect—"The State shall strive to promote the welfare of the people. ..............." I want the removal of the words 'strive to'. The article, would then read as follows:

"The State shall promote the welfare of the people."

I submit, Sir, that by providing that these rights shall not be justiciable, this Article has been sufficiently weakened, and by again putting in the words "shall strive" to promote the welfare of the people, the Article” has been still further weakened. I submit, Sir, that if these rights are to be introduced in the Constitution, they should be that the "State shall promote the welfare of the people", not merely "strive to". As it is, it would mean that the State is not expected actually, to promote the welfare of the people, but merely strive to do so. In this weakened and diluted form, I think it is worse than useless. Therefore, in order to give the article some practical meaning, these words must be removed.

**Shri H. V. Kamath:** Sir, I move amendment No. 870:

"That in article 30. the Word The' occurring before the words "national life"

Sir, I was rather reluctant to give notice of this amendment, considering that it is of a minor character; but somehow the word 'the' jarred, upon my ear and ultimately I decided to send it on. I am not so presumptuous as to advise my learned friend Dr. Ambedkar or his wise colleagues of the Drafting Committee on matters of language; but I do hope that in this case, the word ‘the’ jars upon their ears as much as it does on mine, and it does violence to the laws of euphony. So I request him to omit it.

**The Honourable Dr. B. R. Ambedkar:** I accept the amendment Mr. Vice-President: No. 871 not moved. Now the Article is open for general discussion.

**Mahboob AK Baig Sahib Bahadur:** Sir, I oppose the amendment of Mr. Damodar Swarup Seth (No. 863) as well as the Article itself. The reason is that the amendment seeks to import into the constitution certain principles of a particular political school. My view is that in a constitution no principles of
any school of political thought should be incorporated. For the same reason I oppose the clause itself. This question of directive principles of State policy should be examined from two points of view, i.e., democratic principles and secondly, the enforceability of those principles. With regard to the first you know that in the Preamble to the constitution a democratic republic or State is envisaged, and in the body— of the constitution the type of democracy which is commonly known as parliamentary democracy is embodied. And the executive which is embodied in the constitution is what is termed the parliamentary executive which comes into power on account of the majority of a particular party having been elected by the electorate; and that executive is responsible to the people through the parliament. Therefore inevitably there would be parties in the country which seek election to parliament and these political parties have different and distinctive ideas, ideals, ideologies, programmes and principles. Sometimes they $Me so different that they can be called antagonistic; and it is on the merits of, ’ the principles or programmes of particular parties that the electorates return them to parliament. And when a particular party is returned in a majority and. is entitled to form the government, the people and the electorate have got a right to expect the implementation of those programmes and principles. That is what is meant by parliamentary democracy as it obtains in the United Kingdom, and which is sought to be embodied in this constitution. Now the question is, in these circumstances what is the place of these directive principles of State policy in a parliamentary democracy in which the executive is made responsible to the parliament which has been chosen and elected on the merits of the principles and programmes laid down by that party ? That is the most important thing for us to consider. We can conceive of cases where a party which has been returned by the people has programmes and principles which are contrary to the principles that are laid down in this Chapter. Recently we know that hi the British Parliament the Conservatives have moved for the rejection of nationalisation of iron and steel. Yesterday we heard there was an uproar. It was no doubt defeated by the Labour Government; that clearly shows that political parties have different and distinctive programmes, and is on their merits that the parties are returned to parliament in a parliamentary democracy. When that is the position envisaged and embodied in the constitution, what is the place of these directive principles in it? They have obviously no place. It is undemocratic opposed to parliamentary democracy which is envisaged here.
Is it the purpose of these principles to bind and to down the political parties in the country to a certain programme and principles laid down in this? Surely not; that will not be democracy or at least democracy of the type that is envisaged here, viz., parliamentary democracy which is responsible to the people. Therefore my submission is that these principles are out of place and contrary to the principles of parliamentary democracy.

Now it is said by some that these are fundamental principles. I submit that if they are so fundamental they cannot be changed except by amendment of the constitution, and should not find a place here. In fact my own view of fundamental rights is that they are those which are taken away from the purview of the legislature; they are so fundamental that no party can veto them. If all those rights that are embodied here are so fundamental they must be transferred to the Chapter of Fundamental Rights. I consider that most of them are not fundamental rights but only items of programme of certain schools of political thought. Therefore I submit that these clauses must not find a place here at all; and I believe it is for that reason that Dr. Ambedkar while opposing a programme of this kind embodied in an amendment of Prof. K. T. Shah with regard to the panchayat system said that this constitution is only a mechanism whereby any party which has come into power may utilise it and implement its programme according to its political thoughts, principles and programmes. That is quite right. Now I fail to see how this programme can come into the constitution. Either they are fundamental or they are matters of policy. If they are so fundamental that no legislature can interfere with them and have to be placed beyond the purview of the legislature and the executive, they should be placed somewhere else. In my view, however, these are not fundamental but mere State policy. And Dr. Ambedkar was right when he said that this is only a mechanism and any party which comes into power might implement its principles and programmes, ideals and ideologies.

Now, Sir, we next have to see whether there is any enforceability. In a Constitution like this, except where discretion is given to the Governor or the Governor-General or some other authority to act in this way or that way, no clause should find a place which cannot be enforced. Supposing a Government which comes into power does not care about these things, neglects them, and ignores them because it has a different mandate from the
people. The people have accepted its programme and the guidance that you have provided here is such that it goes against the mandate given to the party by virtue of their having been returned to power: not only that, it neglects them and goes out of the way and does something contrary. What is going to happen? Who is to judge?

It is said by my friend, Mr. Ananthasayanam Ayyangar that the country will judge. The country does not judge these directive principles. It judges the ideals, programmes and the principles of the concerned parties. That is what is called parliamentary democracy. Therefore I submit that not only Article 31 but all the articles that follow — the whole Chapter — has no place. It may be that a certain party thought that unless certain principles are introduced in the Constitution itself by a Constituent Assembly where it has a majority, perhaps in the country political parties might take objection, might canvass support for themselves and against the party at present in power. May be that is the reason. Or perhaps they think these are fundamental rights. One of these reasons must be there. I am sure they cannot be called fundamental rights. So it is the anxiety of the party in power to placate the electorate, saying we have framed a Constitution in which we have made these provisions which are as good, if not better than the principles and programmes of some other party, say the Socialist Party.

So, I submit that these principles are wrong. They do not find a place in, the Constitution and on account of the fact that they cannot be enforced they are useless and they had better be deleted.

Shri K. Hanumanthaiya: Sir, I have to oppose the amendment moved by my Socialist friend, Shri Damodar Swarup Seth and I request the House to give its full support to the Article as it stands. If the Honourable Member who moved amendment No. 863 carefully reads article 30, as well as article 31, clauses (1) and (2), he will surely find that all the ideas he wants to incorporate are contained therein. In fact the previous speaker, Mr. Baig based his opposition to the amendment and to the original clause on this very reason. What he wants to achieve by his amendment is there already—in these two Clauses—and therefore, it is completely superfluous to accept this amendment.
As for Mr. Baig, it has become the fashion of his school of thought always to fling a remark at the majority party and I can only say his argument suffers from "Grapes are sour" psychology. Merely because he is in a minority today, he chooses to fling remarks now and then in this fashion. If a particular school of thought persuades the country to be with it, there is nothing sinful or immoral or objectionable in that. The fact that he has not been able to do so is a disqualification in his favour. Instead of admitting this, he cannot go on throwing stones at the majority party in this fashion. The same applies to his argument that this particular section or article wants to bring a particular type of Government into being. It was the case that several centuries back it was a sin to talk of democratic government in this country. It was a question then of a particular king ruling or a particular emperor ruling. The days of one individual or one section of people ruling a country have gone for ever. Now it is a democratic age. It is the people's government. A particular type of Government holds sway over the people and the State at a particular time. There was a time when, individualism and laissez faire policy held sway over Governments. That policy has now been given up. It is now a question of socialization. Now the trend of the time is socialism and that holds the field. Many Honourable Members of this House want to go even in advance of the ideals stated in the Articles. But the Drafting Committee has very happily worded the phraseology which does not favour any of these extremes, and at the same time, it has been so wisely worded that even Communist Party can implement its ideology under article 30 and article 31, clauses (1) and (2), if it comes to power. No party is prevented from implementing its ideology under these sections. If anybody reads the wording of the section he will find—as I for one do—it is difficult to say to what word or to what sentence he can take objection. Therefore, Sir, amendment No. 863 is superfluous and the Article as it stands deserves the full support of this House.

Mr. Hussain Imam: Mr. Vice-President, I regret that it is not possible for me to give my full support to Damodar Swarup Seth nor can I admire the Government or the movers, or those who are behind this article at their great fear of bringing forward anything which will smack of socialism. I regret, Sir, that the Government has succeeded neither in placating the capital nor the labour. ...
Shri T. T. Krishnamachari (Madras : General) : What has this House got to do with the Government ?

Mr. Hussain Imam: I am stating facts as they exist. The articles are being governed by a party and under party whips amendments are stopped ....

Mr. Vice-President: Order, order.

Shri M. Thirumala Rao (Madras: General): My friend wants to say some facts. Should they not be relevant to the subject under discussion ?

Mr. Hussain Imam: Let me have my say. You can then say what you like. Mr. Gautam had a similar amendment.

Shri Mohan Lal Gautam (United Provinces : General) : Was I called on to move it ?

Mr. Hussain Imam: No, Sir.

Mr. Vice-President: Please address the Chair and do not carry on an argument among yourselves; otherwise, I might as well vacate the Chair. I will give him opportunities to criticise the article, but not any particular political party. So far as this House is concerned, there is no political party in existence.

Mr. Hussain Imam: I will follow your advice, Sir. I would mention one fact. The directive principles have laid down a number of liabilities on the future State. What the amendment proposes to do is to supply some assets to meet the liabilities created by the constitution as at is going to be framed. In that way I welcome the suggestion for a mild type of socialisation. The socialisation envisaged in this amendment is not a full-fledged socialisation. For instance, it does not include the nationalisation of land which is at present the active policy of many of the States in India. Therefore to say that the mover wants to make any revolutionary change or fundamental change is wrong. In must be remembered that we are creating liabilities for the future State of India saying that it shall do this, that and the other. Is it wrong to attempt to place some funds also at the disposal of such a State ?
Let me remind the House that when the Eighteenth Amendment to the American Constitution was brought forward to introduce Prohibition, the fact that nothing of that nature (about Prohibition) existed in the Constitution of the United States of America did not prevent the Eighteenth Amendment being moved. Similarly, when the Amendment was repealed six years afterwards, there was nothing in the Constitution to stop it. Is there any provision in the British Constitution for nationalising mines, the State Banks and the Iron and Steel industries? There is no provision and yet they are doing all this. If the existing Constitution is not a bar to the Labour Party bringing in socialist changes, I fail to understand how the provision made in this amendment would prevent the Conservative Party from coining to power and not enforce these measures? This is not a justiciable right. It is just a directive principle of State policy. A political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed." Not even the President of the Union has been authorised to put his foot down when he sees a State government going against the directive principles. I therefore suggest that bringing forward of this amendment will not prevent a certain political party from coming to power and there is nothing wrong. These directive principles, as they have been laid down, are singularly inoperative. They merely say that if the people and the Government are good they will observe these directives. I do not think there is any need for having any ineffectual directives at all. It is only when you provide a law or fix a certain standard that you have to provide for those who are not up to that standard. It is just to prevent transgression. And where is the provision here to prevent this? All the directive principles can be ignored by the State Governments and there is no remedy for it. Even the President of the Union cannot do anything to see that the directive principles are observed. The Central Legislature cannot bring forward any motion for the Government which ignores these directive principles to be dismissed or some alternative being adopted. In the Instrument of Instructions issued to Governors under the Government of India Act there was authority given to the Central Government or Secretary of State to see that those instructions are carried out. But here we have provided nothing: like that. At least I do not find anything like that and I shall be obliged if Dr. Ambedkar will point out to us any method by means of which transgressions by the Governments of the States of the directive principles can be proceeded against. There must be some method of
intervention by the Legislature. The provincial legislatures cannot intervene because the provincial Governments are responsible Governments. If there happens to be a going back on directive principles, it is not the Ministers alone, but the entire legislature that would be responsible for it. So, there must be some superior authority to examine whether the directive principles are followed or not. Unless some provision is made on these lines it will only go to prove what one Honourable Member suggested, viz., that these principles have been brought in just to silence criticism and to have a good sign-board that we have good intentions, without having any intention of following those directions. I therefore suggest that the House should examine the amendments rather more dispassionately and, if there is anything good in these amendments, because of the fact that they have been brought forward by a Member who is not persona grata with the majority, they should not be rejected. We are framing a Constitution and in that connection I appeal to the House to be more generous, more conciliatory and more sympathetic and accept the things as they are and not think that by means of these amendments some party will gain advantage. It is not so. It is very necessary that some kind of provision for socialisation should be there. I say this though I do not go as far as Shri Damodar Swarup. But let us give some indication of our trend of thought in our Constitution. Take the case in question of the nationalisation of coal mines accepted by the British Government long ago as an ultimate goal. The Committee which reported on this question in 1935 accepted it as the ultimate goal, though there was then a Conservative Government in power in England. I suggest that these amendments should be dispassionately considered and if there is anything good in them it should be accepted by the Mover of the draft Constitution.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, from the point of view of making a Constitution for our country, this Article is of great importance. It contains at least a fourth part of the aim which we have in view. For, in the Preamble we say that we are drawing up this Constitution with the aim of securing Justice, Equality and Fraternity. Sir, this clause is the only clause which directly deals with justice and justice has been defined here as justice, social, economic and political. In fact, Sir, it accommodates all that we desire. It accommodates all the revolutionary slogans in a particular form. It is social and economic justice that is demanded by the most radical of the radicals of the world. This clause is in fact the pivotal
point in the Constitution, but still I am inclined to criticise its language. The clause from the language point of view is not strong; it is very halting. Our aim in framing this Constitution is to secure social, economic and political justice, but in the clause as it is worded, unfortunately there are so many halting sub-clauses. It says, "The State shall strive to promote". I think the amendment moved by my honourable friend, Mr, Naziruddin Ahmad, makes the clause read better.

Shri Roiuni Kumar Chaudhari (Assam: General) : On a point of information, Sir, as the honourable member is supporting this clause, may I ask him kindly to explain the word "inform" used in this clause.

Shri Maharir Tyagi: "Inform" means animate the institutions of national life. "Inform" is the most idiomatic word which is used in that clause. It adds beauty to the clause. "Inform" means that in the making of the institutions justice should be the foundation. You should not take the word "inform" in the ordinary meaning of the Information Department.

Sir, this clause is very halting. I appeal to Dr. Ambedkar and his other colleagues to accommodate the wishes of the House on all sides. When we want to put something real in the Constitution, why should these lawyers come between our wishes and the Constitution? They should make it absolutely plain that the purpose of the Constitution is to secure justice, social, political and economic. So,-Sir, why should they introduce the words "strive to"? Suppose a man wants a recommendation from me and I say, "I will try", it means that I have not given a promise. Why not say, "The State shall promote"?

Then it goes on to say, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, etc." Why introduce so many halting phrases in this clause? Why say, "as it may"? If a government cannot do it, we do not want that government. If a State cannot do it, of what use is that State to us? The function of a State is taken to be only the maintenance of law and order by means of the army and the police. We do not want a police state. In fact, all order and tranquillity which reigns over mankind is not the effect of any government in the world. Its origin lies in the principles of society. Order would remain intact, even if the formality of having Governments had been
done away with. The desire to associate is an instinctive feature of man, and so the credit for the peace and tranquillity of the world goes to the individuals who make up the society. The first and the foremost duty of a Government is to promote the welfare of the people. That is why governments are there. If a Government cannot do this, they should have the honesty to move out and give place to others. Sir, it must be made incumbent on the State to promote the welfare of the people by securing justice, social, economic and political, without introducing the words "as it may" I appeal to Dr. Ambedkar to listen to the advice of those who have come here from the people and also of those like me who have no legal knowledge gained in law colleges, in England or elsewhere—unfortunately my education has been by experience of the people—I therefore plead and request the House to accommodate the wishes of the people. I hope the wordings of this clause will be changed by my lawyer friends with a view to make it incumbent on the Government to promote the welfare of the people. I am not a man of words; I am a man of ideas and action. I can only give ideas. Dr. Ambedkar is a man of words and therefore he may be able to devise suitable words to convey the idea. This clause must be made very strong and unequivocal. It should be made the first and foremost duty of the Government to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all our institutions. If this suggestion of mine is accepted, the most radical of radicals will be accommodated.

Shri Mohanlal Gautam: Is the discussion going to be closed now?

Mr. Vice-President: I have given a reasonable time for discussion, both for and against the amendments.

Shri Mohanlal Gautam: Will you please permit me to speak?

Mr. Vice-President: I maintain that we have had a reasonable amount of time—merely an hour—for discussion and Dr. Ambedkar should now address the House.

Shri Mohanlal Gautam: My submission is that I gave notice of an amendment. It is only a chance that Seth Damodar Swarup's amendment was placed at the top and mine below it and therefore, you did not think it
desirable or necessary for me to move it. I stood twice or thrice and I am unfortunate that I was not given a chance to speak on my amendment.

Mr. Vice-President: I think the amendment was discussed at full length and I do not think there is any use moving it now.

Shri T. T. Krishnamachari: Certain observation have been made by a member in regard to the manner the Congressmen in this House are acting I think, Sir, it is the duty of the Congressmen to repudiate this statement. May I ask you, Sir, to give us an opportunity of repudiating those charges "Which have been levelled against us ?

Mr. Vice-President: I think we had better close the discussion, here.

Shrimati Renuka Ray (West Bengal: General): I think this is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles, it is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in my opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy'.
and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That idea is economic democracy, whereby, so far as I am concerned, I understand to mean, ‘one man, one vote’. The question is: Have we got any fixed idea as to how we should bring about economic democracy? There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to the instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really twofold: (i) to lay down the form of political democracy, and (M) to lay down that our ideal is economic democracy and also to prescribe that every Government whatever, it is in power, shall strive to bring about
economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive', and phrases like that I think he has misunderstood why we have used the 'strive'. The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

As to the rest of the amendments, I am afraid I have to oppose them.

Mr. Vice-President: Only two amendments have been moved; I shall put them to vote. The first is amendment No. 863 by Shri Damodar Swamp Seth.

The question is: "That for article 30, the following be substituted:—

30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the shall direct its policy towards securing:—

(a) the transfer to public ownership important means of communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise\as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries v& cooperative basis."

The amendment was negatived.
Shri H. V. Kamath: I am not pressing my amendment, Sir.

Mr. Vice-President: The next one is amendment No. S67 by Mr. Naziruddin Ahmad.

The question is:—

That in article 30, the words 'strive to' be omitted.”

The amendment was negatived.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, Mr. Kamath must have the leave of the House to withdraw his amendment.

Mr. Hussain Imam: The Mover has accepted the amendment!

Mr. Vice-President: Does the House give him leave to withdraw?

Several Honourable Members: Yes.

Shri L. Krishnaswami Bharathi: I object to leave being granted.

The Honourable Dr. B. R. Ambedkar: If he wants to withdraw, I have no objection; let him withdraw.

Shri H. V. Kamath: There seems to be some conflict in the House over this. One Honourable Member thinks that Dr. Ambedkar has accepted it. I did not know that he had accepted it. If he has accepted it, then, no question of withdrawal arises.

Mr. Vice-President: Do you wish to withdraw?

Shri H. V. Kamath: Yes.

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

Mr. Vice-President: The question before the House is:

"That Article 30 stand part of the Constitution.”

The motion was adopted.
Article 30 was added to the Constitution.

**Shri Mahavir Tyagi:** Does this clause pass with the word 'the'? Mr. Vice-President: It has been passed as it stands now.

**New Article 30-A**

**Kazi Syed Karimuddin:** Mr. Vice-President, Sir, I move:

"That after article 30, the following new article be inserted:—

'30-A. The State shall strive to secure prohibition of manufacture, sale or transportation or consumption of intoxicating liquors for beverage purposes."

I need not give a very long lecture in this respect. In the American Constitution this has been described as a Fundamental Right. I will read Amendment 21 of the American Constitution:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Sir, it is a fact known to everybody that Mahatma Gandhi was preaching all his life that the use of liquor and the manufacture of liquor should be prohibited in India; and in fact in keeping with that policy the Provincial Governments in India have been framing laws and are applying those laws. I am really surprised that in the Constitution which is drafted, there is no mention about the prohibition or manufacture or sale of liquors in India. We know that thousands of families have been ruined and are miserable on account of this evil. In the directive principles of the State, which according to Dr. Ambedkar have no sanction, they ought to have been embodied because the State would have tried their utmost to secure prohibition of liquors. The rejection of this additional clause will be the rejection of the wishes of Mahatma Gandhi.

**Mr. Vice-President:** Amendment No. 873—not moved. Any Member who wishes to speak on amendment 872 may please do so now.
**Prof. Shibban Lal Saksena:** Sir, my friend Kazi Karimuddin Sahib has raised a very important issue. Although I could not agree that a separate clause for this is necessary here, but I do wish that in clause 31 there should be a sub-clause incorporating that the State Policy is prohibition. In fact the Congress from the very beginning since 1920 has placed prohibition as one of the chief planks of its struggle. Many of us have gone to jail for picketing liquor shops and toddy shops and I do not think it is proper that in this Constitution when we are laying down the Directive Principles of State policy we should not make mention of prohibition. Of course there is a general clause in part (vi) of 31 which says:

"That childhood and youth are protected against exploitation and against moral and material abandonment"

Of course its meaning is almost the same but that is far too general and I think that prohibition is something so important that this should be mentioned as one of the sub-clauses in article 31. I hope on this matter it is not necessary to give long arguments as it is well-known that many of our Governments have already declared several districts dry. Madras has the honour of declaring first the whole of the province dry. We do not wish to live by the excise revenue which is in fact the revenue got by the ruin of so many labour class families. I therefore think that in our country, when all the religions are unanimous about prohibition, this amendment of Kazi Karimuddin should be mentioned somewhere in Article 31. Because this is something on which the entire House is unanimous, I hope Dr. Ambedkar will see to its inclusion.

**Seth Govind Das** (C.P. & Berar): Sir, I do not wish to press Honourable Dr. Ambedkar to accept this amendment but at the same time I entirely agree with my honourable friend, Prof. Saksena that we are pledged to the policy of prohibition. Everybody knows that in spite of the reduction in revenue in various provinces we follow this policy. It is true that up till now complete prohibition is not there in every province, yet an effort is being lined to bring about complete prohibition not only in the provinces but in the Centrally administered areas also. Now, Sir, it would really not be in accord-ance with our traditions that when we are making a new Constitution for our Inland, no mention is made about prohibition. I hope that the Honourable Dr. Ambedkar and the Drafting Committee will find out, if this amendment is not accepted,
a suitable place in the constitution where a reference is made to prohibition and I think that every community of this land, Hindus, Muslims, Christians, Sikhs, Parsees and others will agree that the principle of prohibition must be accepted in this country and our Constitution should say something with respect to prohibition. Though, Sir, I am not in a position to support the amendment I would request the Honourable Dr. Ambedkar to make the policy in this respect clear.

Mr. Mohamed Ismail Sahib: Sir, I have got the honour to support the amendment that is placed before the House. Sir, you know with regard to the principle underlying this amendment, there has not been and there is not any difference of opinion amongst any section of people. Almost all sections political or otherwise, are agreed upon this principle. Therefore, Sir, one would have expected the Government to have made this principle the subject-matter of even a mandatory and statutory article. It is really a very mild amendment to say that this principle on; which there is no difference of opinion in the country should be made at least part of this Part, viz. of Directive Principles. I therefore, Sir, earnestly request the Honourable the Mover to accept this amendment; though he may not accept it as part of article 30, he may, as was suggested by one or two of my friends, make it part of article 31. I would request him once again to make prohibition find a place in the Constitution because there is absolutely—I may say almost absolutely—no difference of opinion in the matter. Whatever may be the loss in the matter of revenue, people are agreed that the Government must find other ways and means of revenue and should enforce this principle which the Congress Party as well as the other parties had been advocating for decades.

Shri Biswanath Das: Sir, I am very sorry I have to oppose my honourable friend, the mover of the amendment: my grounds are there. We have been—I mean the nationalist sections of the country have been—wedded to the principle of entire prohibition but unfortunately my honourable friend wants and proposes as a Directive part of the Constitution that we should prohibit only the manufacture and consumption of liquor. What becomes of opium? Opium is the worst evil that is prevailing in the country. Sir, China and the eastern countries are in their present position because of opium-eating. Therefore, I for myself would not be a party to any prohibition if it does not
include the prohibition and manufacture of opium for purposes of consumption.

Sir, I am not in favour of having a reform of this magnitude to be put in the directive principles in the Constitution. I consider the Directive Principles of the Fundamental Rights in the Constitution as the Sermon on the Mount. Shri Bhagavat has stated that there is nothing like small and great but fact remains that there are small and great. Therefore nothing will be gained by putting all and sundry in the Fundamental Rights. Under these circumstances I feel that any additions to what we have already is going to serve no useful purpose. We are wedded to democracy. We are going to have a national government. A National Government even today led and guided by not less persons than Pandit Jawaharlal Nehru and Sardar Patel will not have their way if they do not carry the people with them. That being the position, I do not see why the question of prohibition should come in at all here as a Sermon on the Mount. Sir, despite the difficulties, despite the financial Stringencies, despite various limitations, the provincial Governments in Madras and other Provinces have already adumbrated the reform. I plead patience with friends. For myself I want an all-India policy in which the provinces and the States should go on together fighting against this mighty demon of drink and opium consumption.

Under these circumstances I do not see how any useful purpose could be served by only putting this hi the framework of the Constitution as a Directive Principle. Directive Principles are of course useful and they will serve as a beacon light to the incoming ministries. They will serve as a sort of test for the work of the Ministry after the term of office of five or three years. As test, they remain for ever, but that does not bring us anywhere near our goal if we include this in the Constitution and keep it as a Directive Principle. Under the circumstances I am strongly opposed to this addition which will mean nothing more than another Sermon on the Mount. Sir, I want a practical step to be taken and the practical step is being taken, despite difficulties, and. I have no hesitation in believing that the installation of a national Government of India, guided and led by a Ministry which is responsible to the Honourable Members of the Constituent Assembly or the National Parliament, will have no other option than to take up this great reform on hand without any delay. Sir, despite difficulties, even the Central Government, ridiculous though it looks, is thinking of having prohibition in
the province of Delhi. I state all this merely to show the anxiety of the Government, i again appeal to the Honourable the Mover that nothing can be gained by appealing to sentiments in the name of Mahatma Gandhi. We must look to the practical aspect of the question, and nothing will be served by putting this in the Directive Principles. Under these circumstances, I stand opposed to the amendment.

Shri Mahavir Tyagi: Sir, I have a similar amendment, and that is No. 999* but a practical joke has been played here and my amendment has been completely reversed by the omission of two words. I do not know where and at what time this clerical mistake has occurred or when. My amendment reads thus—

Mr. Vlce-President: But I cannot permit you to move your amendment now.

Shri Mahavir Tyagi: No, Sir, I am only quoting it. It reads:

"That at the end of article 38, the following words be inserted:—

'and shall endeavour by means of both temperance and prohibition the use by mouth of liquor and other intoxicating drugs except on medical grounds'."

The words should be "shall endeavour to stop by means of both temperance and prohibition. .... etc." I am reminded of a couplet in Urdu which with your permission I will repeat—

Itahi hamse mai khawaron ko

woh dunya ata hoti;

Jahan hukman piya Kerte,

na pite to saza hoti.

Well, Sir, on this occasion, I have come to oppose this amendment, not because I disagree with its contents but because he has suggested it a bit too early. I feel that the amendment of Syed Karimuddin is one to which we can have the support of an overwhelming majority of this Assembly. But my difficulty is that this is not the proper place where this amendment should
come up. My friend wants k to come in as article 30-A. My suggestion is that it should come below article 31 where all the directives have been enumerated; that is the proper place for his amendment.

That there must be prohibition is admitted to by all. I submit that Gandhiji's foremost plank of constructive programme was prohibition (cheers), and we all stand pledged to this programme; we had pledged in front of Gandhiji. We have repeated that pledge tens of times every year on Independence Dvays and now we cannot falsify that pledge before the nation. The time has now come when we must implement our programme of prohibition. We must bring it in the Constitution. I am in full agreement with the' spirit of the amendment, but it is misplaced. I must submit that the Constitution as it is, and I have repeated this many times before, is devoid of Gandhiji's ideas. It is very poor from that point of view. We have not accommodated him in the least. I had hoped that even if he be dead, we would keep his spirit alive, but he stands dead even in this Constitution. Without his spirit, I submit that the Constitution is dead. We had given our pledges to stand by his programme, and, we had done so in the most unambiguous and unequivocal manner; Sir, on such questions we Congressmen cannot compromise, whatever may be the consequences. This prohibition has been in his programme. It has been also in our Election Manifesto, on which all members of the provincial Assemblies were elected, and it is through those elected bodies in the provinces that we have been sent to this Assembly, indirectly. So basically the whole of "our electorate has voted for the programme of prohibition, and if now we do not bring it in here, we shall be betraying the wishes and the trust of the whole electorate, and the people on whose behalf we say, rightly or wrongly, that we are making this Constitution. Let us not forget that we are using the name of the people. If we do not appreciate their desires and do not accommodate them in this Constitution, we shall have no moral justification to use the name of the people. If we cannot accommodate even the idea of prohibition in our Constitution, then what else have we been sent here for? We have been talking of revolutions, and about all sorts of progress. But if we cannot have even this small reform in our Constitution; the book will not be even worth touching with a pair of tongs. I therefore submit that if the Draft Constitution does not contain prohibition, it does not contain Gandhiji, because where there is liquor, Gandhiji cannot be, and where Gandhiji is, liquor cannot be. That is the position. Therefore, I submit
that this amendment may be accommodated at some proper place in the Constitution. I support the spirit of the amendment, but only oppose it because it is proposed to be put in a place which is not the proper one to incorporate it. With these words I oppose not the spirit, but the place where my friend wants his amendment to be inserted.

**Kazi Syed Karimuddin:** If Dr. Ambedkar accepts the spirit of my amendment and is prepared to accommodate it in article 31, I will have no objection in withdrawing it.

**B. Pocker Sahib Bahadur:** Sir, I heartily support this amendment and in doing so I do not want to take up the time of the House except to draw its attention to one fact. One of the previous speakers mentioned financial difficulties which will arise out of prohibition. I only want to draw the attention of the House to the fact that prohibition has been accepted by the Government of Madras, and by the Madras legislature and they have worked it out wonderfully well. It is working wonderfully well inspite of financial difficulties, and these difficulties are being overcome. Therefore, I would say financial difficulties should not stand in our way. As was pointed out by the previous speaker, if we have got any real reverence for the views of Gandhiji, we ought to incorporate prohibition at least in the directive principles, if not in the mandatory provisions of the Fundamental Rights. It is not at all a difficult thing to include it in the chapter dealing with the directive principles.

After all, it only says, Government shall strive to achieve what is stated there. Therefore I appeal to the House that the Members here should not allow it to be said of them that soon after Gandhiji's death, his wishes and views were also buried nine fathoms deep.

**Mr. Vice-President:** The House stands adjourned till Monday the 22nd November, 10 a.m.

The Assembly then adjourned till Ten of the clock on Monday, the 22nd November, 1948.
**CONSTITUENT ASSEMBLY OF INDIA - VOLUME VII**

**Monday, the 22nd November 1948**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Ten of the Clock, Mr. Vice-President, (Dr. H. C. Mookherjee), in the Chair.

Mr. Vice-President (Dr. H. C. Mookherjee): Before we commence the proceedings of today, I beg to apologise to the House for my delay which I may add is not due to any fault of my own.

We shall now resume discussion on new Article 30-A. Does any Member want to speak on amendment No. 872?

Shri Mahavir Tyagi (United Provinces: General): Sir, the other day I had spoken at length on this amendment, and I had put in a request with the Mover of this amendment to kindly agree to postpone the discussion on this question just now and have it when my amendment No. 999 comes. I hope, if the honourable Mover agrees, then it will be better that you be pleased to postpone discussion just now, and take it up when the proper occasion comes.

Mr. Aziz Ahmad Khan (United Provinces Muslim): Sir, this amendment was proposed by Mr. Karimuddin who is not present here today but at the same time the amendment was sent by me and him both, and he has specifically authorized me to submit that in case there is an agreement or an undertaking given by the Honourable the Law Member that he is prepared to incorporate the principle of it anywhere in the Constitution, then the amendment may be withdrawn; and I agree to it. Therefore, I am quite prepared to submit to your decision that consideration of the amendment may be delayed till we come to article 38.

The Honourable Dr. B. R. Ambedkar: (Bombay: General): Sir, I have not followed exactly what it is, but if it is a matter which relates to prohibition...........

Mr. Vice-President: Yes.

The Honourable Dr. B. R. Ambedkar: Then, it has been agreed between myself and Mr. Tyagi that he will move an amendment to Article 38, and I propose to accept his amendment. So, this matter may be postponed until we come to the consideration of Article 38.

Mr. Vice-President: Then we shall pass on to the next amendment No. 873.

Shri Basanta Kumar Das (West Bengal: General): Sir, I am not moving it.

Mr. Vice-President: The next amendment is No. 874.

Shri Raj. Bahadur (United State of Matsya): Mr. Vice-President, Sir, I tabled this amendment because it appeared to me that the Draft Constitution contained no provisions to secure the
most elementary justice or the barest chance of survival as decent and self-respecting citizens of the Indian Union, to the people of those territories in our country which are at present under the control and possession of feudal lords, the jagirdars. I want to invite the attention of this Assembly to the unfortunate circumstances - circumstances which provoke sympathy and pity at one and the same time - under which these people are living. But before I do that I should read my amendment. The amendment runs as follows:

"That after article 30, the following new article 30-A be added:

'30-A. The State shall not recognise feudalism in any shape or form and no person shall be entitled within the territory of India to any special rights or interests on the basis of property falling in the category of Jagirs or Muafis'."

Sometimes the position of these jagirdars and these feudale states is confused with that of the zamindars and zamindaries. I submit that the two are essentially different in nature, conception and origin. In fact there is no resemblance or similarity between the two. The jagirdars find their origin in past history. They descend from certain ruling families in the States. In other words they are the scions of these families. They enjoy the right to hold properties in their jagirs and estates without paying anything absolutely, or if at all very little, to the State or Government to which they owe their origin. They enjoy independent judicial powers. They have got the right to levy even customs duty in some cases. In some other cases they have got the right to have a separate Police force.

They also levy sales tax. Their succession always operates on the principle of primogeniture. As such, vis-a-vis the State to which they belong or vis-a-vis the Central Government, their position is one of quasi-sovereignty. I should therefore submit that there is nothing common between the Zamindars and feudalists. Vis-a-vis their people, their rights and authority are almost unlimited. They have the right to levy extortionate rates of rents from the kisans (tenants) under them. It is common knowledge that they enforce begar, that is, forced labour, not only for ordinary purposes of agriculture but even for menial and humiliating jobs.

Another thing that constitutes an insult to humanity itself is the imposition of a duty known as "Lagbag" on marriage or other occasions as also the way in which they impose certain humiliating social restrictions as for example in some cases these feudal lords do not allow their ryots and kisans to ride horses in their presence. If there is a marriage party, the bridegroom cannot ride a horse. The womenfolk of their ryots are not allowed to wear even silver trinkets or ornaments. In some cases, this goes to the extent of refusal of the right to hold an umbrella even. I therefore invite the attention of the House that if in a free India such conditions exist and are tolerated then this would mean clearly a denial of democracy and liberty. It is why when we address these people and tell them that "Swaraj has come", they look blankly at our faces. They refuse to believe that Swaraj has really come and we find ourselves in a very awkward position. It is true that now with the democratisation of the
States, we have got popular Ministers functioning in the States, but in some of the States where these jagirs or feudal estates exist there are some sort of mixed Governments and Ministries, and our popular Ministers are unable to bring any succour or relief to this hard-pressed and oppressed section of the people.

If we consider the problem from another point of view, we can also see that in our Constitution, there are three classes of States or "units" - firstly, Governor's provinces, secondly, Chief Commissioners' provinces, thirdly, the acceding States. But it is obvious that these feudal estates enjoying a sort of quasi sovereignty over their people, constitute a class by themselves. It should have been therefore meet and proper that there should have been something in the Constitution to provide for the securing of social justice, of liberty and democratic freedom to the people in these feudal estates. Unfortunately it is not there. The simple question that arises from the amendment I have tabled is whether this Constitution of ours should or should not contain something in order to ensure even an elementary freedom for these people. As far as the Draft Constitution is concerned, we have been assured that the position of the States, in course of time or may be even before we finish the consideration of the Draft Constitution, shall be brought on a par and equality with the rest of the units of the Indian union. But at the present time there is definitely a difference in the Draft Constitution between the treatment proposed for the present States Unions or States on the one hand and the provinces on the other. This goes to the extent that the people of the States cannot come in the defence of their fundamental rights even, before the Supreme Court. If you want to appeal regarding certain matters there is a special procedure provided for it and that procedure would make it very difficult for us to get even our rights vindicated from the Supreme Court. When I commend this question to the House, I presume that the House will earnestly consider it. I am not very serious to move my amendment. What I am very serious about is that when I go back to my constituency I may face the people with an easy conscience. I want to know in case they ask me, "What have you done for us who are so much hard-pressed under the thumb of these feudal lords?" what answer I shall give to them. I want this answer from this Assembly. It is not my purpose to delay the proper consideration of the Draft Constitution by any frivolous or superfluous amendments, but I submit that the House should come to the relief and succour of these hard-pressed people and our Constitution should contain adequate provisions to secure this.

Mr. Vice-President: I have not been able to make out whether this amendment has been formally moved.

Shri Raj Bahadur: I have not formally moved it. I have simply had my say on it, to invoke the attention of the House on this question.
Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, it is very unfortunate that several amendments dealing with this subject have been scattered pell-mell in this list of amendments. It would have been much better if these amendments relating to village panchayats had been taken up all together and had been placed in the list also in the same order. Unfortunately, however, that has not been so, and I am constrained to move the amendment as it appears on the Order Paper, because by not moving it I do not want the impression to be created that I have resiled from the stand which I took in the course of the debate on Dr. Ambedkar's motion for consideration of the Draft Constitution. I am very happy to see that my feeble voice was reinforced by the powerful support of my veteran and elder colleagues in this House and I am glad that several amendments on this subject have appeared. If you are to disposed, Sir, I would formally move it now and request you to hold it over for consideration till the other amendments come up for discussion or an agreed amendment comes up. Whatever the case may be and whichever amendment on this subject is accepted by the House, the other amendments will be withdrawn in favour of that, and mine also will be withdrawn later on; but as matters stand, I have no other go but to move it before the House. I do not want to traverse the ground which I covered in the course of my speech on Dr. Ambedkar's motion. I would only express the hope that where the type of capitalist, parliamentary democracy typified by Europe and America and the centralised socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern, and that we would be able to realise the vision of Mahatma Gandhi's Panchayat Raj and, through this system of decentralised socialism, we will lead mankind and the world to the goal of peace and happiness.

I, therefore, with your leave formally move this amendment and make a personal request to you to hold this over till such time as the other amendment to this Article are ready for discussion. I shall read my amendment.

"That after article 30, the following new article be inserted:

'30-A. The State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration.'"

Mr. Vice-President: Does Dr. Ambedkar wish to say anything on this amendment?

The Honourable Dr. B. R. Ambedkar: I move that this matter do stand over.

Mr. Vice-President: I find that there is an amendment, to add a new article 31-A, numbered 927 in the list, standing in the name of Shri K. Santhanam. This, as well as that amendment may be considered together. Is it the wish of the House that this may be done?

Honourable Members: Yes.

Article 31.

Mr. Vice-President: We shall then pass on to article 31.
An Honourable Member: Article 30 has not yet been put to the House.
Mr. Vice-President: It has been put and adopted.
Mr. Vice-President: The House will now take up article 31, for discussion.
Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:
"That in clause (i) of article 31, the words 'men and women equally' be omitted."
The clause in question is to this effect, that "the citizens, men and women equally, have an adequate means of livelihood." I submit, Sir, that the words 'men and women equally' are unnecessary and redundant. In fact with the acceptance of this amendment, the clause would run thus:"that the citizens have the right to an adequate means of livelihood." I submit, Sir, that the words 'men and women equally' are unnecessarily and redundant. In
Pandit Lakshmi Kanta Maitra (West Bengal: General): Did the Honourable Member say, "masculine" means "feminine"?
Mr. Naziruddin Ahmad: 'Masculine' includes 'feminine'in interpretation. 'Every person' mentioned in article 5(a)means certainly feminine as well as masculine. Therefore, as the word 'citizen' has been precisely defined and that defined expression 'citizen' has been used in this article, I think the addition of the words "men and women equally" is unnecessary. If we are to make it clear that any law shall apply to men and women equally and if we are forced to declare it everywhere, then this expression has got to be used unnecessarily in many places. Although I agree with the principle that all citizens shall have certain rights without distinction of caste or creed, sex or colour, these words need not be there.
The Honourable Dr. B. R. Ambedkar: I oppose the amendment, Sir.
Shri Mahavir Tyagi: Sir, I have a suggestion to make. There are a number of amendments suggesting improvement in language or change in words. They do not propose any change of the spirit or the meaning of the article concerned. That being so, may I suggest that they may be collected together and sent to a committee which you may appoint to consider and dispose of? If this is done much of the time of the House can be saved for the consideration of vital and important amendments.
Mr. Vice-President: I am quite willing to fall in with the suggestion, if that is the wish of the House. Probably we shall consider this suggestion later, after two or three days.
Shri Lokanath Misra (Orissa: General): Does it mean an adjournment of the consideration of these motions?
Mr. Vice-President: No. Why should we adjourn it? We can take a vote on it at once and come to a decision.
Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move: -
"That in clause (i) of article 31, for the words 'that the citizens, men and women equally, have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

Sir, in commending this motion to the House, I would like to be understood in the first place that this is not merely an attempt to improve upon language. I do not profess to be an authority on the English language, and much less on the mysteries of technical draftsmanship as is implied in this language. Mine is only a commonsense view of this matter. The term "the citizens", as it is used in this clause, is so collective that I am afraid its distributive sense is apt to be lost sight of. I am, therefore, proposing to substitute for the words "the citizens" the words "every citizen" so that each and every member of the society shall have this right to an adequate standard of living. The distributive sense is brought out much better by my amendment, this very language is used in another article in this Chapter itself later on when they are speaking of the right to primary education. I am therefore suggesting no innovation which is not authorised by the draftsman's own terminology.

It is, of course, beyond me to say why in one article, in one and the same Chapter, they use the collective expression "the citizens", while in another article in the same Chapter they use the words "every citizen" and in a third again some different form. This, Sir, is the reason why, not understanding the distinction that may have been in the mind of the draftsman for using a variety of expressions to convey perhaps the same meaning, at least to a commonsense man, I am proposing this amendment. If the intention is that the words "the citizens" are used in the collective sense, then I submit that would be an offence more of substance than I am at present inclined to believe while reading this article. For taking the term collectively it can at best express a vague hope for the happiness of the average citizen. Now, the law of averages is a very misleading law, and will give you a sort of satisfaction for which in truth there can be no basis. I have no desire to convert this debate into any kind of light-hearted exhibition of one's capacity to entertain the House; but I cannot help bringing here to the notice of the House the mischief that the vagaries of the mere mechanical statistician can reduce the law of averages, and give a result which is totally opposed to fact. In illustration, may I say that I have heard the story of a women's hostel having to be reported upon, when the trustees of the hostel came to know that there were ten girls, and one of them had apparently misconducted herself. There was some trouble and a statistical authority was called in to investigate and report on this hostel. He examined the inmates and made the famous report saying that everyone of the inmates of the hostel was ninety per cent virgin and ten percent pregnant. In this statement he was simply applying the law of the average.

I do not know whether it is fully appreciated that this kind of perpetration is within the power of the expert to achieve; and as I do not wish the Constitution to lead to this kind of expert
technical perfection, I wish to substitute the words "every citizen" for the words "the citizens", which will leave no room for doubt in the matter.

Another reason why I am moving this amendment for dropping the words "men and women equally" is that it smacks too much in my opinion, of patronising by men over women. There is no reason for man to believe that he is even an equal to woman, let alone superior. According to that view which I have always entertained that man is a somewhat lower animal as compared to woman, I feel that this exhibition of patronage by man over woman, as if we were conferring any special right, ought to be expunged from the Constitution.

Citizens are citizens irrespective of sex, age or creed; and that being one of the fundamental propositions accepted by the Constitution, I see no reason why we should say "men and women, equally" as if we were pleased to grant equal rights to men and women, rights moreover which are only directives, and therefore not necessarily to be implemented immediately. For these reasons, I suggest that this amendment ought to be taken, not merely as a verbal amendment, but one of substance, and I trust that those responsible for moving this Constitution before the House will accept it.

Mr. Vice-President: I understand that even though amendment No. 884 is to be negatived, I must give an opportunity to Mr. Naziruddin Ahmad to speak on it.

Mr. Naziruddin Ahmad: Not moving it, Sir.

Mr. Vice-President: Then 885, Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (ii) of article 31, the following be substituted:

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority or statutory corporation as may be provided for in each case by Act of Parliament';"

Sir, the original clause for which I propose this one in substitution stands as follows: -

"'(ii) that the ownership and control of the materialre sources of the community are so distributed as best to subserve the common good;"

If I may venture to say so, Sir, the clause, as it stands can lend itself to any interpretation; and, with the background on which we have been working, with the traditions under which the administrative machinery is operating, and the allegiance which vested interests command in this House, I am afraid that, if this clause is allowed to stand as it is, instead of serving any purpose, it will make the proper development of the country or the justre distribution of its wealth, or bringing in a fair measure of social justice, only an empty dream.
I suggest, therefore, that it should be substituted by what I have just read out, where by the ownership, control and management of the natural resources shall be vested in the community collectively, and shall be exploited, developed and worked by the community as represented by the Central or Provincial or Local Governments, or by any statutory corporations that may have been created for the purpose.

I think there can be no dispute on this proposition that, as regards the natural resources that I have tried to describe, no human being has lent any value to those resources by his or her own labour.

They are gifts of nature. They are the initial endowment which each country has in greater or less measure; and, in mere equity, they should belong to all people collectively. And if they are to be developed, they should be developed also by, for, and on behalf of the community collectively.

The creation or even the presence of vested interests, of private monopolists, of those who seek only a profit for themselves, however useful, important, or necessary their production of such natural resources may be for the welfare of the community, is an offence in my opinion against the community, against the long-range interests of the country as a whole, against the unborn generations, that those of us who are steeped to the hilt, as it were, in ideals of private property and the profit motive, do not seem to realise to the fullest.

In the resources that are mentioned in my amendment not only is there no creation of any value or utility by anybody’s proprietary right being there, but what is more, the real value comes always by the common effort of society, by the social circumstances that go to make any particular interests or resources of this kind valuable.

Take mines and mineral wealth. Mines and mineral wealth, as everybody knows, are an exhaustible, a wasting asset. Unfortunately, these, instead of having been guarded and properly protected and kept for the community to be utilised in a very economical and thrifty manner, have been made over to individual profit-seeking concession-holders and private monopolists, so that we have no control over their exploitation, really speaking, for they are used in a manner almost criminal, so that they can obtain the utmost profit on them for themselves, regardless of what would happen if and when the mines should come to an end or the stored up wealth of ages past is exhausted.

I suggest, therefore, that we allow no long range interests of private profit - seekers involved in the utilisation of these mines and the mineral wealth, that on the proper utilisation of these mines and mineral wealth depends not only our industrial position, depend not only all our ambitions, hopes and dreams of industrialising this country, but what is much more, depends also the defence and security of the nation. It would, therefore, I repeat, be a crime against the community and its unborn generations if you do not realise, even at this hour, that the
mineral wealth of the country cannot be left untouched in private hands, to be used, manipulated, exploited, exhausted as they like for their own profit.

It is high time, therefore, that in this Constitution we lay down very categorically that the ultimate ownership, the direct management, conduct and development of these resources can only be in the hands of the State or the agents of the State, the representatives of the State, or the creatures of the State, like Provinces, municipalities, or statutory corporations.

Another argument may also be advanced here in support of my view. By their very nature, these resources cannot be exploited economically or efficiently unless they become monopolies. In one form or another, they have to be developed in a monopolistic manner. Now monopolies are always distrusted so long as they remain in private hands and are operated for private profit. If they are to be monopolized, as I believe inevitably they will have to be, then it is just as well that they should be owned, managed and worked by the State.

It is not enough to provide only for a sort of vague State control over them as the original clause does; it is not enough merely to say that they could be so utilised as to "subserve the common good," every word of which is vague, undefined and indefinable, and capable of being twisted to such a sense in any court of law, before any tribunal by clever, competent lawyers, as to be wholly divorced from the intention of the draftsman, assuming that the draftsman had some such intention as I am trying to present before the House. We must have more positive guarantee of their proper, social and wholly beneficial utilisation; and that can only be achieved if their ownership, control and management are vested in public hands.

Considerations, therefore, of immediate wealth, of the necessity of industrialisation, of national defence, and of social justice have moved me to invite this House to consider my amendment favourably, namely, that without a proper full-fledged ownership, absolute control and direct management by the State or its representatives of these resources, we will not be able to realise all our dreams in a fair, efficient, economical manner which I wish to attain by this means.

Most of these forms of wealth, I need hardly tell this House, are yet undeveloped, or developed in a very, very superficial manner. It is to be hoped that in years to come, we shall undertake and carry out a much more direct, a much more effective and efficient Plan for the all round development of the country, in every part and in every item of our available resources. If that is so, if we are going to achieve, if we are going to take that as our first concern, for the new life that is pulsating throughout the country, then I put it to you, Sir, that without some such provision, it would not be possible to attain the objectives as quickly and as economically as we would desire.

I would only add one word. Deliberately, I have not included in the list of initial resources of the country, the biggest of them, namely land. I have not mentioned it, not because I do not believe that land should be owned, operated and held collectively, but because I recognize
that the various measures that have been in recent years adopted to exclude landed proprietors - zamindars to oust them and take over the land, would automatically involve the proposition that the agricultural or culturable land of this country belongs to the country collectively, and must be used and developed for its benefit.

For these reasons, therefore, Sir, while particularising the natural resources which we should have in common ownership and develop collectively, I have deliberately left out perhaps the most important of them all. But that I trust will not prejudice the fate of this proposition by itself. I commend it to the House.

(Amendments Nos. 886 to 891 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (iii) of article 31, the following be substituted: -

'(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there be any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

Sir, the original Article as it is drafted reads as follows:

"(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

Once again, I have to use the same argument namely that while I have taken the phraseology that is given in my amendment almost entirely from the Draft itself, I have tried to make it much more clear and unambiguous than the Draft makes it. I feel, Sir, that if the Draft remains as it is, it is liable to be interpreted in a way not at all intended perhaps by the draftsmen, or, at any rate, not understood in that sense by the reader.

I think, Sir, that monopolies by themselves are very offensive to the common good. In every country whose history is recorded, wherever they have manifested themselves, there have been cries of protest against their presence. Some of the most important decisions which have contributed materially to the growth of the English Constitution have been in regard to monopolies granted by the Crown. No fight was so strong in the ages gone by in England or France or other countries which have experienced this in a more intense form than the fight against the monopolies.

Monopolies, however, need not be created or established by direct grant or patent, or in a legal, open form that would admit itself to be caught or controlled, so to say, by the straightforward operation of any provision like this included in the Constitution or legal system in general.

Monopolies develop much more artificially; monopolies develop much more by force of the very circumstances that competition is supposed to provide. In a competitive society, we are
told, the only guarantee of the common good being served is that, by the mere process of competition amongst themselves, the competing producers will have so to reduce prices, they would have so to bring down their costs or selling price, that the largest amount of profit can be gained if the monopolised commodity is consumed by the widest number of consumers. In actual fact, however, Sir, in every country that has got industrialised, and commercialised on a wide scale, you find that the competitors soon come to realise that competition is good for nobody. Hence by arrangement amongst themselves, by all sorts of devices, like Trusts, Syndicates, and Cartels, they try to make a virtual monopoly, which may seem inoffensive on the face of it, which may even appear to be aimed at cutting out costs and reducing overheads, and thereby making the product more easily and more cheaply accessible; but which, in fact, really result in adding enormously to the increasing profit of the private proprietor.

I take it, Sir, that members of this enlightened House will be all too familiar with the history of Trusts in England or America, and of the Syndicates and Cartels in Germany or France, for me to outline it. They would easily realise how insidiously, how slowly, but how irresistibly the movement for Trustification, Syndication, Cartelisation, combination or monopoly in all important industries began to develop, what devices they adopt for holding these monopolies tightly and closely among a selected few of their own blood circle, and what part the Interlocking Directorate plays in the general direction of policy; how when competition is intense, they try to ruin every new appearance in the field, so that the field remains for ever their exclusive possession, their exclusive property.

We in this country have too bitter, too recent, too varied and too numerous experiences of the operation of foreign monopolists, who, until the other day, held power in our country, whereby any indigenous enterprise that was against the vested interests of the alien Monopolists, had to put up the most intense struggle against the monopolist outsiders. Only the other day we had the spectacle, in which the history of the growth of a great national shipping concern was outlined. Those who know the vicissitudes through which that concern has gone, would realise the long years of fight, the discouraging developments that they had to put up with, because the Government of the country in those days was a foreign Government. Because the new competing interest was an Indian interest, it did not suit the Government to allow the foreign monopolists in any way to suffer, and the native new enterprise to succeed. The latter, therefore had to suffer all kinds of handicaps and disadvantages, into the details of which this is not the place nor the time to go. The fact, however, that in spite of that, by the support of the people, by the intrinsic strength of the service they wanted to render, the enterprise has survived to this day, does not undo the principal argument that I am trying to place before the House, that private Monopolies, by their very nature, are not in the interests of the public, unless they are of the community as a whole.
A private less correct monopolist will always be a predatory creature, who will hunt and prey upon those who become consumers of his product or service. Whether it is in an ordinary industry like the manufacturing industry turning out a given product, or in any industry which is making consumer goods, or in a social service, like Education or Health, there is danger of monopolists creating strong private interest which it will never be in the interests of the country to tolerate. I should therefore forbid the very possibility of any monopoly emerging, let us say, in the matter of education or educational apparatus, let us say, in regard to health or the production of drugs, or making medicines, or the supply of surgical and other instruments and apparatuses. I would beg to submit to this House that there is every danger of our country being dominated by private monopolists unless, from the very start, in this very Constitution we make it perfectly clear that in this New India, there shall be no room for private monopolists, who would be predatory, who would be preying upon their kind as cannibals in a form that no savage or alleged savage of the Pacific Seas would do.

The Honourable Shri K. Santhanam: (Madras: General): Does the expression 'Private Monopolies' include monopolies by public companies?

Prof. K. T. Shah: I have already said in an earlier amendment that I would not only have monopolies but only monopolies when they are public, either Government owned, State-owned or owned by state Corporations. If by public companies you mean statutory companies, the answer is in the affirmative. But if you mean by public companies only those that are registered and falling under the Companies Act as public companies, then the answer is in the negative.

The Honourable Shri K. Santhanam: The expression 'private monopolies' will exclude public limited companies.

Prof. K. T. Shah: I would invite my Honourable friend to help me in making it much more explicit. If he will not, then he will forgive me for not paying more attention to these very casuistic words. The monopolies I have in mind are represented much more by Trusts, by inter-locking Directorates, by a variety of ways by which banks, insurance companies, transport concerns, electricity concerns, power corporations, utility corporations of all kinds...
etc. yet all combined horizontally, vertically, angularly, sideways, backways and frontways, so that if you take up the totality of them all, you will find that this country is in the grip of between 300 to 500 people or families so far as economic life of this country is concerned. They may have their nephews and their nieces functioning in various capacities. One may work in a factory, another may shine in sports, a third may flirt with Art, and a fourth may endow Science and Learning. One may be a Manager, and another may be a philanthropist, and yet another may be a religious teacher, but that does not change the complexion. There are a few hundred families in this country which hold us all in economic slavery of a kind that the slavery in the Southern States of America has no comparison. If you do not open your eyes even now, then you are inviting with open eyes the kind of revolution in a form which none of us might desire but none of us would be able to resist. Sir, I commend this proposal to this House.

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

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

Sir, the passage in the Draft Constitution runs thus: -

"That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment etc".

My amendment would be to the effect that the clauses should prevent "undue" concentration of wealth and means of production to the common detriment. I submit that the economic system which we have here today and which it seems is in view, would necessarily mean that the wealth and means of production would be uneconomic; unless we want to introduce a Communistic state, these inequities would be inevitable. Even in the Communistic state of today there are inequities. I submit, Sir, that it is impossible to equalise wealth and means of production in the hands of all. I submit, the earning of a good business man, that of a lawyer of eminence, that of a Minister of eminence and that of a common man in the street or a Chaprasi, cannot be equal. So I submit that all that we should attempt to prevent is "undue" concentration of wealth and means of production. There would be inevitable concentration of some wealth and the means of production. I submit Sir, that this word would remove the misconception.

(Amendments Nos. 896 to 903 were not moved.)

Mr. Naziruddin Ahmad: Sir, Amendment No. 904 consists of three parts, of which I wish to move only parts two and three.

Sir I beg to move that in clause (v) of article 31, for the word "abused" the word "exploited", and for the words "economic necessity" the word "want" be substituted.

Mr. Vice-President: Is it necessary to make a speech?

Mr. Naziruddin Ahmad: No, Sir.
Mr. Vice-President: Amendment No. 905, Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, I find that so far as this amendment of mine is concerned, I am in very good company. I find that the Drafting Committee has sponsored an amendment - No. 907 - to the same effect.

The clause as it stands, reads as follows:

"The State shall............direct its policy towards securing........that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

My amendment seeks to add the word "sex" also, so that it will then read thus:

".........are not forced by economic necessity to enter avocations unsuited to their age, sex or strength."

I feel, Sir, that so long as the economic system is what it is today, it is conceivable that women might be forced by sheer necessity to take to occupations which may not be suitable to the conditions imposed on them by nature. I personally feel that this would be a wise amendment, a wise move, to see that necessity does not force women to enter certain occupations.

Since sending in this amendment, however, I have ascertained from my Honourable women friends in this House that they are not very keen on this provision being made, in this clause. So in spite of my inclination to the contrary, in spite of my disposition to retain this amendment, I have decided, out of deference to their wishes, not to press this amendment, and not to move it. Of course, it will await the fate of amendment No. 907 which has been officially sponsored.

Shri C. Subramaniam (Madras: General): Sir, can a speech be made if the Member is not moving his amendment?

Mr. Vice-President: I did not notice till the very end that Mr. Kamath was not going to move his amendment. We are all in the hands of Mr. Kamath in this matter. I am not a prophet.

Then we come to amendment No. 906, Shri Sahu.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, move the amendment which stands in my name:]

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

Mr. Kamath admitted here that even he considers that the word 'Sex' should be put in but that he did not do so because the term 'Sex' was not liked by some lady members of this House. But I insist that this word should be retained here. I would like to know the reasons which led them to say that they did not like this word. We see that the word 'Sex' has already been used in article 9 of the Fundamental Rights. We also know that we use the word 'Linga' in our language, and so I fail to see the harm likely to be done by the use of this word here.

Secondly, if we do not use the word 'Sex' here, many unpleasant complications are likely to ensure. In order to avoid all such complications I would like that the words "Unsuited to their
age, sex and strength" should be retained. There are many such factories and mines which are not fit for women to work in. But many women are compelled by circumstances to work there. To stop this practice the word "Sex" should be specifically used here.

The third point is that the members of the Drafting Committee like to use the word 'sex' here. When it is so, I do not find any reason to delete it. And hence the word sex must be retained so that women may be saved from exploitation. The condition of the women of our country is rather deplorable and I do not like that they should work day and night in the mines and be obliged to adopt some such profession which may spoil their home life. On account of these three reasons I propose that this word 'Sex' must be retained here and I move this amendment accordingly.

Mr. Vice-President: No. 907, Dr. Ambedkar?
The Honourable Dr. B. R. Ambedkar: Not moving.

Mr. Vice-President: Then No. 908. Mr. Syed Abdur Rouf.
Syed Abdur Rouf (Assam : Muslim): Sir, I beg to move:
"That in clause (v) of article 31, for the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

From the trend of the amendments it is seen that so far as acceptance of the word "sex" is concerned, there is unanimity of opinion in the House. Now, in my amendment I have tried further to add the word "health" in place of "strength", because I think the word "health" includes and connotes the word "strength", but the word "strength" does not necessarily connote the word "health". On this ground the word "strength" is unsuited. If we want to save the worker from ruin, we should consider the health of the worker, not merely his strength. I therefore commend this amendment for the acceptance of the House.

Shri S. V. Krishnamoorthy Rao (Mysore): Sir, I move:
"That in clause (v) of article 31, for the words 'that the strength and health' the words 'that the health and strength' be substituted."

My amendment is only in order to rearrange the phraseology. My only justification is that strength follows health and the phraseology sound better. Sir, I move.

(Amendments Nos. 910 to 913 were not moved.)

Rev. Jerome D'Souza (Madras: General): Mr. Vice-President, I am grateful to you for the opportunity you have given me of making a very brief statement on this amendment which I and some of my friends have tabled. Let me say at once, to reassure this House that statement will be brief and that for reasons which I shall presently explain, it is not my intention to press the amendment. But, Sir, I deem it a matter of some importance that the grounds which moved
usto table this amendment should be understood by this House, and that the broad principles
on which we have based this request may be appreciated, so that though at the present moment
and in the present form this amendment may not be acceptable or may not be prudently
pressed, the spirit of it may be understood and somehow embodied in this momentous
and solemn document of our Constitution.

Sir, there have been complaints from many sides of
this House that our Constitution does not reflect the spirit or the genius of our people, that it is
a kind of mixed recipe got up from various foreign sources and foreign constitutions. To a
certain extent this was inevitable, but I am sure that the framers of the Draft have partly
answered this criticism by the embodiment of certain principles in this part of the Constitution,
the Directive Principles.

Now, Sir, if one thing characterises our people more than anything else, it is the power and the
sanctity of the family tie, the sacredness which we have been accustomed to attach to the
sanctities that go to make up the spirit and the atmosphere of home life. Therefore, I am sure
that every section of this House will feel that it is in the fitness of things that this strong and
traditional spirit of our nation and race might somehow be expressed in our Constitution.
Sir, I venture to say that if the virtues, the strength and manhood of our people have survived so
many centuries of invasion and subjection, it is because, inspite of external and political
changes, the strength of the family, its protective power, its capacity to inspire and
maintain virtue and moral strength, have never been diminished, have never been completely
overcome in our land. Whatever is best in the Caste system - and nobody will say that it is
an unmixed evil - I venture to say is an extension of the family spirit, and the attachment to
family ties that has come out of it is its best and most admirable characteristic.

Sir, in a Constitution, we undertake legislation for the organisation of society. We are
speaking of villages, of provinces and the Centre, of tribes and Communities, and every other
form of society. Now, the primary unit of society is the family. The varieties and forms of external civil society may vary and change, but the limits, the characteristics, the fundamental features of the family, are fixed by nature. And it is within the bosom of the family that the social virtue, on the basis of which we are making this Constitution, and the firmness of which will be responsible for the carrying out of the Constitution, those fundamental virtues are developed and most lastingly founded in the family circle - mutual regard, mutual dependence, respect for authority and order, foresight and planning, and even the capacity for negotiating with other units, - qualities which would be required on a wider scale and in a wider theatre in our political and public life. Nay, Sir, patriotism itself is but the extension and the amplification of the love of the family. We call our country Fatherland or Motherland. Even before we know the culture and the extend and the greatness of our historical past, we begin to love our country because we love
the little place where we were born, because the scenes and the sounds and the sights of those places are linked for ever in our memories with the voices and visages which are among the most lasting and most treasured things in life. Therefore, I feel that this house will not reject this plea that in some form our respect and love for family traditions, may be reflected in this Constitution.

Now, Sir, I know that there is a serious divergence of views as to what this amendment should imply, in what manner the family should be protected and how its stability should be ensured. Let me, Sir, in all frankness place before you very briefly what was in my mind about the means of ensuring the stability of the family. In the first place, I believe it implies that in the majority of instances, in a normal state of society, the mother of the family should have freedom and leisure to give all her attention to the upbringing of her children and to the maintenance of that family. Now, I do not say that it is obligatory on her to do so always - there are exceptions, and she may sometimes find it convenient to give her best energies to answer the highervocation of public life and public service. But under normal conditions this is her main and her sacred duty, and this implies that the wage-earner, be he the working man, be he the poorest in the country, should have a wage which will enable him to maintain his wife and children, a family wage, a concept which modern social legislation tends to accept more and more. I say, therefore, that the head of the family is not to get a wage in accordance with the strict principle of remuneration for labour done according to the laws of liberal economics. I rather say that society owes him, as the head of a family and as one of the most important elements in the organisation of society, a maintenance to which he has a right, partly independently of whatever work he does. That is one principle which this amendment implies.

In the second place, I believe that this amendment, or this idea of the sacredness of the family, implies a readiness on the part of the State to recognise and encourage the institution of marriage in every way possible in its stable and monogamous form. I wish to draw the attention of the House to this fact that in all societies the tendency is to recognise more and more monogamous marriages as the only legal form of marriage. Moreover, I am aware of, and I am not here prepared to discuss, the claims of the women of our land to some degree of facility in breaking up unions which are no longer happy. I admit there may be grounds for separation when a union has become utterly unhappy. I plead at least for this: that the State should look with caution and prudence, nay with positive disfavour, on the multiplication of the facilities for divorce in order that the permanence and happiness of the family may be ensured.

In the third place, - and I know that here again I shall provoke the opposition of many elements, but nevertheless, it is necessary to state it on this occasion and in this House - it would be unfortunate if the State gave official patronage or approbation or encouragement to
the artificial limitation of families. We in India who are recipients of such bounty from nature have nothing to fear from the multiplication of the greatest source of our wealth, namely, the manhood of our land, the hard-working men and women of our race.

Lastly, I would, as a last idea which should accompany this notion of the sanctity and permanence and stability of the family, plead for respect for the rights of parents, there recognition of all reasonable authority on the part of parents in regard to their children, particularly, the right of the parent to see that his child is brought up in the traditions and in the beliefs, which are dear to him, so that there may not be in his family a disruption of the happy atmosphere, the uniformity, the homogeneity which should normally reign there. These are the implications - grave, far reaching, but I believe, acceptable to the vast majority of our countrymen - these are the implications of this amendment. But as I said already, it is because I understand that in this particular form and owing to the vagueness of its implications there may be very serious difference of opinion, I am prepared not to press it at the present moment, but I do want this House and my most honoured and most respected colleagues somehow and at sometime and in some form to speak the word which would ensure for future generations the blessings which they and we ourselves have inherited and enjoyed, to recognise that the great virtues which go to make up the greatness of a country - personal worth - are best developed in an early period and within the atmosphere of the home. We are optimists and democrats, but we know that human nature has many evil inclinations and if they are not to get the better of a man, if the vicious and anti-social elements in his nature are not to gain the upper hand, it is during these tender years that the seeds of lasting civic virtues should be planted. I therefore ask you, my honoured colleagues, to turn your attention, to turn your regard, back to that treasury of the tenderest and the most sacred memories that you have, the voices and the visages that are most dear to you, and appreciating all you have received from that circle and from those people, do something to ensure that the future children of this land will be blessed with the same happiness.

Shri V. C. Kesava Rao (Madras: General): I do not move amendment No. 917 standing in my name but I reserve the right of moving it later in connection with fundamental rights.

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving amendment No. 920 at present, but when we come to fundamental rights, I propose to move it.

I am not moving No. 923. The same remarks apply as in 920.

Mr. Vice-President: The article is now open for general discussion.

Prof. Shibban Lal Saksena (United Provinces: General): This is a clause which is very fundamental in our Constitution. The character of the amendments suggested also shows that it goes to the very root of the whole Constitution. My sympathies are undoubtedly with the amendments of Prof. K. T. Shah who has moved two amendments which really suggest that in this clause we should lay down that the system of our State shall be "Socialist". In an
amendment to the Preamble I have suggested that the word "Socialist", should be added before the word "Union". I personally feel that the particular amendments which he has moved are very important and I would urge on my friend Dr. Ambedkar at least to incorporate the spirit of those amendments somewhere in the Constitution. Part (2) of article 31 says: "...Ownership and control of the material resources of the community are so distributed as best to subserve the common good."

Now, this enunciation "ownership and control of the material resources of the community to be distributed so as to subserve the common good" is a very wide enunciation of a most important principle. The enunciation is so general that any system of economy can be based upon it. Upon it can be based a system of socialistic economy where all the resources of the country belong to the State and are to be used for the well being of the community as a whole. But a majority in the next Parliament can also come forward and say that the New Deal evolved by Roosevelt is the best system, and it should be adopted. This clause leaves it open to any future parliament to evolve the best plan of their choice. But I feel personally that we should today at least lay down that the key industries of the country shall be owned by the State. This has been an important programme of the Congress since 1921. The Congress has accepted the principle that the key industries shall be controlled by the State. Even recently in the committee appointed by the Congress the report mentioned that the key industries shall be owned by the State; for the present we have postponed nationalisation of key industries for ten years. But I do feel that in our Constitution we must lay down that this is our fundamental policy. Unless we lay down in the Constitution itself that the key industries shall be nationalised and shall be primarily used to serve the needs of the nation, we shall be guilty of a great betrayal. Even if the principle is not to be enforced today, we must lay down in this clause (ii) about directive principles that the key industries shall be owned by the State. That is, according to the Congress, the best method of distributing the material resources of the country. I therefore think that Professor Shah's amendment has merely drawn attention to this fundamental principle.

His second amendment is against monopolies and my sympathies are entirely with him. The system of monopolies has been admitted to be very wrong everywhere. In America, about 54 per cent of the nation's wealth is owned by some 60 families of that State and it is said that the 12 directors of these industrial concerns there are more powerful than even the Cabinet Ministers of the U. S. A. I therefore think that we must take a lesson from the other countries and lay down in our Constitution that monopolies will not be permitted in India. This being so I trust that Dr. Ambedkar will try to incorporate this idea in the clause by means of an appropriate amendment.

I know there is one merit in his draft which is that he has left the whole thing open and it is my hope that he will incorporate
this idea in the clause. This Assembly, which has the majority from one party that has already committed itself to these principles, should lay down these principles in the Constitution itself. As I said, Dr. Ambedkar has left the whole thing open and it is possible that an Assembly elected on the basis of adult franchise will lay it down that the State shall own and control the key industries.

I have given notice of an amendment to an amendment of Mr. Kamath (875-A) which he did not move. My object therewith was to substitute for the words "The State shall foster the growth" the words, "the State shall promote the development". The amended amendment would have read: "The State shall promote the development of economic and social democracy and to that end direct its policy towards securing." I had proposed that this amendment should be incorporated in the first line of article 31 in accordance with the view announced by Dr. Ambedkar the other day that we want an economic democracy on the basis of 'one man one vote'. It is a great ideal and I congratulate him forgiving expression to that great ideal. With these words I commend this article to the House and I hope that the spirit of my criticism will be remembered by Dr. Ambedkar.

Shri Jadubans Sahaya (Bihar: General): With your kind permission, Sir I hope the House will give me the indulgence of making certain observations in regard to article 31 which is now before the House for its consideration.

Sir, it was said, possibly yesterday, that this article of this Chapter is the Charter of economic democracy. It was also said that in this Charter and in this article we could find the germs of socialism and other isms. It was said also that this article was the Charter of the poor man. I most respectfully submit that in this Chapter, Article 31 is the pivot around which everything will revolve. Article 31 clause (ii) is the most important feature to which I shall most respectfully draw the attention of the House. But it is not possible for me, I am sorry, to support the amendment moved by my friend Professor Shah outright, because I respectfully submit it is loosely worded. But I may state for the information of the House that, so far as the principles which underlie his amendment are concerned, I support them. The spirit of it also I support. I fail to see why this august Assembly which meets only once in every country, is not keen to the extent of clearly and boldly incorporating in this article that the means of production and the natural or material resources of the country shall belong to the community and through it to the State. I cannot understand this, though the large majority of the amendments, if you scrutinise them, will be found to favour the principles underlying the amendment of Professor Shah. I cannot understand how it is that the Congress, the predominantly majority party here, is not pressing this thing.

One Honourable Member stated yesterday that these are political matters and that political parties should not bring up such amendments. I was considerably surprised to hear it. Constitution making is the work of political parties. So far as the organisation to which I have
the honour to belong, viz., the Congress we congressmen have given promises from many platforms to the teeming millions that so far as the means of production and the natural resources of the State are concerned, they will not be put into the hands of a favoured few. How can we go back on our word? After all this is a directive principle. I am not asking you to incorporate it so that the capitalists and the big purses of the country may not have the opportunity to work the mines and the minerals. This is only a directive principle. Are we not going to keep it as our goal that all means of production and the gifts of Nature which belong to this vast country should belong to the State or to the community? I am sorry, Sir, that the bogey has been raised by the capitalists that if you talk like this they will cease to produce. I know the large majority of friends here will not be deterred by this bogey raised by the capitalists, because production is not for the welfare of the community. It is for the welfare of the capitalists. They produce for profits. Honourable Members of this House know it better than myself that they produce for profit and they will continue to produce as long as they make profit, if not, they will not. So we should not be deterred by this slogan. As far as the Government of India is concerned, somebody attributed it to the Prime Minister - it is said that after ten years we shall have nationalisation. To this, Sir, Ardeshir Dalal has stated, according to newspaper reports, that production is hampered because something was said by the Prime Minister of India.

Sir, in this Chapter and particularly in this article are we not going to suggest that ultimately we have to nationalise them, are we not going to suggest that is the aim of the nation, is the target of the nation? We stated in the August Resolution that land belongs to the tillers of the soil. You have here magnificent and sparkling words, social justice, political justice and economic justice. Very good and splendid words but they appear very far away from the toiling millions. Why not state here, not today, not tomorrow but in the distant future that the community will own what belongs to the community by the gift of nature and by the gift of God. I do not belong to the Socialist Party but I belong to the Congress to which many here belong. May I appeal to Dr. Ambedkar who claims to represent the down-trodden untouchables of the country not to wash away this hope from our hearts that in the future years the natural resources of the community may belong not to the privileged few but to the poor people of the country, for the good and benefit of all.

Shri S. Nagappa (Madras: General): Sir, this clause is the only clause where the poor man, the common man can find some hope for the future. Clauses (ii) and (iii) are intended for the benefit of the poor man. No doubt, it would have been better if this clause had been drafted in more unequivocal terms instead of in this ambiguous language. As a layman, as a common man, I can see some ray of hope for the future in these clauses. It is the aim of all honourable Members who have assembled here to socialise as early as possible. As long as
these clauses stand, there is no possibility of capitalism thriving in India. I am very much thankful to the Drafting Committee and to the President of it in particular for having brought in these clauses and my only grievance is that they have not been drafted in more unequivocal language. Sir, the slogans today are municipalise utilities and nationalise industries and means of production, and unless and until these things are done, there is no hope for the common man. Today, land is concentrated in a few hands and the tiller finds himself in serious difficulties. A friend was moving an amendment for abolishing feudalism in India. When such are his feelings, you can imagine what would be the feelings of a man who has been teased for centuries and centuries. You know the conditions of the tenants in jagirs and zamindaries. They are expected to work for nothing for a number of hours and for a number of days, whereas in factories there are fixed hours. I am very glad, Sir, that in the Fundamental Rights there is a provision against beggar and forced labour. I would request the framers of the Constitution to see that every word of it is translated into action. There is no use having pious wishes or putting in high-sounding words.

With these words, I support the article.

Shri Brajeshwar Prasad (Bihar: General): May I speak, Sir?

Mr. Vice-President: I am very sorry. I think there has been sufficient discussion. Dr. Ambedkar.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, of the many amendments that have been moved to this particular article, there are only four that remain for consideration. I will first take up the amendment of Mr. Krishnamoorthy Rao. It is a mere verbal amendment and I say straightaway that I am quite prepared to accept that amendment. Then there remain the three amendments moved by my friend, Professor K. T. Shah. His first amendment is to substitute the words "every citizen" for the words "the citizens". Now, if that was the only amendment he was moving, I would not have found myself in very great difficulty in accepting his amendment, but he also proposes to remove the words "men and women equally" to which I have considerable objection. I would therefore ask him not to press this particular amendment on the assurance that, when the Constitution is gone through in this House and is remitted back to the Drafting Committee for the consideration of verbal changes, I shall be quite prepared to incorporate his feelings as I can quite understand that "every citizen" is better phraseology than the words "the citizens".

With regard to his other amendments, viz., substitution of his own clauses for sub-clauses (ii) and (iii) of Article 31, all I want to say is this that I would have been quite prepared to consider the amendment of Professor Shah if he had shown that what he intended to do by the substitution of his own clauses was not possible to be done under the language as it stands. So far as I am able to see, I think the language that has been used in the Draft it a much more extensive language which also includes the particular propositions which have been
moved by Professor Shah, and therefore do not see the necessity for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments.

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

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words `men and women equally' be omitted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words `that the citizens, men and women equally have the right to an adequate' the words `every citizen has the right to an adequate' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (ii) of article 31, the following be substituted:

`(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority statutory corporation as may be provided for in each case by Act of Parliament';"

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (iii) of article 31, the following be substituted:

(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there by any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (iii) of article 31, for the word `concentration' the words `undue concentration' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) article 31, for the word `abused' the word `exploited' and for the words `economic necessity' the word `want' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:
"That in clause (v) of article 31, for the words `their age' the words `their age, sex' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, the words `to their age or strength' the words `to their sex, age or health' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, for the words `that the strength and health', the words `that the health and strength' be substituted."

The motion was adopted.

Mr. Vice-President: The question is:

"That Article 31, as amended, be part of the Constitution."

The motion was adopted.

Article 31, as amended, was added to the Constitution.

Mr. Vice-President: We shall now proceed to Article 31-A.

Article 31 - A

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. Vice-President, Sir, Amendment No. 927 stands in my name, but Mr. Santhanam has given an amendment to this amendment, for substitution of this. I find that that language is better. With your permission, Sir, he may be allowed to move his amendment in the place of mine. If you want me to formally move my amendment, I will do so, but I am prepared to accept the substitution for 31-A. I am prepared to adopt whichever course you direct.

Mr. Vice-President: Let Mr. Santhanam move.

The Honourable Shri K. Santhanam: Sir, I beg to move:

"That after article 31, the following new article be added: -

`31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

Sir, I need not elaborate the necessity for this clause. Many honourable Members had given similar amendments for village panchayats, but they had also attached to it conditions like self-sufficiency and other matters, which many of us did not consider desirable to be put into the directives. What powers should be given to a village panchayat, what its area should be and what its functions should be will vary from province to province and from state to state, and it is not desirable that any hard and fast direction should be given in the Constitution. There may be very small hamlets which are so isolated that even for fifty families, we may require a
village panchayat; in other places it may be desirable to group them together so that they may form small townships and run efficient, almost municipal administrations. I think these must be left to the provincial legislatures. What is attempted to do here is to give a definite and unequivocal direction that the states shall take steps to organise panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organised village community life is the common factor of all the amendments tabled and that factor has been made the principle basis of this amendment. I hope it will meet with unanimous acceptance. Thank you, Sir.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment.

(At this stage Seth Govind Das rose to speak).

Mr. Vice-President: If you want to discuss anything, you can discuss after Prof. Ranga's amendment has been moved.

An Honourable Member: Prof. Ranga is not here.

Mr. Vice-President: I am on the horns of a dilemma. This amendment has been accepted. If I gave an opportunity to one speaker, then the whole question will have to be re-opened. I would value the advice of experts on this matter.

Shri M. Ananthasayanam Ayyangar: If you will permit me to say so, I shall only quote the procedure that is adopted in the House when it sits as a Legislature. Even though a Member in charge of a Bill says he accepts an amendment, he only indicates the line of action for other Members to follow. They may go on speaking and he will always have a right of reply after they have spoken. Even to cut short the debate on certain matters which do not involve a principle, people would like to know what the attitude of the Government is. If it is found useless, they may not pursue that matter and it is for that reason that Dr. Ambedkar has said that he accepts the amendment. He still can reserve his reply after the speeches or debates are closed. I therefore request you to call upon other speakers who want to speak. It is a very important subject and every one would like to throw some light on it.

Mr. Vice-President: In that case, I shall call upon Mr. Prakasam to speak first.

Shri T. Prakasam (Madras: General): Mr. Vice-President, Sir, I feel happy that the Government have with grace accepted this amendment and agreed to introduce it in the Constitution. We should have tried to introduce this at the very beginning of the framing of the Constitution.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, I do not know which Government he has referred to.

Shri T. Prakasam: I am referring to the Government as it is constituted today.

This is a subject which is so very dear to the country and to the Members of this House as is shown by the way in which they have intervened in the general debate and brought it to the
forefront of the discussion that this should find a place in the Constitution itself. Dr. Rajendra Prasad, who is the President of the Constituent Assembly, himself expressed his opinion in favour of having village republics as the basis of the Constitution.

Shri Vishwambhar Dayal Tripathi: What has the Government to do with our discussions?

Mr. Vice-President: The reference was to the President of the Constituent Assembly and not to the Government.

Shri T. Prakasam: I have not referred to the Government. Thank you,

Dr. Rajendra Prasad has expressed his view in favour of making the village republic as the basis of the whole Constitution, which we are completing these days. On the 10th of May, Sir, Dr. Rajendra Prasad happened to express his views in this matter. The Constitutional Adviser, Sir B.N. Rau, when he dealt with this question, sympathised with the whole thing, but pointed out that it was too late to make any attempt to change the basis of the Constitution which has gone so far. I too agree, Sir, that if there was any mistake, the mistake was on our part in not having been vigilant enough and brought this before the House in propertime. When this was coming so late as that, I did not expect Dr. Ambedkar as Chairman of the Drafting Committee to be good enough to accept this.

Sir, a very serious situation was created by not making the village republic or the village unit as the real basis of the Constitution. It must be acknowledged on all hands that this is a construction which is begun at the top and which is going down to the bottom. What is suggested in this direction by Dr. Rajendra Prasad himself was that the structure must begin from the foundations and it must go up. That, Sir, is the Constitution which the departed Mahatma Gandhi indicated and tried to work up for nearly thirty years. Under these circumstances, it is very fortunate that this should come in at this stage, that this should be introduced and worked in a proper way. I must really congratulate Mr. Santhanam for having attempted to bring this amendment in this form so that all others who had tabled amendments, of whom I was also one, reconciled ourselves to accept this, because this gives opportunity to the people of every province and the whole of India to go on this basis and work up the whole thing, without interrupting the progress of the Constitution at this stage.

Sir, one of the distinguished friends of this House was remarking the other day to me, "why are you thinking of these village republics and all these things? The bullockcart days have gone; they will never come back." This was his observation. I may point out to that friend that the village republic which is proposed to be established in the country and worked is not a bullock cart village republic. The republic that would be established, Sir, under this resolution, under the orders of the Government as it were, would be a village republic which would use the bullock carts, not for simply taking the firewood that is cut in the jungles to the towns and cities and getting some money for hire; these village republic would convert the work of the bullock carts to the work of carrying paddy and other produce which they produce in the
village for their own benefit and for the benefit of the public. These village republics will also be serviceable to those men of ours who are now fighting in Kashmir. I was there the other day; I saw the way in which those friends in the battle field have been carrying on their work. Some of them said to us: "Well, Sir, when you go back to the country, you please see that the prices of food-stuffs are reduced and that our people when they apply for small sites for habitation, they are secured." For all these things, the village republics will be of service to the military people in the best possible manner.

This is not a thing which should be looked upon with contempt, having forgotten our history and the history of the world. This is not the first time that this is introduced in our country. This is not a favour that we bestow upon our people by reviving these republics. When we fill the whole country with these organisations, I may tell you, there will be no food famines; there will be no cloth famine and we would not be spending 110 crores of rupees as we are doing today for the imports of food; this amount could be saved for the country. We have gone away far from the reality. These village republics will put a stop to black-marketing in a most wonderful manner. These village republics, if properly worked and organised on the basis of self-sufficiency, to which some may take exception, if the village is made a self-governing unit, it would put a stop to inflation also which the Government has not been able even to checkmate to any appreciable extent. This village organization will establish peace in our country. Today whatever the Government might be doing from the top here by way of getting food from other countries and distributing it, the food would not be distributed amongst the masses ordinarily through the agencies which we have got either in the Centre or in the provinces. All that trouble would be solved immediately so far as this business is concerned. Let me tell you above all that Communism - the menace the country is facing - we are seeing what is going in China, we saw what was done in Czechoslovakia and we know what the position is in Burma, we know what the position is even in our own country with regard to Communism. Communism can be checked immediately if the villages are organized in this manner and if they are made to function properly. There would be no temptation for our own people to become Communists and to go about killing our own people as they have been doing. For all these reasons I would support this and I am very anxious that this must be carried out in all the provinces as quickly as possible, soon after the Constitution is passed, and I am seeing today the light and prosperity before the country when the Constitution is passed and when this village organization comes into existence.

Shri Surendra Mohan Ghose (West Bengal: General): Sir, I am grateful to you for giving me an opportunity to express my feeling on this amendment moved by my honourable Friend Mr. Santhanam. Sir, you will find there is another amendment No. 991 which stands in my name almost identical with the present amendment which has been moved by my honourable Friend.
I am glad that such an agreed amendment has been moved by my honourable Friend, Mr. Santhanam and that it has been accepted by the Honourable Law Minister, Dr. Ambedkar.

Sir, in my opinion the meaning of this Constitution would have been nothing so far as crores and crores of Indian people are concerned unless there was some provision like this in our Constitution. There is another point also viz., for thousands and thousands of years the meaning of our life in India as it has been expressed in various activities, was this that complete freedom for every individual was granted. It was accepted that every individual had got full and unfettered freedom; but as to what the individual should do with that freedom there was some direction. Individuals had freedom only to work for unity. With that freedom they are to search for unity of our people. There was no freedom to an individual if he worked for disruption of our unity. The same principle was also accepted in our Indian Constitution from time immemorial. Every village like the organic cells of our body was given full freedom to express itself but at the same time with that freedom they were to work only to maintain and preserve the unity of India.

Sir, our village people are so much familiar with this system that if today there is in our Constitution no provision like this they would not have considered this as their own Constitution or as something known to them, as something which they could call their own country's Constitution. Therefore, Sir, I am glad and I congratulate both my friend the Honourable Mr. Santhanam and the Honourable Dr. Ambedkar on moving this amendment as well as for acceptance of the same. Sir, I commend this.

Seth Govind Das (C. P. and Berar: General): *Mr. President, very few speeches are being made now-a-days in this House in Hindi. I would, therefore, resume my practice of speaking in Hindi unless of course I have something to explain to my South Indian friends which requires my speaking here in English. During the course of the speech he made while presenting this Draft to the House Dr. Ambedkar made some remarks about villages which caused me and, I believe, a great majority of the members of this House, great pain. It is a matter of deep pleasure to me that he has at last accepted the amendment moved by Shri Santhanam. We need not complain if one comes to the right course, though belatedly.

I belong, Sir, to a province in which perhaps the greatest progress has been made in respect to this matter. Our village Panchayats, our judicial Panchayats, and our laws for Janapadas are the talk of the whole of India today. There was a time when our province was regarded as a very backward province. But today the whole country will have to admit that our province though small in size, has given a lead in many matters to the other provinces of the country. So far as the scheme of village Republics is concerned, it is an undisputed fact that our province has progressed more than any other province towards its fulfillment.
Ours is an ancient, a very ancient country and the village has had always an important position here. This has not been so with every ancient country. In Greece, for instance, towns had greater importance than villages. The

* [ ] Translation of Hindustani speech.

Republics of Athens and Sparta occupy a very important place in the world history today. But no importance was attached by them to the villages. But in our country the village occupied such an important position that even in the legends contained in most ancient books - the Upanishads - if there are descriptions of the forest retreats, of the sages, there are also descriptions of villages. Even in Kautilya's Arthashastra there are to be found references to our ancient villages. Modern historians have also admitted this fact. We find the description of our ancient village organisation, in 'Ancient Law' by Mr. Henry man, 'Indian Village Community' by Mr. Baden Powell and in 'Fundamental Unity of India' by Shri B. C. Pal. I would request the members of this House to go through these books. They will come to know from these books the great importance the villages have had in India since the remotest times.

Even during the Muslim Rule villages were considered of primary importance. It was during the British regime that the villages fell into neglect and lost their importance. There was a reason for this. The British Raj in India was based on the support of a handful of people. During the British regime Provinces, districts, tahsils and such other units were formed and sovereignty formed the Talukdaris, Zamindaris and Malguzarlis. The British rule lasted here for so many years only on account of the support of these few people.

Just as Mahatma Gandhi brought about a revolution in every other aspect of this country's life, so also he brought about a revolution in the village life. He started living in a village. He caused even the annual Congress Sessions to be held in villages. Now that we are about to accept this motion I would like to recall to the memory of the members of this House a speech that he had delivered here in Delhi, to the Asiatic conference. He had then advised the delegates of the various nations to go to Indian villages if they wanted to have a glimpse of the real India. He had told them that they would not get a picture of real India from the towns. Even today 80 per cent of our population lives in villages and it would be a great pity if we make no mention of our villages in the Constitution.

I support the amendment moved by Honourable K. Santhanam. I hope that the Directive Principles laid down in the Constitution would enable the provinces to follow the lead given by the Central Provinces in the matter and I hope a time will come when we shall be able to witness the ancient glory in our villages.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, by my Honourable Friend Mr. Santhanam moving this amendment and the Chairman of the Drafting Committee expressing that he is going to accept it shows the real feeling of the Sovereign Body towards...
their less fortunate brethren living in the villages. My Honourable Friend Mr. Prakasam referred to the statement made by the revered leaders Rajendra Prasad and Mahatma Gandhi. But we know it for a reality that the villages are in rack and ruin, and if there is to be any amenities or self-government, it is to the villages that the Sovereign Body must give them. The other day when I made a speech on the Draft Constitution, I pointed out that there is no provision to give the rural areas any choice of self-government. Now, under this amendment we bestow a certain amount of power to make the villages self-contained and to have self-government there. Sir, I am sure the seven lakhs of villages in the whole of India will welcome the provision of this amendment in this Constitution. Sir, it is with the revenue that is derived from the rural areas that it has been possible to create towns, with all amenities therein. But the man who gives the revenue by way of taxes could not get even the rudiments of amenities, due to a citizen. I feel that by accepting this amendment we will go a long way to reconstruct the villages that have been allowed to go to rack and ruin for centuries together. If the pies are taken care of, the rupees will take care of themselves. So I feel that by having this amendment, we are going a long way towards reconstructing our villages which are in such dire necessity of such reconstruction today.

Dr. V. Subramaniam (Madras: General): Mr. Vice-President, when our Mother India delivers her Constitution, if there is any living cell in the Constitution, it will be this village panchayat amendment which has been brought forward by my Honourable friend, Mr. Santhanam. It is a well-known fact that India is standing today as a self-governing unit in the world because of this living cell in our body politic - the village panchayat. Today, if we want to make the country strong and self-sufficient in every respect, this clause in the Constitution or in the Directive principles is very necessary.

Now, there has been some controversy about self-sufficiency. My interpretation when we speak of a village being self-sufficient is this. It may produce, say ground-nut in large quantities, and it may export it, even though it may be forced to import Dalda and other substances for the needs of the people in the village. By saying that it is self-sufficient, we only mean that it may grow all the articles that it can and also import what is necessary, from the neighbouring villages. That is my interpretation. But these are matters to be worked out in detail by the village panchayats themselves.

It is clear that as far as this amendment is concerned, there can be no two opinions about it. This amendment must be carried, and in our future constitution, much more powers must be given to the villages. As a matter of fact, we don’t know how many carpenters there are in our land. If we have the panchayats, we need go only to their records and pick up the number of carpenters in every village. These panchayats will serve a very useful purpose. This clause is very essential, and I support this amendment.
Shri Satyanarayan Sinha (Bihar: General): Sir, we have had enough discussion, and after Shri Bharathi, I would like to move for closure.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir; I congratulate the Honourable Mr. Santhanam for moving and Dr. Ambedkar for agreeing to this amendment. I must confess that I am not fully satisfied with this amendment, for the very simple reason that even today, even under the present Constitution, I think the Provincial Governments have enough powers to form village panchayats and operating them as self-governing units. But to the extent to which it goes, I must express my satisfaction. It must be remembered that this is in the directive principles, and I see no reason why the idea of self-sufficiency should not have been accepted by Mr. Santhanam. The reasons that he gave for not accepting that principle are not at all convincing. In fact, two or three Honourable Members - Mr. Ranga, Shri Ananthasayanam Ayyangar, and Mr. Prakasam have given amendments with these ideas. Mr. Ananthasayanam Ayyangar's amendment says there is great need for effective decentralisation of political and economic powers. After all, what the amendment seeks to give is only political independence. Political independence apart from economic independence, has no meaning. The idea behind the Directive Principles is to emphasise the way in which we want the country to function, and for that we must make it quite clear to the whole world that economic democracy is important and for that decentralisation of economic power is important. It is that aspect of the matter which Gandhiji emphasised. Decentralisation both in the political and economic sphere is absolutely essential if India is to function as a democracy.

In fact, speaking at the Asian Relations Conference, Mahatmaji said pointing out to the City of Delhi:

"This is not India. You people are seeing Delhi - this is not India. Go to villages; that is India, therein livesthe soul of India."

Therefore, I do not know why they should fight shy of self-sufficiency. It has been sufficiently explained by Mahatmaji, and if it is necessary I would like even to say some words from his speeches.

The Honourable Shri K. Santhanam: May I point out to the Honourable Member that self-government is not merely political? It may be economic or spiritual.

Shri L. Krishnaswami Bharathi: I quite understand it and that is the reason why it should be made clearer. If self-government includes that, it is much better that we explain it because that explanation is very necessary. I would very much like the word "self-sufficiency" in the Gandhian sense of the word, self-sufficiency not in all matters, let it be remembered, but in vital needs of life, self-sufficiency in the matter of food and clothing as far as possible. That is what Mahatmaji said. It does not mean absolute independence. Sir, I would ask leave to read...
from Mahatmaji’s articles certain important portions which will clear up the matter. This is what Gandhiji wrote: -

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants and yet interdependent for many others in which dependence is a necessity."

An Honourable Member asked, "Well, what can you do? Some villages produce only paddy, they cannot have self-sufficiency". Is it such an impossible proposition? Gandhiji was emphatic in saying that he was not at all suggesting that the village should be independent of all these things, but in certain matters you must have self-reliance, the basic idea being, "no work, no food". Now the villagers think that as it is a Swaraj Government, khadi and food will flow from the heavens as manna. Gandhiji's idea in this self-sufficiency is, "Don't expect anything from the Government. You have got your hands and feet; work; without work you will have no food. You can produce your own cloth, you can produce your own food. But if you do not work, you shall have no food, no cloth." That is the basic idea of decentralization and economic democracy. And if the villagers are to have that idea, we must put it here and tell them about self-sufficiency, "Do not expect anything from the Government. Who is the Government? After all you constitute the Government. You must work, you must produce. Do not depend on these mills. Go on with your charkha, make your own food". That is the basic idea of self-sufficiency and decentralization and economic democracy.

Mahatmaji said: -

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity. Thus every village's first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playground for adults and children. Then if there is more land available, it will grow useful money crops, thus excluding ganja, tobacco, opium and the like. The village will maintain a village theatre, school and public hall. It will have its own waterworks ensuring clean supply. This can be done through controlled wells and tanks. Education will be compulsory up to the final basic course. As far as possible every activity will be conducted on the co-operative basis. There will be no castes such as we have today with their graded untouchability. Non-violence with its technique of Satyagraha and non-cooperation will be the sanction of the village community…"

(At this stage Mr. Vice-President rang the bell).

Sir, I think there are only a few more lines of Mahatmaji’s picture of life. With your leave I should like to finish it.

"...There will be a compulsory service of village guards who will be selected by rotation from the register maintained by the village. The government of the village will be conducted by the Panchayat of five persons, annually elected by the adult villagers, male and female possessing minimum prescribed qualifications."
This is a rough idea of what Gandhiji felt, and therefore, in my opinion it is very necessary that this sovereign body should enunciate and give its views on this fundamental tenet of Mahatma Gandhi, his idea being that there must be decentralisation and the village must function as an economic unit. Of course, the Honourable Mr. Santhanam said that it is included. I only wanted that it should be made more explicit so that Mahatma’s soul will be very much pleased. He said that India dies if the villages die, India can live only if the villages live.

The Honourable Dr. B. R. Ambedkar: Sir, as I said, I accept the amendment. I have nothing more to add.

(An Honourable Member rose to speak.)

Mr. Vice-President: In this matter my decision is final. I have not yet found anybody who has opposed the motion put forward by Mr. Santhanam. There might be different ways of praising it, but at bottom and fundamentally, these speeches are nothing but praising the amendment.

The question is:

"That after article 31, the following new article be added: -

`31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

The motion was adopted.

Mr. Vice-President: The question is:

"That the new article 31-A stand part of the Constitution."

The motion was adopted.

Article 31-A was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 23rd November 1948.
Wednesday, the 1st December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

Shri H. V. Kamath (C. P. & Berar: General): Sir, before we proceed with the business of the day, may I request you to be so good as to see that my learned friend, Shri Alladi Krishnaswami Ayyar, who is frequently called upon to give us the benefit of his sage counsel is allotted a seat somewhere in the centre of the hall, neither too much to the right nor to the left so that he may be heard and appreciated in the House?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. Ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'title' the words 'not being a military or academic distinction' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the words 'beconferred' the words 'or recognised' be inserted".

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'State' the words 'and the State shall in no way recognize any title conferred by the British Government on any citizen of India prior to August 15, 1947' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word 'conferred' the words 'or recognised' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 12, the following clause be substituted.

'2) No title conferred by any foreign State on any citizen of India shall be recognised by any State.'"
The motion was negatived.
Mr. Vice-President: The question is:
"That article 12, as amended, stand part of the Constitution."
The motion was adopted.
Article 12, as amended, was added to the Constitution.

Article 13
Mr. Vice-President: We shall now take up article 13 for consideration.
Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:
"That for article 13, the following be substituted:
`13. Subject to public order or morality the citizens are guaranteed--
(a) freedom of speech and expression;
(b) freedom of the press;
(c) freedom to form association or unions;
(d) freedom to assemble peaceably and without arms;
(e) secrecy of postal, telegraphic and telephonic communications.
13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in anyplace he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.'"
Sir, article 13, as at present worded, appears to have been clumsily drafted. It makes one significant omission and that is about the freedom of the press. I think, Sir, it will be argued that the freedom is implicit in clause (a), that is, in the freedom of speech and expression. But, Sir, I submit that the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.
Now, Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practise any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law or prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear, Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the
legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the author ity or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the author ity or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights.

Then, Sir, the expression 'in the interests of general public' is also very wide and will enable the legislative and the executive author ity to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticis ing this article has pointed out that if the mala fides of Government are not proved--and they certainly cannot be proved--then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civilliberty.

Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the habeas corpus writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outs de the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr. Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly. Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be
altered radically and part of the Official Secrets Act will also have to go. I therefore submit
that this article should be radically altered and substituted by
the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of
mine. If whatever fundamental rights we get from this Draft Constitution are tempered here
and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the
boon of fundamental rights is still beyond our reach and the making of this Constitution will
prove to be of little value to this country.
Mr. Vice-President: Do I understand that amendment No. 441 will not be moved? I shall not
allow any discuss on but I shall put it to vote. Do I understand that the mover does not intend
to move this amendment.”
(Amendment 441 was not moved.)
(Amendments No. 413 and No. 414 were not moved.)
Mr. Vice-President: Amendments Nos. 415 and 418. They are the same. I will allow
amendment No. 415 to be moved. It stands in the names of Pandit Lakshmi Kanta Maitra and
others, including Mr. Kamath.
Shri Mihir Lal Chattopadhyay (West Bengal: General): Sir, I beg to move:
“That in clause (1) of article 13, the words `Subject to the other provisions of this article' be
deleted.”
Various provisos have been mentioned in this Section in clauses (2), (3), (4), (5) and (6).
Therefore the words “subject to the other provisions of this article” are unnecessary.
Mr. Naziruddin Ahmad (West Bengal: Muslim): I submit that this is a drafting amendment.
Mr. Vice-President: Proceed, Mr. Chattopadhyay.
Shri Mihir Lal Chattopadhyay: Moreover, this section deals with Fundamental Rights and
there should be positive enumeration of these rights and privileges at the beginning and it
should not begin with provisos. Each proviso should in the natural course come afterwards. I
therefore move this amendment.
(Amendment No. 419 was not moved.)
Mr. Vice-President: Then we come to amendment No. 416 standing in the name of
Prof. K.T. Shah.
Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:
“That in clause (1) of article 13, for the words, "the other provisions of this article" the words
‘this constitution and the laws there under or in accord there with at any time in force’ be
substituted, and after the words ‘all citizens shall have' the words ‘and are guaranteed’ be
added.”
The article, as amended, would read:
“Subject to this Constitution and the laws there under or in accord there with at any time in
force, all citizens shall have and are guaranteed the right” etc.
Sir, my purpose in bringing forward this amendment is to point out that, if all the freedoms enumerated in this article are to be in accordance with only the provisions of this article, or are to be guaranteed subject to the provisions of this article only, then they would amount more to a negation of freedom than the promise or assurance of freedom, because in everyone of these clauses the exceptions are much more emphasised than the positive provision. In fact, what is given by one right hand seems to be taken away by three or four or five left hands; and therefore the article is rendered nugatory in any opinion.

I am sure that was not the intention or meaning of the draftsmen who put in the other articles also. I suggest therefore that instead of making it subject to the provisions of this article, we should make it subject to the provisions of this Constitution. That is to say, in this Constitution this article will remain. Therefore if you want to insist upon these exceptions, the exceptions will also remain. But the spirit of the Constitution, the ideal under which this Constitution is based, will also come in, which I humbly submit, would not be the case, if you emphasise only this article. If you say merely subject to the provisions of this article, then you very clearly emphasise and make it necessary to read only this article by itself, which is more restrictive than necessary. I am aware it might be said that, under the rules of interpretation, the whole Constitution will have to be read together and not only one clause of it. If so, I ask where is the harm in then saying, as you have said in many other articles, "subject to the provisions of this Constitution"? and "subject also to the laws in force at any time and the laws there under"? Those laws which have not been abrogated or abolished under this article or any other article will be enforced. Those new laws which you make in accordance with this article will also be enforced, so that all the safeguards that you wish to introduce, and which you may wish to maintain against any abuse of the freedoms guaranteed or granted by this Constitution, will be available.

Why then should we draw attention and emphasize only this article, which is more full. I repeat, of exceptions and delimitations of freedom than of freedom itself? The freedoms are curtly enumerated in 5.6 or 7 items in one sub-clause of the article. The exceptions are all separately mentioned in separate sub-clauses. And their scope is so widened that I do not know what cannot be included as exception to these freedoms rather than the rule. In fact, the freedoms guaranteed or assured by this article become so elusive that we would find it necessary to have a microscope to discover where these freedoms are, whenever it suits the State or the authorities running it to deny them. I would, therefore, repeat that you should bring in the provisions of the whole Constitution, including its preamble, and including all other articles and chapters where the spirit of the Constitution should be more easily and fully gathered than merely in this article, which, in my judgment, runs counter to the spirit of the Constitution. Somebody described yesterday the Constitution as a paradise for lawyers. All written Constitutions, and even un-written ones, do admit themselves to legal chicanery of a
very interesting type. Constitutions of Federal States are generally more so. But whether or not it was deliberately intended to be so, this particular Draft seems to be a very fertile ground for legal ingenuity to exercise. And that will, of course, be at the expense of the Community. Whether the State wins or loses, the public, the country in any case, will lose to one small section, that of the legal practitioners.

I also suggest that it would not be enough to enumerate these freedoms, and say the citizen shall have them. I would like to add the words also that by this Constitution these freedoms are guaranteed. That is to say, any exception which is made, unless justified by the spirit of the Constitution, the Constitution as a whole and every part of it included, would be a violation of the freedoms guaranteed hereby.

For instance, sub-clause (5) uses such a wide expression as to make anything come within the scope of the exception, and suffice to deny the practical operation of the freedoms that by one big clause you are supposed to guarantee. I, therefore, think that it is necessary to make the substitution I have suggested in this article, that the words "this Constitution and the laws there under or in accord there with at any time in force" may be substituted for the words "the other provisions of this article" and after the words "all citizens shall have" the words "and are guaranteed" be added. I hope the amendment will prove acceptable to the House.

Mr. Vice-President: Amendment Nos. 417 and 418 are of similar import. I can allow No. 417 to be moved. This amendment stands in the name of Mr. Lari.

An Honourable Member: He is not in the House.

Mr. Vice-President: Then amendment No. 418 which stands in the name of Shri Mukut Behari Lal Bhargava.

The amendment was not moved.

Mr. Vice-President: Amendment Nos. 420, 421, and 424 are of similar import and I suggest that the House should consider them together. I suggest that amendment No. 421 be moved. This stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (1) of article 13, after the word `expression'; the words `of thought and worship; of press and publication;' be added."

so that the article as amended would read:

"Subject to the other provisions of this article, all citizens shall have the right--

(a) to freedom of speech and expression; of thought and worship; of press and publication;"

In submitting this amendment, I must confess to a feeling of amazement at the omission whether it is by oversight or deliberate. I do not know of these very essential and important items in what are known as Civil Liberties. The clause contents itself merely with the freedom of speech and of expression. I do not know what type of freedom of speech the draftsman had
in mind when he adds to it the freedom of expression separately. I thought that speech and expression would run more or less parallel together. Perhaps "expression" may be a wider term, including also expression by pictorial or other similar artistic devices which do not consist merely in words or in speech.

Allowing that is the interpretation, or that is the justification for adding this word "expression", I still do not see why freedom of worship should have been excluded. I am not particularly a very worshipful man myself. Certainly I do not indulge in any overt acts of worship or adoration. But I think a vast majority of people feel the need and indulge in acts of worship, which may often be curtailed or be refused or in other words be denied unless the Constitution makes it expressly clear that those also will be included. All battles of religion have been fought—and it must be very well known to the draftsman that they are going on even now—in connection with the right of free worship. The United States itself owes its very origin to the denial of freedom of worship in their original home to the Fathers of the present Union some 300 odd years ago. That is why in most modern constitutions, the freedom of worship finds a very clear mention. I certainly feel therefore that this omission is very surprising, to say the least. Unless the Drafting Committee is in a position to explain rationally, is in a position to explain effectively why this is omitted, I for one would feel that our Constitution is lacking and will remain lacking in a most essential item of Civil Liberties if this item is omitted.

The same or even a more forceful logic applies to the other "freedom of the press, and freedom of publication." The freedom of the press, as is very well known, is one of the items round which the greatest, the bitterest of constitutional struggles have been waged in all constitutions and in all countries where liberal constitutions prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written constitution, they are in the well established conventions or judicial decisions. In those which have written constitutions, they have been expressly included as the freedom of the press.

Speaking from memory, I am open to correction, although I think it would not be necessary, even the United Nations Charter gives special prominence and mention of freedom of the press. Why our draftsmen have omitted that, I find beyond me even to imagine. I dare say they must have very good reasons why the freedom of the press has not found specific mention in their draft. But, unless and until they give the reasons and explain why it has been omitted, I feel that an amendment of the kind I am proposing is very necessary.

The Press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is, as one of the present Ministers, who was then a former non-official member, called, a "black Act," in the last but one session of the legislature
when there was an attempt to curtail the liberty of the press under certain circumstances. This endeared him at least so much to me that in spite of many differences with him. I felt he had done yeoman service, though singly opposing even at the third reading of the Bill.

With the presence of such men in this House, I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine, why these draftsmen, so experienced and so seasoned, should have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision. Freedom of the press, I repeat, is apt to be misunderstood, or, at any rate, apt to be regarded as licence which you may want to curtail. There are many ways by which laws can be passed or laws can be administered whereby you can regard the liberty as verging upon licence and as such to be curtailed. To omit it altogether, I repeat, and I repeat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on my amendment being rejected.

Mr. Vice-President: Amendment No. 420. Is it pressed?

(Mr. Naziruddin Ahmad rose in his seat to speak.)

You need not come. I only want to know whether you intend to press this, in which case, I shall put it to the vote.

Mr. Naziruddin Ahmad: Sir, I wish to speak on this.

Mr. Vice-President: You can speak in the course of the general discussion, provided, of course, you get a chance.

You have given me the power to rule out; take your seat, please; it will be put to the vote.

Mr. Naziruddin Ahmad: Without any debate, Sir?

Mr. Vice-President: Amendment No. 422.

(Shri Lakshminarayan Sahu came to the rostrum.)

You are not allowed to speak. Do you want to press it?

Shri Lakshminarayan Sahu (Orissa: General): Yes, Sir.

(Amendment No. 424 was not moved.)

Mr. Vice-President: Amendment No. 423 is disallowed.

(Amendment No. 425 was not moved.)

Mr. Vice-President: Amendment No. 426.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *[I donot wish to move my amendment, as it is covered by clause(1) of the Explanation to article 19.]*

Mr. Vice-President: I cannot follow what he is saying.

An Honourable Member: He is not moving the amendment.
(Amendment No. 427 was not moved.)

Mr. Vice-President: Amendments numbers 428, 429, 430 and 432 are of similar import and are therefore to be considered together. Amendment No. 428 may be moved.

Mr. Naziruddin Ahmad: Sir, am I to move all the amendments and speak, on all of them?

Mr. Vice-President: On amendment No. 428 only.

Mr. Naziruddin Ahmad: Will all the others be put to the vote?

Mr. Vice-President: Of course.

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

"That at the end of sub-clause (c) of clause (1) of article 13, the words 'for any lawful purpose' be inserted."

The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order, sub-clause (4) covers exactly this position in greater detail.

Mr. Naziruddin Ahmad: I had carefully thought about this objection, Sir, and I was just going to mention the difficulty of that view. That is the only reason why I have come here to move the amendment.

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* [ ] Translation of Hindustani Speech.

Mr. Vice-President: Proceed.

Mr. Naziruddin Ahmad: Sir, all that I wish to convey by means of this amendment is that the people's freedom of speech, freedom of forming associations or unions, and moving freely throughout the territory and residing in any place, should be subject to the condition that they do it for a lawful purpose.

So far as Mr. Santhanam is concerned, he does not quarrel with the principle. His contention is that these conditions are sufficiently expressed in the clauses (2), (3), (4), (5) and (6). I shall draw the attention of the House and particularly of Mr. Santhanam to sub-clause (b) of clause (1) of article 13. It gives the right to assemble 'peaceably and without arms'. The words 'peaceably and without arms' should be objectionable from the point of view of Mr. Santhanam because it may be argued that the words are unnecessary and the condition is sufficiently provided for in clause (3). I submit that the amendments which stand in my name are merely an application of this method of draftsmanship to the other sub-clauses. I submit if we have them in the sub-clauses (b), they should also be in (a), (c), (d), (e), (f) and (g). If we introduce the words "for any lawful purpose" there, they will be beyond the scope of any legislature to interfere. But if we are satisfied with clauses (2), (3), (4), (5) and (6), they can be interfered with by the Legislature. So there is this difference that with the inclusion of the words in the sub-clauses as I suggest, they would be part of the Fundamental Right. That is, if any one speaks, he should do so for a lawful purpose; if he forms associations and unions, he should do it in
alawful manner, i.e., he should not join or form into a conspiracy or other forbidden things of the sort. Then if he wants to move throughout the territory of India, I think this should be also limited by the condition that it should be for a lawful purpose. No male person should enter a female compartment in railway carriage or enter into lady's dressing room: and then somebody might say "I shall reside in this Assembly Hall"; there must be imitating conditions. My point is if you insert them in sub-clauses (a), (c), (d), (e), (f) and (g), as you have already inserted specifically in sub-clause (b)--if you insert them in these sub-clauses, then they will be part of the Fundamental Right and clauses (2), (3), (4), (5), and (6) will not give any power to the legislatures to abrogate them. This is the reason which induced me to move this amendment. Sir, this point of view should be carefully considered.

(Amendments No. 431 and Nos. 433 to 437 were not moved.)

Mr. Vice-President: No. 438 and first part of 443. Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, I move:

"That after sub-clause (g) of clause (1) of article 13 the following new sub-clause be added: I move this amendment, as amended by my own amendment No. 79 in List No. II, which runs thus:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:-- (h) to keep and bear arms; and the following new clause be added after clause (6):

(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquillity, restrictions on the exercise of the right conferred by the said sub-clause."

Sir, I feel a little pardonable pride in moving this amendment before the House today. Considering as I do that it puts an end or brings to an end one phase of our ignominious past, the past of more than a hundred years, and in view of the importance of this matter involved in the amendment, may I appeal to you, Sir, to give me a little latitude in the matter of time, because I want to put the case in its entirety before the House? And may I also make a personal request to Dr. Ambedkar or whoever it may be that will reply on behalf of the Drafting Committee, to pay close attention to what is going out in the House? Yesterday we found at the fag end of the day Dr. Ambedkar--perhaps he was a bit fagged out and tired--I felt that he had not followed the debate on titles.

Mr. Vice-President: I will not allow you to make any reference to what happened yesterday.

Shri H. V. Kamath: Before I come to the amendment itself may I say a word as to an important omission which has been made before article 13? I find from the Report of the Fundamental Rights Sub-Committee over which the Honourable Sardar Patel presided, the rights from 13 up to 18 have been titled or designated as the Rights of Freedom. This sub-title
'Rights of Freedom' has been omitted from the draft as presented to the Assembly now. In this report which I am reading—Report of the Committee—First Series from December 1946 to July 1947—the sub-title is 'Rights of Freedom' just before we come to article 13.

Then, Sir, I come to the amendment itself. It is common knowledge to all of us who have lived and worked in India during the last thirty years or more that this has been a universal demand emanating from all sections of the population, firstly as a protest against the degrading and humiliating Arms Act passed by the British Government in the last century, and secondly, Sir, as a guarantee of the right of self-defence. This demand has been embodied in various Congress Resolutions during the last two decades.

The most important Resolution and most historic, the most momentous was the Resolution on Fundamental Rights passed at Karachi. I read, Sir, from that Resolution the relevant extracts:

"This Congress is of opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any constitution.

Mark these words—any constitution.

* * * which may be agreed to on its behalf, should provide or enable the Swaraj Government to provide for the following......"

and various fundamental rights are enumerated, among them being this one—

"Every citizen has the right to keep and bear arms in accordance with Regulations and reservations made in that behalf."

I find, Sir, from this list of Fundamental Rights, adopted at the Karachi session of the Congress, almost all of them have been incorporated in this Draft Constitution, except this one, and this is a very serious omission.

I might also make an observation about this amendment, that I am in a very good company, because amendment No. 443 which is similar to my amendment has been tabled by the General Secretaries of the Congress—Shri Shankar Rao Deo and Acharya Jugal Kishore.

Mr. Vice-President: Do you suggest that it is the work of the Congress only? I thought it is the co-operative work of all the parties.

Shri H. V. Kamath: But, Sir, all will agree that the dominant party in this House is the Congress Party, and if this party is not going to stand by its past professions, if it is going to prove false to its past, and not implement its resolution of the past, what has that party come to? If the fundamental idea of this resolution passed at Karachi is to be given the go-by, I ask this House, shall we not fall in the estimation of the people of the country? Sir, this demand has not been a mere demand. I very well remember that in Nagpur in 1923 or 1924 there was a Satyagraha movement against the Arms Act and this Satyagraha movement attracted
Satyagrahis from all over-India. That went on for six months, and the Congress put its seal of approval on this Satyagrahamovement against the Arms Act. Today we may say that conditions have changed and we do not want this sort of thing to be incorporated in our fundamental rights. But, Sir, I will come to that argument a little later.

I can appreciate the force of the argument that this absolute right should not be conceded today. Perhaps there is a lurking fear in the minds of those in power that the right may be abused. For that reason I have given this proviso in conformity with and in line with the other provisos which have been embodied in this article. I am personally not very much in favour of these elaborate provisos. Here again, I would like to draw the attention of the Honourable Dr. Ambedkar to pages 21 and 29 of this Report of the Committees' First Series. On page 21, we have the Report of the Fundamental Rights Sub-Committee presided over by the Honourable Sardar Patel, and later on the same report was discussed in the Assembly and modifications were made in that, and the elaborate provisos which appeared in the original report of the Fundamental Rights Committee do not find a place in the resolution on the report which was adopted by the Constituent Assembly. This perhaps needs an explanation from Dr. Ambedkar.

Reverting to the subject matter of the amendment. I have already said that I do not want to make this right absolute. That is why I have tabled this proviso, imposing restrictions in the interests of public order, peace and tranquillity. It may be said that saboteurs and other elements are abroad in the country and these may abuse this privilege and take advantage of this privilege conferred upon the ordinary citizen. But may I tell the House that saboteurs and other evil elements, villains and criminals have managed and will always manage to get arms, Arms Act or no Arms Act; and it is the law-abiding citizen who has always suffered in the bargain, and it is he who has to be protected against these elements. The history of the last twelve months has proved this to us most unmistakably, that those who suffer in these criminal riots and disturbances are not the violent elements or the saboteurs, but the law-abiding citizens, and these have to be protected.

Again, the argument may be put forward that we should incorporate only such rights about which there is fear that they might be denied to the citizen. But if we examine this argument a little closely, and also this article, in the light of this argument, we will find that rights like freedom of movement throughout India; freedom to reside and settle in any part of India, and such other rights about which there is no doubt or fear that they will be denied, have been incorporated in this article. But this one right, to keep and bear arms has not found a place in this article. If this very diluted proposal of mine, if even this very abridged freedom to bear arms is not acceptable to the House, I am afraid it will create a most unfortunate impression on our countrymen that the Government does not trust the people, that the Government has no
faith in the people, that the Government is afraid of the people. It is all right. Sir, for Ministers of Government to say, "We are here to protect you". But, with security guards outside their bungalows, it is very well for them to put forward this plea. But the ordinary citizen has no armed guard about him, no guards standing outside his house. If the Government wishes to convey the impression to the people that the Government has no faith in them, that it is afraid of them, if that is the attitude of the Government, then it is welcome to say so. It will prove to the people that you are not a popular government, that you are a government which has no faith in the people. If you are a popular government, this is the least that you can do today to put an end to this ignominy of the past one hundred years.

It may be argued also that the Congress and Mahatma Gandhi and our leaders have taught us to defend ourselves by Ahimsa, and not by Himsa, by non-violence and not by violence. But, Sir, may I, in all humility remind the House that Mahatma Gandhi used to say, "Resist, defend, non-violently, if possible, but violently, if necessary. What I hate is cowardice." And this doctrine, Sir, has been propagated recently by the Honourable Sardar Patel himself who has been going about the country asking the people never to run away, never to be cowards, but to resist violently if necessary, not to run away from the assassin, from the hooligan, from the criminal. Defend yourself by all means and at all costs. I find my honourable Friend Mr. Shankar Rao Deo laughing in his seat. He is welcome to smile or laugh but I may tell him that he laughs best who laughs last. He has tabled an amendment here. I do not know whether he is serious about it. In the end I will only say that if we of the Congress party who are in a majority desire to prove true to our past, if we have the desire in us to implement all the resolutions that we have adopted in the past, if we do not want to live with the lie in our soul, I appeal to the House to accept this amendment and put an end to one of the most disgraceful phases of our ignominious past of over a hundred years.

Mr. Vice-President: May I ask whether the first part of amendment No. 443 is going to be pressed?

Shri Shankar Rao Deo (Bombay: General): No, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to give my wholehearted support to the motion of my honourable Friend who has just moved his amendment ........

Mr. Vice-President: May I suggest that instead of starting the general discussion we postpone it till all the amendments have been moved. We shall try our best to give the Maulana Sahib an opportunity to speak. Will he kindly resume his seat? (Laughter)

Order, order. The Maulana Sahib is perfectly within his rights if he wants to speak. I am sorry, Maulana Sahib, to ask you to go back to your seat. It is regrettable to greet an old Member of this House in this fashion.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Sir, I move:
"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:--

 `(h) to follow the personal law of the group or community to which he belongs or professes to belong.

 (i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a uniform civil code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a uniform civil code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President: It is no point of order. Mr. Mohammed Ismail Sahib may continue his speech.

Mr. Mohammed Ismail Sahib: It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

Personal law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some commonsense, as a matter of interference with religion. Mr. Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Islam, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the
law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question—I mean the question of cow-slaughter—an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir, respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President: Will the honourable Member kindly address the Chair.

Mr. Mohammed Ismail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President: Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohammed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter” has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities.
Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

Sir, I also move:

"That after clause (6) of article 13, the following new clauses be added:

'(7) Nothing in the clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article'."

This is consequential. The personal law is presumed to be guaranteed by the previous amendment, that is the new sub-clause (h) to clause (1) of article 13, and this clause (7) seeks to preclude any interference with the question of personal law as a result of clauses (2) to (6).

Then coming to the new clause (i), it reads thus:

"to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

This has nothing to do with the minority or the majority. It concerns itself with the right of every citizen. Personal liberty is the core of the whole freedom. It is the basis upon which the freedom of the land must be rebuilt. But here, Sir, in this bulky Constitution this question of personal liberty is left almost as an orphan. Only one mention is made of personal liberty, i.e., in article 15 and it is left there, it is left to be taken care of by "procedure established by law". I do not here enter into the controversy whether it should be "by due process of law", or "by procedure established by law". But what I want to say is that only a mention has been made in the Constitution with regard to personal liberty. But personal liberty is the most fundamental of the fundamental rights and it ought not to be dealt with in such a cursory manner, as it has been done in the Constitution.
I request your permission to read a quotation to illustrate how the Constitutions of other countries have dealt with this all-important question of personal liberty.

Much smaller countries than India have taken a moreserious and, if I may say so, a sacred view of this question. The Polish Constitution says, among other things: "If in any case the judicial order cannot be produced immediately"—(it is only on a judicial order that a man's liberty can be curtailed)—"it must be transmitted within 48 hours of the arrest stating the reasons for the arrest. Persons who have been arrested and to whom the reasons for the arrest have not been communicated within 48 hours, in writing over the signature of judicial authorities, shall be immediately restored to liberty.'

'The laws prescribe the means of compulsion which may be employed by the administrative authority to secure the carrying out of their order.'

Then again, the same Constitution says; "No law may deprive a citizen, who is the victim of injustice or wrong, of judicial means of redress."

Sir, another State, viz., Yugoslavia, in regard to this matter goes even further. It has provided: "A man after he is informed of the reasons for the arrest or detention has got the right........."

Shri C. Subramaniam: Questions of personal liberty come only under article 15. They are irrelevant under this article. It is article 15 that deals with personal liberty thus: "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India." Therefore what is the use of discussing the question of personal liberty under article 13?

Mr. Mohammed Ismail Sahib: I have already referred to this point. Of course it is mentioned there. But to say that because it is mentioned there it is necessary that the matter should be discussed only there is not correct. I am of the view that this subject is more appropriately brought under article 13 which speaks of the various freedoms of the citizen. Of these freedoms, this is the most important. Therefore there is nothing wrong in my saying that this all-important question must be brought under article 13. With that view I have tabled this amendment and I am speaking on this amendment.

Sir, my amendment, which I have moved with your permission, says that the citizen shall be guaranteed his personal liberty. As I was saying, the Constitution of Yugoslavia has provided: "No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing stating the charge. This order must be communicated to the person arrested at the time of arrest or within 24 hours of the arrest. An appeal against the order for arrest may be lodged in the Competent Court within three days. If no appeal has been lodged,--(this is important) --within this period, the police authorities must as a matter of course communicate the order to the competent court within 24 hours following. The court shall be bound to confirm or annul the arrest within 2 days of the communication of the order.
and its decision shall be given effect forthwith. Public officials who infringe this provision shall be punished for illegal deprivation of liberty”.

Sir, ours is a bulky Constitution. Our friends congratulated themselves in having produced the bulkiest Constitution in the world. And this Constitution from which I read out an extract just now contains only 12 articles. It is a much smaller Constitution than ours and yet in the matter of personal liberty it has made such an elaborate provision as that I mentioned. This bulky Constitution of ours does not find more than a few words where this all important question of personal liberty is concerned.

Now, Sir, there are various Public Safety Acts enacted and enforced in the various provinces of the country. Here, personal liberty as it stands is almost a mockery of personal liberty. A man is being arrested at the will and pleasure of the executive. He is put in prison and he does not even know for what he has been imprisoned or for what charge he has been detained. Even where the law puts the obligation on the Government to reveal to him the reasons for which he has been detained, the executive takes its own time to do so. There are cases in which the persons concerned were not informed of the charge for weeks and months and when the charges were communicated, many of them were found to be of such a nature that they could not stand before a court of law for a minute. No right has been given to a detenu or a person arrested or detained to test the validity of the order before a court of law. This kind of administration of law was not known even under foreign rule, that is, under British rule.

Now, Sir, another contention is being indulged in, and that is that it was different when the Britisher, the foreigner was in the country and that now it is our own rule. True, but that does not mean that we can deal with liberty of the citizens as we please. Bureaucracy is bureaucracy, whether it is under foreign rule or self-rule. Power corrupts people not only under foreign rule, but also under self-government. Therefore, Sir, the citizen must be protected against the vagaries of the executive in a very careful manner as other self-governing countries have done. In almost every country in the world, they have made elaborate provision for protecting the personal liberty of the citizen. Why should India alone be an exception, I do not understand. Therefore, the framers of the Constitution, I hope, will reconsider this question and make suitable provisions for the protection of the liberty of the person.

Sir, in this amendment of mine I have not gone elaborately into the question of personal liberty. I only want the citizen concerned to be given the right of going to, and being tried by, a court of law, if his personal liberty is curtailed. That one precious right I want to be given to every citizen of India.

May I also, Sir, move the other consequential amendments included in amendment No 502. I have moved only the one on page 53 of the List of Amendments, namely new sub-clause (7).
That relates to personal law. May I move now the other portion of the amendment relating to new clauses (8) and (9) on page 54 of the List?

Mr. Vice-President: The Honourable Member may do so, but without making a speech.

Mr. Mohammed Ismail Sahib: Sir, I move that the following new clauses be added:

"(8) Nothing in clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

These are only consequential amendments.

Mr. Vice-President: We shall now go on to amendments Nos. 442, 499, the second part of 443, 468 and 501. These are all of similar import. I hold that the only two amendments which can be moved under the new regulations are amendments Nos. 442 and 499. The others will be voted on.

Shri M. Ananthasayanam Ayyangar (Madras: General): All these relate to free choice in the election of representatives. In a sense this is a new subject and may on that account be held over for consideration.

Mr. Vice-President: What about 499?

Pandit Thakur Dass Bhargava: That also relates to the same subject.

Mr. Vice-President: The whole group will be held over for consideration.

(Amendment No. 444 was not moved.)

Mr. Vice-President: Amendment No. 445.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause (1) of article 13:

`Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India.'"

Sir, this again is of the same species of amendments which I am trying my best to place before the House, that is to say, the enunciation and incorporation of those elementary principles of modern liberal constitutions in which it is a pity our Constitution seems deliberately to be lacking. The liberty of the person, ever since the consciousness of civil liberties, has come upon the people, has been the main battleground of the autocrats and those fighting against them. In no single instance other than this has the power of autocracy wanted to assert itself against the just claims of the individual to be respected in regard to his personal freedom. The liberty of the person to fight against any arbitrary arrest or detention, without due process
of law, has been the basis of English constitutional growth, and also of the French Constitution that was born after the Revolution. The autocrat, the despot, has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him. It was, therefore, that any time the slightest difference of opinion was expressed, the slightest inconvenience or embarrassment was likely to be caused by any individual, the only course open to those who wanted to exercise autocratic power was to imprison or arrest or detain such a person without charge or trial. It has been in fact in many modern constitutions among the most cardinal articles that the liberty of the person shall be sacred, shall be guaranteed by the Constitution. We are covering new ground and should not omit to incorporate in our Constitution those items which in my opinion ought to be sacrosanct, which would never lose anything by repetition, and which would also add to our moral stature.

This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain. The tragic happenings of some twelve or fourteen months ago were no doubt responsible for influencing those who drafted this Constitution to feel that in the then prevailing goodsit was necessary to restrict somehow the freedom of the individual. Therefore it is that the freedom of the individual, the sacredness and sanctity of personal liberty has been soft-pedalled in this Constitution. But now after an interval of fourteen months. I would suggest to this House that these sad memories should be left to the limbo where they deserve to remain. We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to exert violence and do injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately. In emergencies like this, in cases like this, if you wait for performing the due processes of law, if you wait for reference to a magistrate for the issue of a proper warrant, or compliance with all the other formalities of legal procedure to be fulfilled, it is possible that the ends of justice may not be served, it is possible that the maintenance of law and justice may be endangered. But, Sir, I venture to submit to this House that was an extraordinarily abnormal situation which we hope will not recur.

Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas. We are making a constitution, Sir, for such types of people and not for those exceptions, the few who might have temporarily lost the possession of their senses, and who therefore maybe dealt with by extraordinary procedure.

We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended. I am not at all enamoured of these extraordinary exceptions to the working of constitutions; but even I might conceive that in moments of emergency it may be necessary, however regrettable it maybe, to suspend constitutional liberties for the time being. But we must not, when framing a constitution,
always assumethat this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties.

I, therefore, want to mention categorically in this Constitution that the liberty of the person shall be respected, shall be guaranteed by law, and that no person shall be arrested, detained or imprisoned without due process of law. That process it is for you to provide. That process it is for laws made under this Constitution to lay down. And if and in so far as that process is fulfilled, there is no reason to fear that any abuse of such individual liberty will take place. Why then deny it, why then omit the mention of personal liberty that has all along been the mark of civilised democratic constitutions against the autocratic might of unreasoning despots? I am afraid, looking at the fate of most of my amendments, that I may perhaps be hurling myself against a blank wall. But I will not prejudice my hearers and certainly not the draftsmen by assuming that they are unreasoning until they prove that they are guilty of utterly unreasoning opposition.

Mr. Vice-President: Amendments Nos. 446, 447 and 448. These are all of similar import. Amendment No. 448 may be moved. It stands in the joint names of Shrimati Renuka Ray, Dr. Keskar, Shri Satish Chandra and Shri Mohanlal Gautam.

(Amendments Nos. 448 and 446 were not moved.)

Mahboob Ali Baig Sahib Bahadur: (Madras; Muslim): Sir, there is another amendment in my name, amendment No. 451: that is for the deletion of clauses (2), (3), (4), (5), and (6).

Mr. Vice-President: That comes under another group which will be dealt with hereafter.

Mahboob Ali Baig Sahib Bahadur: Then, alternatively, I shall move amendment No. 447. Sir, I move:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):

'Provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country'."

Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, If they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the
local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not an iota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred, and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights.

Then, Sir, it is said by Dr. Ambedkar in his introductory speech that fundamental rights are not absolute. Of course, they are not; they are always subject to the interests of the general public and the safety of the State, but the question is when a certain citizen oversteps the limits so as to endanger the safety of the State, who is to judge? According to me, Sir, and according to well-recognised canons, it is not the executive or the legislature, but it is the independent judiciary of the State that has to judge whether a certain citizen has overstepped the limits so as to endanger the safety of the State. This distinction was recognised by the framers of the American Constitution in that famous Fourteenth Amendment which clearly laid down that no Congress can make any law to prejudice the freedom of speech, the freedom of association, and the freedom of the press. This was in 1791, and if the American citizen transgressed the limits and endangered the State, the judiciary would judge him and not the legislature or the executive.

Even in the case of Britain where there is no written constitution two prominent and effective safeguards were there. They were governed by the law of the land. The law of the land is the law which gave them freedom of thought, freedom of expression, and they cannot be proceeded against without due process of law. These were the two safeguards. It is only in the German Constitution that we find restrictions such as those in clauses (2) to (6). It is only in the German Constitution that the fundamental rights were subject to the provisions of the law that may be made by the legislature. That means that the citizens could enjoy only those rights which the legislature would give them, would permit them to enjoy from time to time. That cuts at the very root of fundamental rights and the fundamental rights cease to be fundamental. I dare say, Sir, you know what was the result. Hitler could make his legislature pass any law, put Germans in concentration camps without trial under the provisions of law made by the legislature of Germany. We know what the result was. It was regimentation, that every German should think alike and anybody who differed was sent to concentration camps. Totalitarianism, fascism was the result.

(Mr. Vice-President rang the time bell.)

I would request you to give me some time more. I am just developing the point.

Mr. Vice-President: Sorry, you cannot have time without my permission. At the proper time, I would request you to finish and take your seat. I hope you will respect my wishes.
Mahboob Ali Baig Sahib Bahadur: Sir, it is these wideconsiderations that were responsible for the deletion of such clauses by this august Assembly on the 30th April, 1947, when Sardar Patel who was the Chairman of the Committee to report on Fundamental Rights, presented these Fundamental Rights. He moved for the deletion of all these provisos and in the discussion on the 30th of April 1947, many prominent men including Pandit Jawaharlal Nehru took part, and all these provisos were deleted. The proceedings can be found on pages 445 to 447. Here, the Prime Minister of India says:

"A fundamental right should be looked upon, not from the point of view of any particular difficulty of themoment, but as something that you want to make permanent in the Constitution."

Therefore, Sir, in this august Assembly on the 30th of April 1947, after discussion in which prominent men including Mr. Munshi took part, these provisos were deleted. This departure now to re-introduce these provisions, I submit, with great respect, is a departure which is retrograde and I submit, Sir, that we ought not to allow it. My submission is that the existence of these three provisos is the very negation of the Fundamental Rights. I would request you to consider this question from three or four points of view.

(Mr. Vice-President again rang the time bell.)

With your permission, Sir,............

Mr. Vice-President: No; there are many more speakers. I must now insist upon your obeying my orders.

Mahboob Ali Baig Sahib Bahadur: A few more minutes, Sir.

Mr. Vice-President: I have given you enough time. There are other speakers. I have an obligation towards them also.

Now, we shall go to the next two amendments. One is amendment No. 449 and the other is amendment No. 453. Of these two, I think amendment No. 453 is more comprehensive and may be moved. It stands in the joint names of Dr. Pattabhi Sitaramayya and others. There is also an amendment to that amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I submit that this amendment No. 453* which stands in our joint names maybe taken as formally moved. I find in the order sheet, in list No. IV a further amendment to this amendment. I accept that amendment, Sir. If you kindly give permission to move that amendment, I shall accept it and it is not necessary to move this amendment.

Mr. Vice-President: Mr. Munshi.

Shri H. V. Kamath: On a point of order, Sir, unless this amendment is moved, no amendment can be moved to this. This cannot be taken as moved.

Mr. Vice-President: Do you want that he should read over the amendment? I overlooked it.

Mr. Munshi.
That for clause (2) of article 13, the following be substituted:-- "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, offences against decency or morality or sedition or other matters which undermine the security of the State."

Shri K. M. Munshi: (Bombay: General): Mr. Vice-President, Sir, I beg to move amendment No. 86 in the additional list which runs as follows:
That for amendment No. 453 of the list of Amendments, the following be substituted:
"That for clause (2) of article 13, the following be substituted:--
(2) 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, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

Sir, before I go to the merits of the amendment, I should like to point out a verbal error which I am sure my Honourable Friend Dr. Ambedkar will permit me to correct. After the words, "shall affect the operation of any existing law", I propose that the words "in so far as it relates to" should be added; because, that connects this clause with "to libel, etc." This would make the meaning clear and I am sure my Honourable Friend will accept it.

As regards the merits, the changes sought to be made are two. In the original clause, the word 'sedition' occurs. The original clause reads as follows: "relating to libel, slander, defamation, sedition or any other matter". The amendment seeks to omit the word 'sedition'. Further the amendment seeks to substitute the words "undermines the authority or foundation of the State" by the words…..

Mr. Naziruddin Ahmad: On appoint of order, Sir, we have not got this amendment at all. In list IV the number does not tally at all. I believe, Sir, it was circulated today and it cannot be taken up. We should be given some breathing time in order to understand what is going on.

Mr. Vice-President: I think amendments to amendments can be permitted up to the time when the amendment is moved. I understand that this was placed on the table before each member.

Shri K. M. Munshi: Really speaking, the original amendments numbers 458 and 461 have been brought under a single amendment. There is nothing new in this amendment, Sir.

Mr. Vice-President: Go on, Mr. Munshi.
Pandit Hirday Nath Kunzru: (United Provinces: General) Sir, may I request Mr. Munshi to read out his amendment, once again? What is it an amendment to?

Shri K. M. Munshi: This is amendment to amendment No. 453, on page 29. In effect, it combines two amendments which are already on the list. This is how it reads:

"That for clause (2) of article 13, the following be substituted:

‘(2) 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’."

Then comes another change.

‘or any matter which offends against decency or morality."

Then comes another change.

"of which undermines the security of, or tends to overthrow the State."

That is exactly the wording of amendment No. 461.

The object of...

Shri Mahavir Tyagi (United Provinces: General): May I take it that the word ‘morality’ has been taken out?

Shri K. M. Munshi: I read the word ‘morality’.

Mr. Vice-President: You need be under no sort of apprehension so far as that is concerned.

Shri K. M. Munshi: The House will not permit me to do anything of the sort. Sir, the importance of this amendment is that it seeks to delete the word ‘sedition’ and uses a much better phraseology, viz. "which undermines the security of, or tends to overthrow, the State. The object is to remove the word ‘sedition’ which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.
Shri Amiyo Kumar Ghosh (Bihar: General): On a point of information, I want to know whether without moving the original amendment, as amendment, to it can be moved?

Mr. Vice-President: The amendment was moved formally.

Shri K. M. Munshi: I was pointing gout that the word ‘sedition’ has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of Law all over the world. Its definition has been very simple and given so far back in 1868. It says ”sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government”. But in practice it has had a curious fortune. A hundred and fifty years ago in England, in holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word ‘sedition’ has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar Vs King, in III and IV Federal Court Reports, has made a distinction between what ‘Sedition’ meant when the Indian Penal Code was enacted and ‘Sedition’ as understood in 1942. A passage from the judgement of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

"This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."
This amendment therefore seeks to use words which properly answer to the implication of the word ‘Sedition’ as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word ‘sedition’ only is sought to be deleted from the article. Otherwise an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment.

Shri H. V. Kamath: On a point of clarification, may I ask my learned friend Mr. Munshi to examine whether the deletion of the word ‘other’ from the phrase ‘any other matter’ will not create some doubt or difficulty about the meaning of this amendment? Because if he will look up article 13 in the Draft Constitution, he will find that the phrase used is "any other matter". Here the word ‘other’ is deleted which will mean that so far as slander, defamation and libel are concerned, they can not offend against decency or morality, but only some other matter can. Is it the contention of Mr. Munshi that neither defamation, slander nor libel offends against decency and morality?

Shri K. M. Munshi: In the original clause of this article as drafted the words were—"libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundations of the State." Here we have omitted the word ‘sedition’. Slander and defamation need not be necessarily connected with a violation of decency or morality nor do they undermine the authority of the State: the words "any matter" indicate as independent category. One category is libel, slander and defamation. The other category is any matter which offends against the State. The word ‘other’ therefore would be inappropriate.
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Shri H. V. Kamath: In the draft article the antecedents of the words 'other' matter were libel, slander, defamation and sedition, all of them.

Shri K. M. Munshi: I cannot agree with my honourable friend.

Mr. Vice-President: Do you press amendment 449?

Mr. Naziruddin Ahmad: Yes.

Mr. Vice-President: It will be put to vote. We next come to 450, 451, 452, 453, 465 and 478—all are of similar importance and should be considered together. Amendment 450 is allowed.

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, Sir, I beg to move:

"That clause (2), (3), (4), (5) and (6) of article 13 be deleted."

Sir, in article 13(1), sub-clauses (a), (b) and (c), they give constitutional protection to the individual against the coercive power of the State, if they stood by themselves. But sub-clause (2) to (6) of article 13 would appear to take away the very soul out of these protective clauses. These lay down that nothing in sub-clauses (a), (b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogate the rights envisaged in sub-clause (1) which were enacted for the suppression of human liberties, for instance, the Criminal Law Amendment Act, the Press Act, and other various security Acts. If they are to continue in the same way as before, then where is the change ushered in and so loudly talked of? The main purpose of declaring the rights as fundamental is to safeguard the freedom of the citizen against any interference by the ordinary legislature and the executive of the day. The rights detailed in article 13(1) are such that they cannot be alienated by any individual, even voluntarily. The Government of the day is particularly precluded from infringing them, except under very special circumstances. But here the freedom of assembling, freedom of the press and other freedoms have been made so precarious and entirely left at the mercy of the legislature that the whole beauty and the charm has been taken away. It is not only the existing laws that have been subjected to this clause, but the State has been further armed with extraordinary powers to make any law relating to libel, slander etc. It may be said that every State should have the power and jurisdiction to make laws with regard to such matters as sedition, slander and libel. But in other countries like America it is for the Supreme Court to judge the matter, keeping in view all the circumstances and the environments, and to say whether in individual
liberty has been sufficiently safeguarded or whether the legislature has transgressed into the freedom of the citizen. The balance is kept in the hands of the judiciary which in the case of all civilized countries has always weighed honestly and consequently protected the citizen from unfair encroachment by legislatures. But a curious method is being adopted under our Constitution by adding these sub-clauses (2) to (6). The Honourable Mover defended these sub-clauses by remarking that he could quote at least one precedent for each of these restrictions. But it is here that the difference lies, that whereas in those countries it is the judiciary which regulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers by sub-clauses (2) to (6). The right to freedom of speech is given in article 13(1)(a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13(1)(b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order--13(3). Further under 13(4) to 13(6), any legislation restricting these liberties can be enacted "in the interest of the general public". Now who is to judge whether any measure adopted or legislation enacted is "in the interest of the general public" or "in the interest of public order", or whether it relates to "any matter which undermines the authority or foundation of the State"? The sphere of the Supreme Court will be very limited. The only question before it would be whether the legislation concerned is "in the interest of the public order". Only the bona-fides of the legislature will be the main point for decision by the Court and when once it is found by the court that the Government honestly believed that the legislation was needed "in the interest of the public order", there would be nothing left for its interference. The proviso in article 13(3) has been so worded as to remove from the Supreme Court its competence to consider and determine whether in fact there were circumstances justifying such legislation. The actual provisions and the extent of the restrictions imposed would be out of the scope of judicial determination.

For further illustration we may take the law of sedition enacted under 13(2). All that the Supreme Court shall have to adjudicate upon would be whether the law enacted relates to "sedition" and if it does, the judiciary would be bound to come to a finding that it is valid. It would not be for the Judge to probe into the matter whether the actual provisions are oppressive and unjust. If the restriction is allowed to remain as it is contemplated in 13(2), then the citizens will have no chance of getting any law relating to sedition declared invalid, however oppressive it might be in restricting and negating the freedom promised in 13(1)(a). The "court" would be bound to limit its enquiry within this field that the Parliament is permitted under the Constitution to make any laws pertaining to sedition and so it has done that. The constitution is not infringed anywhere, and rather, the draft is declaring validin
advance any law that might be enacted by the Parliament—only if it related to sedition. Similar is the case of other freedom posed in article 13(1) but eclipsed and negatived in clauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected on an adult franchise, can and should be trusted for the safe custody of citizens' rights. But as has been aptly remarked, "If the danger of executive aggression has disappeared, that from legislative interference has greatly increased, and it is largely against this danger that the modern declarations of fundamental rights are directed, as formerly they were directed against the tyranny of autocratic kings."

The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses?

Sir, I commend this amendment to the House.

Mr. Vice-President: The next amendment on the list is the alternative amendment No. 451, in the same of Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur: Sir, I move:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:--

'Without prejudice and subject to the provisions of article 8.'"

My purpose in moving this amendment is twofold. Firstly, I want to know the mind of Dr. Ambedkar and the Drafting Committee how article 8 stands in relation to these provisos. It may be asked whether these clauses (2) to (6) are governed by article 8 or not. If these clauses are governed by article 8, may I refer to article 8 itself. Its 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."

The words "inconsistent with the provisions of this part" donot affect the existing laws relating to libel, the existing laws relating to restrictions on the exercise of the rights with regard to association or assembly. That means that the existing laws mentioned in clauses (2) to (6) are not all rendered void under Article 8. The intention is clear from the footnote that is
appended to article 15, where the reason for the inclusion of the word "personal" is given. There it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widely so as to include even the freedom already dealt with in article 13."

Thus it is very clear that if the existing law relates to libel, if it relates to meetings or associations, or freedom of speech or expression, then that existing law stands in spite of the fact that article 8 says that any law in force which is inconsistent with the fundamental rights is void. So we come to this position. In the past the existing laws, for instance, the Criminal Law Amendment Acts, the Press Acts or the Security Acts laid down restrictions which are inconsistent with the liberties mentioned in clause (1). They shall be in operation and they are not rendered void. That seems to be the meaning that can naturally be attached to this.

The second point which I wish to submit is this. By the Constitution certain powers are given to the legislature or the executive. Whether a court can question the validity or otherwise of such action, order or law is another question. My opinion is that where there is a provision in the Constitution itself giving power to the legislature or in this case the State covering the legislature, executive, local bodies and such other institutions, the jurisdiction of the court is ousted, for the court would say that in the Constitution itself power is granted to the legislature to deprive, restrict or limit the rights of the citizen and so they cannot go into the validity or otherwise of the law or order, unless as it is said there is malafides. It is for the author ities to judge whether certain circumstances have arisen for which an order or law can be passed. Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circumstances, viz., where there is in existence a provision in the Constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the Constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of....

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, if I might interrupt my honourable friend, I have understood his point and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur: The third point which I would submit is this. The new set up would be what is called parliamentary democracy or rule by a certain political party, by the party executive or party government and we can well imagine what would be the measure of fundamental rights that the people would enjoy under parliamentary democracy or rule by a
party. In these circumstances is it not wise or necessary in the interest of the general public that the future legislatures ruled by a party or the executive ruled by a party are not given powers by this very constitution itself? For as has been said 'power corrupteth' and if absolute power is placed in the hands of party government by virtue of the terms of this constitution itself, such legislature or executive will become absolutely corrupt. Therefore, I move that if at all these provisos are necessary, they must be subject to the provision that no law can be passed, no law would be applicable which is inconsistent with the freedoms mentioned in sub-clause (1). Sir, I move.

Mr. Vice-President: The next group consists of amendments Nos. 454, 455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No. 454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava: Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article 13 the words "affect the operation of any existing law, or" be deleted."

To this clause an amendment has been given by the Honourable Dr. Ambedkar.

Mr. Vice-President: May I suggest that when you move amendment No. 454 you move it along with your new amendment?

Pandit Thakur Dass Bhargava: I have moved No. 454, to which an amendment, stands in the name of the Honourable Dr. Ambedkar. To this latter I have given an amendment which is No. 3 in today's list. I have also given two other amendments to amendment No. 454. So I shall, with your permission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list 1 of the Amendment to Amendments--

(i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said clause be omitted.

(ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words 'affect the operation of any existing law or' be deleted and also that before the word "restrictions" in clauses (3), (4), (5) and (6) the word "reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word 'reasonable' be substituted.

If my suggestion is accepted by the House then clause (3) would read:

"Nothing in sub-clause (b) of the said clause shall prevent the State from making anything, imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if the following words are taken away--

"Affect the operation of any existing law, or"
the result will be that, not that all the present laws which are in force today will be taken away, but only such laws or portions of such laws as are inconsistent with the fundamental rights according to article 13, will be taken away, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8 is concerned, it really keeps alive all the laws which are in force today, except such portions of them as are inconsistent with the fundamental rights conferred by Part III. These words--"affect the operation of any existing law, or".....

Mr. Vice-President: How can you deal with a thing unless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava: In the first instance, a resolution has been passed by this House that all amendments shall be taken as moved without being formally moved. Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, I have taken this course and, I had asked for your permission, though it was unnecessary to do so.

Mr. Vice-President: All right.

Pandit Thakur Dass Bhargava: Thank you. I was speaking of the effect of the words--"affect the operation of any existing law, or" and I submitted to the House that so far as the words of article 8 go, even if these words are not there, all the present laws shall be alive. They shall not be dead by the fact that article 8 exists in Part III. The article reads thus:

"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."

So that the real effect which this Constitution wants to give is that so far as those laws are inconsistent, they should be made inoperative. The rest will continue. So if these words are not there--"affect the operation of any existing law, or"--that would make no difference. If you examine the amendment to be moved by Dr. Ambedkar, the result is the same because in his amendment the words "in so far as it imposes" appear. Thus article 8 governs article 13 according to my amendment as well as his. The amendment of Dr. Ambedkar is unnecessary if the House accepts my amendment No. 454.

Mr. Vice-President: It seems to me that if Dr. Ambedkar moves his amendment, then your amendment will not be necessary at all.

Pandit Thakur Dass Bhargava: My amendment will still be necessary as it deals with other matters also.

Mr. Vice-President: I do not wish to discuss the matter with you.

Pandit Thakur Dass Bhargava: There are several clauses in this Constitution in which an attempt has been made to keep the present laws alive as much as possible. Article 8 is the first
attempt. According to article 8 only to the extent of inconsistency such laws will become inoperative. Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keep alive certain of the laws that come within the purview of article 27 in the proviso. Then again not being content with this, another section is there in the Constitution, namely, article 307, which reads:

"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 altered or repealed or amended by a competent Legislature or other competent authority."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of the question. Even if these sections were not there, even then the general principle is that the law would continue in force unless repealed by any enactment or declared illegal by any Court. Therefore, so far as the continuance of the present law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile. But I would not have submitted this amendment before the House if these words were only surplus. They have another tendency and that has been emphasized by the previous speaker. There are good many amendments in the list of amendments to the same effect. I have received representations from various bodies and persons who have said in their telegrams and letters that these words should be removed, because the apprehension is that as article 8 is part of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later and numerically it is of greater import. If article 8 is good law, so is article 13. As a matter of fact article 13 is insufficient by itself, and all the present laws, it may and can be argued, must be continued in spite of article 8. This is the general apprehension in the public mind and it is therefore that Dr. Ambedkar has also been forced to table an amendment No. 49 to my amendment No. 454.

This interpretation and argument may be wrong; this maybe unjustifiable; but such an argument is possible. In my opinion the law must be simple and not vague and ununderstandable. Therefore these mischievous and misleading words should be taken away. As they have further the effect of misleading the public I hold that these words, unless taken away, shall not allay public fear.

When I read these different sections from 9 to 13 and up to 26, and when I read of these Fundamental Rights, to be frank I missed the most fundamental right which any national in any country must have viz., the right to vote.

Mr. Vice-President: That is not the subject matter of the present discussion. The honourable Member should confine his remarks to his amendment.

Pandit Thakur Dass Bhargava: In considering article 15 also the House will come to the conclusion that the most important of the Fundamental Right of personal liberty
and life has not been made justiciable nor mentioned in article 13. If the House has in its mind the present position in the country, it will come to the conclusion that the present state of things is anything but satisfactory. Freedom of speech and expression have been restricted by sub-clause (2). Fortunately the honourable Member Mr. Munshi has spoken before you about deletion of the word sedition. If these words 'affect the operation of existing laws' are not removed the effect would be that sedition would continue to mean what it has been meaning in spite of the contrary ruling of the Privy Council given in 1945. If the present laws are allowed to operate without being controlled or governed by article 8 the position will be irretrievably intolerable. Thus my submission is that in regard to freedom of speech and expression if you allow the present law to be continued without testing it in a court of law, a situation would arise which would not be regarded as satisfactory by the citizens of India.

Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assembling could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar: Is it open to my honourable Friend to speak generally on the clauses?

Mr. Vice-President: That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar: This is an abuse of the procedure of the House. I cannot help saying that. When a member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava: I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or domineering tone?

Mr. Vice-President: Everybody seems to have lost his temper except the Chair. (Laughter). I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava: I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other members to decide what is relevant and what is not.

Mr. Vice-President: I was about to say so, but I was interrupted.
Pandit Thakur Dass Bhargava: Sir, I repeat that unless and until these offending words are removed and if the present law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am advertsing to the present law in order to point out that it is objectionable and if it continues to have the force of law, there will be no use in granting Fundamental Rights. Therefore I am entitled to speak of the Fundamental Rights. I will certainly not speak if you do not allow me, but I maintain that whatever I was and am saying is perfectly relevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this law does not allow the present state of tension in the country to be moved, what is the use of the Fundamental Rights. I ask.

Mr. Vice-President: Kindly remember one thing which is that you may refer to it in a general manner and not make that the principal point of your speech on this occasion. You may refer to all that in such a way as to adopt a viamedia where your purpose will be served without taking up more time than is actually necessary.

Pandit Thakur Dass Bhargava: I am alive to the fact that it is a sin to take up the time of the House unnecessarily. I have been exercising as much restraint as possible. I thank you for the advice given by you. I will not refer to the present situation also if you do not like it.

But a few days ago the Honourable Sardar Patel, in a Convocation Address delivered by him, told the whole country that the labourer in the field and the ordinary man in the street has not felt the glow of India's freedom. Nobody feels that glow today, though India is free. Why? If the Fundamental Rights are there and if they are enjoyed by the people, why is there not this glow of freedom? The reason is that these offending words seem to nullify what article 8 seems to grant in respect of the present laws and people do not take us seriously. That is the cause of the general sympathy of the people. If I referred in connection with this matter to the present situation, my object was only to emphasise that the present situation is very unsatisfactory. I will leave the matter at that.

As regards the amendment for the addition of the word 'reasonable' I will beg the House kindly to consider it calmly and dispassionately. We have heard the speeches of Sardar Hukam Singh and Mr. Mahboob Ali Baig. Both of them asked what would happen to the Fundamental Rights if the legislature has the right to substantially restrict the Fundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this country and their rights to be regulated by the executive and by the legislature or by the courts? This is the question of questions. The question has been asked, if the Legislature enacts a particular Act, is that the final word? If you consider clauses (3) to (6) you will come to the conclusion that, as soon as you find that in the Statement of Objects and Reasons an enactment says that its object is to serve the interests of the public or to protect public order, then the courts would be
helpless to come to the rescue of the nationals of this country in respect of the restrictions. Similarly, if in the operative part of any of the sections of any law it is so stated in the Act, I beg to ask what court will be able to say that, as matter of fact the legislature was not authorised to enact a particular law. My submission is that the Supreme Court should ultimately be the arbiter and should have the final say in regard to the destinies of our nationals. Therefore, if you put the word 'reasonable' here, the question will be solved and all the doubts will be resolved.

Sir, one speaker was asking where the soul in the lifeless article 13 was? I am putting the soul there. If you put the word 'reasonable' there, the court will have to see whether a particular Act is in the interests of the public and secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in the circumstances of the case. The courts shall have to go into the question and it will not be the legislature and the executive who could play with the fundamental rights of the people. It is the courts which will have the final say. Therefore my submission is that we must put in these words "reasonable" or "proper" or "necessary" or whatever good word the House likes. I understand that Dr. Ambedkar is agreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise if words like "necessary" or "proper" had been accepted, I donot think they would have taken away from but would havematerially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled maybe accepted so that article 13 may be made justiciable. Otherwise article 13 is a nullity. It is not fully justiciable now and the courts will not be able to say whether the restrictions are necessary or reasonable. If any cases are referred to the courts, they will have to decide whether restriction is in the interests of the public or not but that must already have been decided by the words of the enactment. Therefore the courts will not be able to say whether a fundamental right has been infringed or not. Therefore my submission is that, if you put in the word "reasonable", you will be giving the courts the final authority to say whether the restrictions put are reasonable or reasonably necessary or not. With the words, I commend this amendment to the House.

The Honourable Dr. B. R. Ambedkar: Sir, I move:
"that with reference to amendment No. 454......"

Shri H. V. Kamath: On a point of order, Sir, has amendment No. 454 been moved?
Mr. Vice-President: Please continue.

The Honourable Dr. B. R. Ambedkar:
"with reference to amendment No. 454 of the List of amendments--
(i) in clauses (3), (4), (5) and (6) of article 13, after the words 'any existing law' the words 'in so far as it imposes' be inserted, and
(ii) in clause (6) of article 13, after the words 'in particular' the words 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any author ity to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam: Muslim): On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President: It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath: This will have the effect of negating the original amendment.

Mr. Vice-President: Kindly take your seat.

The Honourable Dr. B. R. Ambedkar: From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that is the way in which the phrase "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it unnecessary to incorporate some such qualification in using the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to be caused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will read for illustration sub-clause (3) with my amendment.

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."
I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also. "imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava: Not exactly.

The Honourable Dr. B. R. Ambedkar: What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is independent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that thereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position? The position would be that all the laws which have been made by the earlier legislature, by the Central Legislative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the Parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularizes the portion of the existing law
which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the House will not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President: Then we shall take up amendment No. 485, first part. The House can well realize that I am going through a painful process in order to shorten the time spent on putting the different amendments to the vote.

Syed Abdur Rouf: I want the first part of the amendment to be put to the vote.

Mr. Vice-President: Then we come to another group, 456, 472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President: The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President: Then amendment No. 458 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already been covered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President: Still, it would depend upon the Mover.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:

"That in clause (2) of article 13, after the word 'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are giving powers to the State to make laws as against certain offences such as libel, slander, defamation, sedition and similar offences against the State. Now I want that these words "communal passion" be also added after the word "sedition"--which means, agitating or exciting the minds of one community as against the other.

These words, Sir, libel, slander, defamation, sedition, are the common words found in the Indian Penal Code and fortunately or unfortunately, we find that this word does not find a place in the Indian Penal Code. The reason is very simple, because, the Indian Penal Code and the old laws were framed by a Government which was foreign to us. Now, this is the time when we must realise our merits and demerits. We know that the agitation and the excitement of communities against communities have done a great loss and disservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tell the truth, I would say that if in our country which is now an independent country, we are really sincere to ourselves, this word also must find a place in the Constitution. I would request and appeal to
Dr. Ambedkar and the House as a whole to give sound reasoning and due consideration for the addition of this word.

At the end, Sir, I may submit that an amendment has been moved by Mr. Munshi and I do not know whether it is going to be accepted or not. In case that amendment is going to be accepted by the House, I would appeal that this word may be given a place in that amendment or wherever it is found suitable. With these words, Sir, I move.

Mr. Vice-President: We come next to amendment No. 459. It is in the name of Mr. Thomas. It is verbal and therefore disallowed.

Next we take up amendments nos. 460, 461 and the second part of 462. I would allow amendment No. 461 to be moved because that I regard as most comprehensive of the three. That is covered by Mr. Munshi's amendment. Is amendment No. 460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President: Amendment No. 462; Mr. Kamath.

Shri H. V. Kamath: It is covered by amendment No. 461.

Mr. Vice-President: Amendment No. 462, first part. I was dealing with the second part just now. The first part is more or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from two different quarters are of similar import. Amendment No. 464, standing in the name of Shri Vishwambhar Dayal Tripathi maybe moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President: What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President: Then, we take up amendments nos. 467 and 474. Amendment no. 467 may be moved. It stands in the name of Mr. Syamanand Sahaya.

Shri Syamanand Sahaya (Bihar: General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, what was uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely, the freedom of speech, freedom of association and freedom of movement, we had really gone to the extent that everyone desired we should. I must admit that I did not feel happy over the phraseology of the clauses so far as this general desire in the mind of every body, not only in this House, but outside, obtained. I will, Sir, refer to the wording of sub-cause (b) of clause (1) of article 13. This sub-clause lays down that all citizens shall have the right to assemble peaceably and without arms. This is the Fundamental Right which we are granting to the people under the Constitution. Let us see how this fits in with clause (3) of article 13 which
is the restricting clause. Clause (3) lays down that nothing in sub-clause (b) of the said clause (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause, Sir, the only right which we are giving by sub-clause (b) is the right to assemble peacefully and without arms. This right to assemble is not a general right of assembly under all conditions. To assemble peacefully is the first condition precedent and there is also a second condition. That condition is that the assembly should be without arms. On the top of these conditions we are laying down in sub-clause (3) that there shall be a further restricting power in the hands of the State. I would much rather that clauses (3) and (4) did not form part of our Constitution. But, if the Drafting Committee and the other people who have considered the matter carefully think that it is necessary to lay down restrictions even in the matter of assembling peacefully and without arms, I might respectfully submit that it would be necessary to further restrict this restricting power by saying that any law restricting this power must be for a specified period only. I do not think the House will agree that any State should place on the statute book a permanent law restricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate a particular Government at a particular time under a particular circumstance was to give it the power to restrict this right under these conditions but for a specified and defined period only and that I submit, Sir, is the purpose of my amendment. The best interpretation that one could put on this clause is that the Drafting Committee has erred too much on the cautious side in this matter and they have probably kept the Government too much and the citizens too little, in view. I will submit that both in sub-clauses (3) and (4) the words 'for a defined period' should be added in order that if a State at any time has to pass legislation to restrict these rights, they may do so only for a period. It does not mean that once a State has passed such legislation it is debarred from following it up by a second legislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive law to be a permanent feature of the law of the land. A State should not be empowered to pass a legislation restricting permanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State, however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at the formative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental rights as, freedom of speech, freedom of assembly and freedom of movement would, I believe, be harmful and result in the creation of a suffocating and stuffy atmosphere as opposed to the free air of a truly free country. Sir, I move the amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)
Mr. Vice-President: 471 is disallowed as verbal. Nos.476 and 477 are of similar import. I allow 476.

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

"That in clause (4) of article 13, for the words 'the general public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President: 477 is identical, 479, 480 and 486 are of similar import

(Amendments Nos. 479, 480, and 486 were not moved.)

Mr. Vice-President: 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President: 483--Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words 'existing law' the word 'which is not repugnant to the spirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated our fears and we feel that is the object of most of the amendments that have been moved. Certainly there are fears in our minds that if these articles stand independently--articles 8 and 13,--then there is a danger of different constructions being put on them. Dr. Ambedkar has emphasised that if relevant articles of the Constitution are in question, all those articles that relate to one subject shall be taken into consideration when some construction is going to be put by any Court and then article 8 would govern because it says that "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". That we have adopted, and this is what we feel that it should be made clear that certainly those parts which are inconsistent would be void to that extent. If that is the object as Dr. Ambedkar has explained, then why not make it clear in this section as well. Where is the harm? I do not see that we would lose anything or that it would change the beauty of the phraseology even if we make it clear that these provisions are subject to article 8. This is to be admitted that there are certain laws in force just at present that restrict the liberty of the people. For instance I can quote the Land Alienation Act in Punjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase that land. If this distinction were based on some economic ground, if it were to be enacted that all small tillers' rights would be safeguarded and their small lands would not be alienable, we could understand that alright and such a provision would be welcome. But when the discrimination is there, we too feel that such a law should stand abrogated so far as it is inconsistent with the provision in clause (5) or article 13. Because that gives freedom to acquire hold and dispose of property and if that law remains--Land Alienation Act, as it is and definition is not changed of the "agriculturist", there
would be a conflict and there might be certain constructions by Court which would be unfair.

So if that is the object as Dr. Ambedkar has explained that article 8 would govern, then we should make it clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President: Then we come to amendment No. 485, second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the joint names of Dr. Pattabhi Sitaramayya and others. The latter seems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President: Then in that case, the second part of amendment No. 485, standing in the name of Syed Abdur Rouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word 'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got themost valuable of our Fundamental Rights. But clause (5) seems to take away most of our rights, because States have been given power to restrict, to abridge and even to take away the rights if and when they like. We remember the word 'State' has been defined as to include even local authorities etc, within the territory of India or under the control of the Government of India. Even village panchayats, small town committees, municipalities, local boards all these, to a certain extent become States, and it has been left to these States to deal with these valuable Fundamental rights. Sir, I will bring one instance before you. Suppose, due to political views, a particular village or panchayat area is divided between the majority and the minority. Now, if the majority of the Panchayat by a resolution asks the minority not to move freely in the area or to reside there, or to dispose of their property, which law will prevent the majority from doing so, and which law is there to safeguard the interests of the minority? As these are most valuable rights, the State should not be trusted with making laws regarding these rights. In my opinion, Sir, it is only the Parliament which can to the satisfaction of the people, deal with these questions. As it is very dangerous to leave this power in the hands of the small States, which will comprise seven village panchayats, we must be very careful and therefore, I suggest that in place of 'State', the word 'Parliament' should be substituted.

Mr. Vice-President: Then amendments Nos. 487, 489 and 490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President: Amendment No. 489 standing in the joint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: Sir, I beg to move:
"That in clause (5) of article 13, the word 'either'and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

Sir, I am not going to make any speech in this connection, but want only to submit that the removal of these words would make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President: Amendment No. 490 is the same as the one now moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment No. 491, standing in the name of Dr. Ambedkar may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That in clause (5) of article 13, for the word 'aboriginal', the word 'scheduled' be substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President: There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of List I was not moved.)

Mr. Vice-President: That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

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

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words 'public order, morality or health' are quite inappropriate in the particular clause.

Mr. Mohd. Tahir: *[Mr. President, my amendment No. 500 is as follows.

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of begging in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.'"

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist
in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country thousands, lakhs paycrores of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country manyable-bodied persons who

* [ ]Translation of Hindustani speech.
can work and can earn their livelihood, are to be foundbegging on road sides. If you tell them that they can work,that they can maintain themselves by earning theirlivelihood and can do good to their country by their labour,they would say in reply "Sir, this is our ancestralprofession and we are forced to do it". I would

like to saythat there are so many countries on this earth: but if youlook around, you will find this ugly spot only on the faceof our country. Therefore, I want that there should be some
such provision in our Constitution as would be beneficial toour country. Obviously, those that are helpless, forinstance many of our unfortunate countrymen, who are blindlame and cannot use their hands and feet, really deserve some consideration. In such cases begging on these and othersimilar grounds may be justified. But even in this matter, I would submit that the State should be responsible and some
such institution or home be founded in some places where they might be brought up, while those that are able-bodiedand healthy should be forced to work. By doing so, our labour problem will be solved to a great extent and crores
of human beings, who have taken to begging as profession, would be prevented from doing so. This will create in them the spirit of self-respect and self-reliance. Therefore, I hope that Dr. Ambedkar will accept this amendment of mine and the House will also help me by accepting it. With these words, I submit this amendment for the consideration of the House.]
The Assembly then adjourned till Half Past Nine of the Clock on Thursday, the 2nd December 1948.
Thursday, the 2nd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee, in the Chair.

Mr. Vice-President (Dr. H. C. Mookherjee): We shall resume discussion of Article 13.

I should like to know the views of the House as to the way we should deal with the following amendments—we postponed consideration of these amendments yesterday:

Amendments No. 442, No. 499, second part of No. 443, No. 468 and No. 501.

Shri M. Ananthasayanam Ayyangar (Madras: General): May I suggest that in as much as these relate to the free choice of vote and some other matters which are not already prescribed in article 13, these may stand over and be allowed to be moved as a separate clause later on in the Fundamental Rights, and that we need not delay the passing of article 13, amendments with respect to which have already been moved, and the discussion may start?

Mr. Vice-President: Is that the view of the House?

Honourable Members: Yes, yes.

Mr. Vice-President: Then we shall proceed with the general discussion of the article. A large number of honourable Members desire to speak on this article. Therefore, with the permission of the House, I would like to limit the duration of the speeches to ten minutes each ordinarily. I shall extend the time wherever I consider necessary. Have I the permission of the House to fix this time-limit?

Honourable Members: Yes.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir, Two amendments have been held over. Unless they are moved, how can general discussion on the article as a whole go on?

Mr. Vice-President: What are those amendments please?

Shri H. V. Kamath: No. 499 and No. 442.

Mr. Vice-President: They will form part of a new clause.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, I regard freedom of speech and expression as the very life of civil liberty, and I regard it as fundamental. For the public in general, and for the minorities in particular, I attach great importance to association and to free speech. It is through them that we can make our voice felt by the Government, and
can stop the injustice that might be done to us. For attaining these rights the country had to make so many struggles, and after a grim battle succeeded in

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* [] Translation of Hindustani speech.

getting these rights recognised. But now, when the time for their enforcement has come, the Government feels hesitant; what was deemed as undesirable then is now being paraded as desirable. What is being given by one hand is being taken away by the other. Every clause is being hemmed in by so many provisos.

To apply the existing law in spite of change conditions really amounts to trifling with the freedom of speech and expression. From the very beginning we have stood against the existing laws, but now you are imposing them on us. You want to continue the old order so that there should be no opportunity of a trial, of putting up defence and of an appeal. If a meeting is held, then for breaking it up lathis may be used, and people may be put into jail without trial; their organisations may be banned and declared illegal. We do not like this shape of things. If you want to perpetuate all that, then I would like to say that by imposing all these restrictions you are doing a great injustice. There are a few rights to which I attach very great importance. You have included them in the articles relating to directive principles of State policy, and so we cannot go to a Court of law for their enforcement. You are diluting these rights with the result that nothing solid remains.

Mr. Vice-President, I want that these rights should not be restricted so much, and all opposition that is peaceful and not seditious should get full opportunity, because opposition is a vital part of every democratic Government. To my mind, suppression of lawful and peaceful opposition means heading towards fascism.]

Seth Govind Das (C. P. and Berar: General): *[Mr. Vice-President, article 13 is the most important of all the articles concerning Fundamental Rights. The rights that have been granted to us by these articles are all very important. Yesterday Shri Damodar Swarup Seth and Shri K.T. Shah moved their amendments in this House. The purpose of the amendments is that the rights which have been given to us with one hand are being taken away by the other hand. This may be true to some extent but if we consider the present national and international situation as also the fact that we have achieved freedom only recently and our government is in its infancy, we shall have to admit that it was necessary for the government to retain the rights it has done after granting these fundamental rights. We should see what is happening in our neighbouring country, Burma. We should also keep in view what is happening in another great country of Asia--I mean war-torn China. In view of what is happening in our neighbouring countries and of the situation in our own country, we should consider how necessary it is that the Government should continue to have these powers.
I would have myself preferred that these rights were granted to our people without the restrictions that have been imposed. But the conditions in our country do not permit this being done. I deem it necessary to submit my views in respect to some of the rights. I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition'. I would like to recall to the mind of honourable Members of the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. In this connection many things that happened to me come to my mind. I belong to a family which was renowned in the Central Provinces for its loyalty. We had a tradition of being granted titles. My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under section 124 A and sentenced to two years' rigorous imprisonment. I mean to say that there must be many Members of this House who must have been sentenced under this article to undergo long periods of imprisonment. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear.

The next matter to which I would like to draw your attention is sub-clause (b) of this article. The expression "to assemble peacefully without arms", occurs in it. I want to draw your attention to the words "without arms" in particular. I agree that we should have the right of assembling in this way without arms only. We had accepted the creed of non-violence and through it we have achieved freedom. It is true that in the present world situation we are compelled to maintain armies. But I hold that the welfare of humanity can be secured by means of non-violence alone. We should have a right of assembling but assembling without arms.
I would also like to draw your attention to the two following sub-clauses and these are sub-clauses (f) and (g) which run as follows:
"to acquire, hold and dispose of property;" and
"to practise any profession or to carry on any occupation, trade or business."
Speaking for myself I may say that just as I hold that humanity cannot achieve its welfare except through non-violence so also I do believe that there cannot be stable peace, unless and until private property is abolished. I am not a socialist or a communist but at the same time I hold that what the big capitalists, traders, zamindars, talluqdars have to do to protect their property does not allow of their enjoying true happiness. It is not true to say that people lacking wealth alone are unhappy. They are no doubt unhappy but in the present economy the moneyed are more unhappy than the moneyless, and this band of gold is today crushing the rich man's neck. This wealth has been in their possession for long and that is why they are anxious to retain it. It is not for pleasure that they want to keep it. If they are forcibly deprived of their wealth, socialism or communism would not be established. The example of Russia bears testimony to it. Individual property was expropriated there by force and the result has been that it could not be destroyed. On the other hand it is increasing. But if we make an effort to change values in this country and the world and bring about such a psychological atmosphere as makes people eager to rid themselves of the burden of property, we would have reached the desired goal and there would then be the possibility of the establishment of a true socialistic state. There has been change in values in the world from time to time. It is a historical fact that at one time man devoured man. At that time the man who had the capacity of devouring the greatest number of men, must have been worshipped by the society, because he must have been recognised as the bravest among them. Times changed to usher in the epoch of slave-trade. Respectability was judged by the number of slaves one had. Those conditions changed. Today the capitalists are characterised by our society as plunderers and dacoits. They no doubt make such remarks about capitalists, but I may be excused for saying that the major ity of the socialists are such that if they were to get hold of this property, they would forsake socialism. The necessity is for a change in outlook. If there is a change in values by the propagation of these ideas in society and if the capitalists are looked down upon as thieves and pilferers by everyone they would not like to keep their wealth. Such a change of mind and heart can be brought about only through non-violence. I hope that in time to come the articles concerning property will not find a place in the Constitution. I heartily support the whole of the article 13 on the Fundamental Rights.]
Shri Jaipal Singh (Bihar: General): Mr. Vice-President, Sir. So far as I am concerned, this particular article in no way frightens me, although the various fundamental rights have been hedged in by so many exceptions. To me it is obvious that whatever we put into the Constitution, its value, its use to us will depend upon the way we work all these things. But
there are one or two things on which I would like Dr. Ambedkar to enlighten me. The first point on which I would like his clarification is in regard to the amendment which he has moved, amendment No. 491, where in he seeks to substitute the word "aboriginal" by the word "scheduled". Sir, I am always at a disadvantage whenever anything affecting aboriginals has to be discussed at this stage for the obvious reason that the two reports of the Tribal sub-committees have not been fully discussed on the floor of this House, with the result that the House has not been able to obtain its collective viewpoint or arrive at a collective decision as has been the case with all the other articles, that is to say, articles which affect the non-tribals of our country.

Take the question of this word 'tribal'. As far as I know neither of the sub-committees had gone into the work of scheduling. I know it for a fact that the sub-committee of which I was a member did nothing of the sort and, in fact, bodily the Drafting Committee has just put into the Draft Constitution whatever obtained in the Government of India Act. Now, look at the list.

My second point that I want to have clarified is whether the advisory councils or the regional councils, which are envisaged in the recommendations of the two sub-committees, will operate outside the so-called scheduled areas. If they do not, then I want to know from Dr. Ambedkar what is going to happen to the Adibasis, who are in millions, outside those scheduled areas. As far as I can understand the language of the Constitution, the regional councils and the advisory councils are to advise the Governor to participate as it were in the legislation of the State only in regard to the scheduled areas. Well, once it is accepted that the regional councils and the advisory councils may operate also outside the scheduled areas then my point is met.

Take the case of West Bengal. In West Bengal, according to what is proposed, there shall be no scheduled areas; in West Bengal there are 16 lakhs of Adibasis. I want to know what is going to happen to them. There is no regional council; there will be no advisory council there. Who is going to advise the Governor in regard to their welfare, in regard to whatever should be done or should not be done, what act may operate for them or against them? I think that is a point that has to be clarified.

Sir, the Tribes inventory that is in this Draft Constitution is most unsatisfactory. I will exemplify one or two cases. Sir, you yourself come from West Bengal. Bengal has been carved into three provinces, Bengal united, now West Bengal, Bihar and then Orissa. The British had their own arguments for their territorial boundaries. At the present moment, you know it only too well that none of these three provinces seems to be satisfied with the boundary alignment. West Bengal wants something of Bihar; Bihar also wants something of West Bengal. Orissa also is clamouring for some more territory from Bihar. That is the present political situation, but, how does it affect the Adibasis? Now the Tribal Sub-Committee in a
way has been outmoded to this extent that lakhs and lakhs of States people have been integrated into provinces. Take the question of Orissa. When the Tribal Sub-Committee went to Orissa it had to deal only with those areas that were excluded or partially excluded. The present position is that about 24 States have been integrated into Orissa and several others into the Central Provinces. Most of these States are overwhelmingly populated by Adibasis. What happens in regard to them? Whatever scheduled areas the Sub-Committee has recommended is really insignificant. It does not cover the whole Adibasis population, particularly of the two provinces of the Central Provinces and Orissa.

I would like Dr. Ambedkar, therefore, to tell me quite clearly that whatever provisions, whatever little concessions that he desires this Constitution should have, will apply also to those areas that are not particularly specified within the scheduled areas.

Then I come to article 13 (1) (b), namely, to "assemble peaceably and without arms". I have to point out that this matter of the Arms Act has been very mischievously applied against the Adibasis. Certain political parties have gone to extremes to point out that because Adibasis carry bows and arrows, lathis or axes, which they do daily as a normal part of their life, which they have done for generations and generations, and what they are doing today they have done before, that they are preparing for trouble.

Let me give you the instance of the Oraons. We have in this Assembly only one Oraon member. Now the Oraon group of Adibasis constitutes the fourth largest block of Adibasis in India. Just about now, they have what we call Jatras or Melas. These are annual occasions for their cultural activities. They have a certain ceremony in which the head of the Oraon village will carry the flag and the rest of them carry lathis with them and proceed into the various akhadas or villages. It is a festival for the people; they have done it in a harmless way for generations and generations and, now we have been told last year and the year before last that we should not carry weapons. I do not mind pointing out there are several Members here from Bihar who will never be able to get back to their homes unless they are escorted with people and with arms. In my own part, we live in the jungles and every one, even women, may I point out, carry what might be designated arms, but they are not arms in that sense. Whenever we have to hold meetings, if people come with their own usual things, I want to know whether it is going to be interpreted that we are assembling unpeaceably and carrying arms for an unlawful purpose. These are the only points, Sir, that I want to have clarified.

I will give one more instance. Every seven years, it is the custom in Chota Nagpur to have what they call EraSendra, Janishikar. Every seven years, the women dress as men and hunt in the jungles--dressed as men, mind you. That is the occasion when naturally women like to show masculine prowess. They arm themselves like men with bows and arrows, lathis, belas and so forth. Now, Sir, according to this particular article in the Constitution, the Government
might interpret that women every seven years were getting together for a dangerous purpose. I urge the House to do nothing that is going to upset the simple folk. They have been among the most peaceful citizens in our country and we should be very very cautious in doing anything which might be misunderstood by them and lead to trouble.

Sir, I have, as I have said, no difficulty in accepting this particular article, but I thought I should seek clarification from Dr. Ambedkar on these two particular points.

Mr. Vice-President: Mr. Hanumanthaiya.

Kazi Syed Karimuddin: (C. P. & Berar: Muslim): I have not caught your eye, Sir.

Mr. Vice-President: Unfortunately, I have only two eyes. They will be turned to your side the next time.

An Honourable Member: Why do you not have a third eye, Sir?

Mr. Vice-President: Why can you not come to the front Bench? I say it is the fault of the House that they unanimously chose an old man as the Vice-President. His eye-sight is not as good as that of younger men. Mr. Hanumanthaiya.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, this article incorporates some of the most cherished rights of us all. For the last sixty and odd years during which the freedom movement was taking shape, we made innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in this article. But, the point of view of many members here as well as the opinion of some people outside is that these fundamental rights have been so much curtailed that their original flavour is lost. Sir, every law, whether it is in the form of a right or a duty, takes shape according to the condition of the society then prevailing. We went through a course of suffering and sacrifice which were imposed upon us by the repressive laws of British imperialism; this naturally made us votaries of unadulterated fundamental rights and that was our hope. But, ultimately when we emerged out of those innumerable difficulties, we are faced, within our own society, with elements who want to take advantage of those rights in order to do violence to men, society and laws. Hence it is that the Drafting Committee as well as the Governments in the various provinces and the Centre, are hard put to safeguard these rights in their pristine purity. No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights.

The question next arises whether this limiting authority should be the legislature or the court. That is a very much debated question. Very many people, very conscientiously too, think that the legislature or the executive should not have anything to do with laying down the limitations for the operation of these fundamental rights, and that it must be entrusted to courts which are free from political influences, which are independent and which can take an impartial view.
That is the view taken by a good number of people and thinkers. Sir, I for one, though I appreciate the sincerity with which this argument is advanced, fail to see how it can work in actual practice. Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year. The law must be such as to automatically adjust itself to the changing conditions. Courts cannot, in the very nature of things, do legislative work; they can only interpret. Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the legislature. After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution. If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts.

Then, Sir, here in article 13, about seven fundamental rights are incorporated. I wholeheartedly feel the Drafting Committee has done well in incorporating the first four freedoms, freedom of speech and expression, freedom to assemble peaceably and form associations, and to move freely throughout the territory of India. The next three clauses, to reside and settle in any part of the country, to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business, Sir, in my opinion do not take the character of fundamental rights. They are not really fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislatures of the Units. I find these three rights which are incorporated as fundamental rights in this article 13 are not so treated by any other country except, perhaps, Ireland and Switzerland. In America, we do not find these three rights incorporated as fundamental rights. To acquire property, to settle down in a particular town, to practise any trade or profession in any part of the country he likes, are not really fundamental rights. I may be pardoned if I say this that the men who did the work of shaping these constitutional proposals, a majority of them, have come from the uppermost strata of society. After all, they can think of what suits their psychology and their class or their strata of society. It is from that point of view they have framed these three rights. Really speaking, whether these three rights are fundamental or not, we ought to judge from the point of view of the people of the villages and people of the Units. I, for one, feel that these are rather not rights, but liabilities that are sought to be imposed upon the people of the villages and of the Units. I very much wish that the Drafting Committee and this Assembly could now delete these three rights and relegate them to the discretion of the
legislature of the Units but now it is too late and we have to accept them somehow or anyhow. Here arises a conflict in the future that the Units in order to safeguard the rights and interests of the people within their respective areas, may try to circumvent these three rights that are conferred by this Constitution. It will happen. I have no doubt whatsoever in my mind, that here arises a plentiful source of litigation. Yesterday I happened to read Sir Ivor Jennings' opinion about our Fundamental Rights. He says, the rights conferred in this Chapter and especially in this section are so complicated, are worded in such a verbose manner, that it will be a fruitful source of income to constitutional lawyers. There is a good deal of truth in it. The enunciation of the Fundamental Rights and the exceptions added on by provisos are so worded— and they had to be like that because it is impossible to foresee all exigencies, and make provision for them now alone— that there will be litigation on a scale which none of us have ever seen or contemplated. Every man who feels aggrieved can go to any Court of Law and the Supreme Court will be full of cases between individuals and individuals, between individuals and State, between State and State, between the Central Government and State Governments. This litigation— I do not suppose— will be helpful to the interest of the country. Litigation— I need not argue about it— litigation surely ruins both the Parties to it. There is a Kannada proverb the meaning of which is "a successful party in a case is as good as defeated and a defeated party in a case is as good as dead". And whenever there arises litigation in interpreting these clauses, political controversies also arise conferring fundamental rights in this manner especially the last three clauses— will continuously raise political storms in the shape of litigation in regard to interpretation of these Fundamental Rights.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, there is no denying the fact that this article is the very life of the Draft Constitution. Without this article the Constitution will be a dead letter. It must also be understood that the Rights contemplated under article 13 are admittedly inalienable rights and the point involved is whether these rights can be delegated to the Governments or we are going to lay down principles which cannot be subject matter of legislation or the vagaries of the legislatures. My submission is that these are Fundamental Rights regarding individuals a contemplated under article 13 which cannot be made subject matter of the vagaries of the Legislatures. Clauses (2) to (6) of this article rob the people of the only guarantee which will make them secure and my submission is that clauses (2) to (6) are very dangerous clauses. Suppose, in a State there is a political party, which is hostile to the Central Government and they frame laws to the great detriment of the political minority or the religious minorities. What can be done? People have to suffer and there would be untold miseries. Particularly the wording 'subject to operation of existing laws' is very unjust. What is the situation today in India? Practically there is a state of siege. There are Goonda Public Safety Act, etc. in all the provinces in which there is neither appeal, nor any warrant is
necessary for arrest, and searches can be made without justification. In spite of this, the article laysdown that the existing laws will be recognized. These unjustlaws which do not provide appeals and which do not provideany proper representation will be recognized under article13. There is no doubt that we are living in an emergencyperiod but that does not mean that article 13 should be inconsonance with emergencies. Another part of the article isthe right to assemble peacefully and without arms. Whatgreater restriction could have been laid down by the framersof the Constitution than this and in spite of that the legislatures of the States are empowered to have morerestrictions as embodied in clauses (3) and (4). Now thepoint is whether a particular legislation is in the interestof the people, or whether that can be delegated to thejudiciary or to the States' Legislatures. My submission isthat you must realise that we cannot entrust theinterpretation of these clauses in the Fundamental Rights to the vagaries of legislatures. In the State Legislatures the major ity is capable of practically oppressing themminor ities, political or communal. The very purpose of thisFundamental Right is being defeated. The Fundamental Rightsare being enacted only with a view to placing restrictionson the legislation. By these clauses (2) to (6) we areenlarging the scope of this article 13 and we are enlargingthe scope of the powers of the Provincial Legislatures orStates. This is entirely to the detriment of the politica lor religious minor ities. If this article as it stands ispassed, my submission is that it will be taking away thoserights which are given in article 8 of the Constitution.There is no parallel to these restrictions in anyConstitution of the world. In the American Constitution allthese rights have been entrusted to the judiciary simplybecause the political parties who are elected from time totime cannot be entrusted with the interpretation of laws. The main principle should have been whatever is notforbidden should have been allowed. Apart from that, twoamendments have been moved, one by Mr. Mohamed Ismail and the other by Mr. Tahir. My submission is that both theseamendments are very innocent and both these are verynecessary for the protection of the minor ities. Mr. Ismail'samendment advocates that personal law should be respectedand this should be embodied in this Constitution. The peopleoutside and the Members of the Constituent Assembly mustrealize that a Muslim regards the personal law as part of the religion and I really assure you that there is not asingle Muslim in the country--at least I have not seen one--who wants a change in the mandatory provision of religious rights and personal laws and if there is any one who wants achange in the mandatory principle, or religion as a matterof personal law, then he cannot be a Muslim. Therefore ifyou really want to protect the minor ities--because this is a secular State it does not mean that people should have noreligion--if this is the view of the minor ity Muslims or anyother minor ity that they want to abide by personal law,those laws have to be protected. The amendment of Mr. Tahiris very important and I feel that every Member of theConstituent Assembly must realize that it is importantbecause we have seen after 15th August, whether Muslims areresponsible or the Hindus are responsible for communalpassion,
it has eaten away everything that is good in society. It was really a canker that was destroying the society and would have done so but for the Central Government. Then communal passion should be made an offence. In my opinion this is a very vital amendment that has been moved and it should be accepted by Dr. Ambedkar; Sir, as I have said even Dr. Ambedkar in his book 'States and Minorities' has said--

"No law shall be made abridging the freedom of the press, of association and of assembly except for consideration of public order and morality."

In 1947 he was agreeable that only the first part of article 13 should be enacted in our Constitution and within a year he is so changed that he has placed so many restrictions that take away what has been given under article 8.

Mr. Vice-President: You seem to make the mistake that Dr. Ambedkar is responsible for everything connected with this Draft Constitution. There was the whole Drafting Committee.

Kazi Syed Karimuddin: My submission is that if you take the opinion of the minorities in this House—a Sikh representative has spoken, and I am speaking now—and if you take votes, you will find that the minorities in the country will say that article 13 is not sufficient protection for them. Therefore, I earnestly plead for deletion of clauses (2) to (6). I strongly support the other two amendments to which I have referred. If article 13 is passed as it stands, it is not acceptable to the minorities. It is no freedom of speech that you are guaranteeing. It is no freedom of the press that you are giving. You are giving by one hand and taking it away by the other.

Chaudhari Ranbir Singh (East Punjab: General): Mr. Vice-President, Sir, I am not in agreement with those who are for abolition of these provisions from the text during the transitional period. This is why I gave notice of two more provisions to article 13. They are as under:

"That the following new clauses (7) and (8) be added to article 13:

(7) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law or prevent the State from making any law imposing restrictions on non-agriculturists to acquire and hold agricultural land, for the protection of the interests of the tillers of the soil or the peasantry.

(8) Nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making laws to declare the minimum of economic holdings of land inalienable."

Sir, after further consideration, I changed my mind and did not move these amendments, because I think in sub-clause (5) of the article, the words "in the interests of the general public" denote, mean and cover my point that whenever the imposition of restrictions is found to be necessary for the protection of the interests of the tillers of the soil and labourers, the governments will have the right to impose the necessary restrictions on any section of the society, or may allow to continue such laws as are already in existence, which the
Governments think are necessary for the protection of the interests of the peasantry or labourers.

I come from East Punjab, and there is a law which is known as the Land Alienation Act, according to which certain classes are debarred from acquiring land, by law. I agree with my Friends, specially Harijans who advocate that the Harijans and other persons who are actually the tillers of the soil should have the right to acquire land. But I fail to understand the argument that each and every person whether he is a tiller of the soil or not, should be put on a par with the tillers of the soil, and should have the liberty to acquire agricultural land. If that is to be the case, then we will be creating a new problem—the problem of zamindaries, the same problem of zamindaries which we are abolishing or have promised to abolish from our country. In several provinces, laws for the abolition of the zamindari system have already been enacted. As regards the Punjab, I am of the view, that it cannot be denied that the absence of zamindari system in the Punjab in its acute form as it exists in other provinces is the result of the Land Alienation Act, and this is the real reason why the agriculturists are in a more advanced position in the Punjab than in other provinces. I therefore, feel very strongly and rightly that the legislatures of the State and the various governments should have the full liberty to impose restrictions on the non-tillers of the soil on acquiring or holding agricultural lands, and to declare a minimum economic holding of land inalienable, for the protection of the interests of the tillers of the soil or the peasantry.

Moreover, the overwhelming majority of the population of our country depends on agriculture and they are the tillers of the soil. So the words "general public interests" can mean only the interests of the peasantry and the labourers, and not only the interests of the vocal middle intelligentsia and vested people.

Mr. Vice-President: Maulana Hasrat Mohani (Cheers) I am glad the House recognises the excellent services rendered by Maulana Hasrat Mohani to this country. He was the first to stand for total independence of our Mother-Land.

Maulana Hasrat Mohani (United Provinces: Muslim): * Mr. Vice-President, when I rose to speak, my first impulse was to support whole-heartedly the amendment moved by Mr. Kamath and even now I have come here with that idea. In the later speeches and amendments, one amendment has been moved by Mr. Muhammad Ismail of Madras and I give my full support to it. Besides, I also support the amendment of Mr. K. T. Shah. Mr. Muhammad Ismail in the second part of his amendment has made mention of personal liberty. Mr. K.T. Shah's amendment is also of similar nature. I shall speak at the end about his amendment. First of all, I would like to give full support to Mr. Kamath's amendment. Mr. Kamath has said that everyone should have the right to bear arms. This is a testamentament. If Dr. Ambedkar and his committee are honest, then surely they ought to accept this section and include it in the article at once. If he...
wavers or raises any objection as I know he is capable of doing, as Dr. Ambedkar's legal abilities are established, and if he wishes, he can turn night into day and day into night and can prove it conclusively, -- then I would like to tell him that this is a test amendment and, if you do not include it, it would mean that your tendency is the same as that of the British Government. You know what the Britishers had done. They had promulgated the Arms Act in India. The result was that all the inhabitants of Hindustan were kept as imbeciles. If you also have the same design, then it is a different matter. But if there is any national Government and an Indian Government, then there is no reason why you should deprive anybody of this right. If you too will forge an Arms Act and will deprive the people of this right, then I would say that your attitude and way of doing things is much worse than that of the Britishers. It will be much worse. The Arms Act, enforced by the British Government, was applicable to one and all with the exception of the ruling class. We were under the impression that under our own Government this restriction will be removed. Unfortunately at present here we have

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*[] Translation of Hindustani speech.

a party Government and they want to retain it, so that the Act may be applied against their political opponents and may not be enforced against their own party men.

On the basis of my own experience, I would like to say something about U. P. In particular I would tell you about Kanpur city which I represent. The U. P. Government there have singled out the Socialists, the Communists, Independent-Socialists, -- including Muslims -- Forward Blockists and even those who were suspected of standing against them as rival candidates in the elections and put restrictions on them, and on one plea or the other they were brought under the provision of the Defence of India Act. Some were branded as Goondas, others were stamped as Communists, there were others who were told that they were supporting Hyderabad and collecting funds. There were yet others who were told that they were connected with those members of the Communist Party who are working underground and they were sent to jail. In short, they applied this Act against all rival parties, and such was the ill treatment against the Muslims that every Muslim of position at Kanpur was house-searched and even if a kitchen-knife was found in his house, the Arms Act was applied and he was sent to jail. Some of them have been released and some are still in jail. Therefore, I would like to submit that for you, who are a party Government, this is a test amendment. You ought to accept Mr. Kamath's amendment and give the right of bearing arms to everybody. If you are not prepared to do this, then you will be setting an Indian bureaucracy in place of the English bureaucracy.

Another point which I should like to submit is that the amendments of both Mr. Ismail and Prof. Shah are of similar nature. As regards personal rights and liberty I would like to say that so long as you do not prove anything openly against anybody in a court of law, it should not
be lawful to detain anybody under Defence of India Rules, be he your rival party man or any other. If you send somebody to jail under Defence of India Act or under some other ordinance, then what would happen to the right of Habeas Corpus, and who would give that right, since the High Court will have no jurisdiction over it? And even if High Court interferes in one or two cases, it does not mean that it will be possible in all cases. Therefore, I submit that this should not be included and that everybody should have personal liberty.

I would like to submit my third point in few words, namely, regarding Mr. Ismail's amendment which has been supported by several members. I would like to say that any party, political or communal, has no right to interfere in the personal law of any group. More particularly I say this regarding Muslims. There are three fundamentals in their personal law, namely, religion, language, and culture which have not been ordained by human agency. Their personal law regarding divorce, marriage and inheritance has been derived from the Qoran and its interpretation is recorded therein. If there is any one, who thinks that he can interfere in their personal law, then I would say to him that the result will be very harmful.

I say from the floor of this House that they will come to grief. Muslims will not submit to any interference in their personal law, and if anybody has got the courage to say so then I declare.....

Mr. Vice-President: Order, order.

Maulana Hasrat Mohani: He should remain convinced—and I declare in this House—that Muslims will never submit to any interference in their personal law, and they will have to face an iron wall of Muslim determination to oppose them in every way.

(Interruption)

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Will you give the right of human sacrifice to those who believe in it and may claim it under the pretext of their personal law?

(More interruptions)

Mr. Vice-President: Will honourable Members please take their seats?

Shri Brajeshwar Prasad (Bihar: General): I rise to support article 13 with all its reservations and safeguards. These restrictions are necessary in our national interest. Let me adduce the reasons for saying so.

An Honourable Member: Is the honourable Member reading his speech?

Mr. Vice-President: He is reading his speech and I have given him permission to do so.

Shri Brajeshwar Prasad: Personal freedom has to be curtailed if the menace of capitalism is to be met. Nation-states of the nineteenth century were not confronted with even a small part of the dangers that confront a modern state. Political conspiracies of international
dimensions were unknown. The political criminal in the pursuit of his nefarious designs resorted to methods and anties very well known to the administrators of old. The laws and judicial institutions were strong enough to grapple with these problems. The technique and methods widely employed by modern law-breakers cannot effectively be checked by judicial institutions and ordinary laws of the nineteenth century. The state must be vested with wide discretionary powers and the freedom of the individual must be seriously curtailed if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Shri Rohini Kumar Chaudhari (Assam: General): The honourable Member is reading his speech so swiftly that we cannot follow him. May I suggest that his speech should be taken as read?

Mr. Vice-President: Do you agree, Mr. Brajeshwar Prasad, that it should be taken as read? (After a pause) Mr. Brajeshwar Prasad does not agree to the suggestion made by the Honourable Member Shri Rohini Kumar Chaudhari.

Shri Brajeshwar Prasad: It is wrong to regard the State with suspicion. Today it is in the hands of those who are utterly incapable of doing any wrong to the people. It is not likely to pass into the hands of the enemies of the masses. And constitutional guarantees of individual freedom will not for long remain sacrosanct if the machinery of the State passes into the hands of the reactionaries. If you want to prevent the political reactionaries from gaining political power and ascendancy, the rulers of the land must be vested with large discretionary powers.

In a modern progressive State there is not much conflict between the individual and the State. For the State is composed of individuals. It is we ourselves purged and purified of our selfishness. The individual has no power of his own, separate and distinct from the State. The State and the individual are the two sides of the same coin.

In the nineteenth century the executive authority had not developed the technique and mechanism of the modern State. It had very little part to play in the life of its citizens. The executive authority in the modern State has anominant part to play. It is not handicapped by any lack of technique.

The needs of modern life, of socialism and collectivism cannot be fulfilled if the State is not vested with ample powers. The trend of modern politics is towards regimentation of ideas and conduct. The doctrines of Mill and Spencer have become thoroughly unrelated to the needs and demands of the age. It is the society and not the individual which has become the object of primary concern and loyalty both of political theorists and actual administrators. The objective conditions of our modern life have relegated the individual from the Olympian heights
of honour and glorification accorded by the individualist school to a position of utter insignificance and neglect.

Individual freedom is risky in a community where more than 80 per cent of the people are sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

It is sheer illusion to think that the personal rights of the individual can be firmly secured if these are laid down in the Constitution in clear language without any reservations and safeguards. The enjoyment of these rights is dependent upon the fulfilment of certain social conditions outside the scope of any constitution. Man can never enjoy the blessings of personal freedom as long as society remains organized on the basis of capitalism, as long as the menace of war and foreign intervention looms large on the horizon, as long as poverty, illiteracy, communalism and provincialism remain in our midst. It is only with the decline of the forces of organized religions and the establishment of a World State based on the ideals of economic equality and political liberty that man will be able to achieve the content of personal freedom.

It is not entirely due to the wickedness or ignorance of constitution makers that there are restrictions on individual rights. The legacy of centuries of backwardness and foreign misrule cannot be wiped out by one stroke of the pen. The concomitants of the age cannot be brushed aside by any constitutional guarantees. Constitutional guarantees merely facilitate the achievement of personal rights, which are essentially of an inward character, to be secured by the exercise of reason and proper conduct. We must think, speak and act properly if we are to obtain and enjoy the rights of personal freedom. It is only with the growth and development of education to communal dimensions that the foundations of personal liberty can be securely laid.

Shri H. V. Kamath: Sir, may I request my Friend to have a few full-stops if not other punctuation marks?

Mr. Vice-President: The Honourable Member's time is up. But what Mr. Kamath said has certainly not added to the dignity of the House.

Prof. Yashwant Rai (East Punjab: General): *[Mr. Vice-President, Sir, the Harijans of the Punjab are very much indebted to the Chairman of the Drafting Committee for having included article 13 in the Constitution. At present it is the custom in the Punjab that only one particular community can purchase land and take to agriculture. But the Harijans, 90 per cent of whom are cultivators, are not permitted to purchase land to cultivate, or to build houses. When this article receives the assent of the House, they will have the facility of purchasing land for building their houses, as also land for agricultural purposes if they have the capacity to do so. I hope that the many handicaps from which the Harijans suffer in Punjab, causing the clashes that are taking place in almost every village between them and the landlords, as a result of which they are kept confined to their houses in some villages, as also...*
their other difficulties will not have to be faced by them infuture. They find themselves in their present plight thought they thought that the Congress Government would be a national Government and on coming to power it would permit them to purchase land and would remove all their difficulties. Our

Translation of Hindustani speech.

Indian National Congress was wedded to the creed that on establishing its Government every one will get house-building and agricultural facilities and no one will have any difficulty on these accounts. People are also realizing that now the Congress is in power all these facilities will have to be afforded to the Harijans. Therefore clause (f) of article 13 is very necessary because it provides the facilities we wanted. I think that the difficulties with which we are faced today will soon disappear. I therefore support this article.

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I must congratulate the House for having decided to drop the word "sedition" from our new Constitution. That unhappy word "sedition" has been responsible for a lot of misery in this country and had delayed for a considerable time to the achievement of our independence.

While on this article, I should also like to draw the attention of the House to the unhappy condition which had prevailed so far as the relations between us and the people of the tribal areas were concerned. The British Government wanted to keep these regions as their own preserve, nothing imagined for a moment that they will have at any time to quit this country. They wanted to keep the tribal people completely under them for all ages to come and they wanted to have the hills as their own place of preserve and therefore they had introduced rules which prevented the ordinary people of the plains from mixing with their brethren in the hills. I am glad, Sir, that in this article we have laid down that all people will be able to travel freely throughout the territory of India. But it is most unfortunate that we cannot do away with the proviso to say that a particular State may lay down a law by which this freedom of movement can be restricted. Sir, I can only draw the attention of the House to a very unfortunate incident which took place even after the achievement of independence. A few months ago some Members of the Central Legislature headed by our friend the Honourable Mr. Santhanam had occasion to pay a visit to the Manipur State. Although the officers of the Provincial Government had allowed us to go there freely, we were held up there for more than an hour by the orders of the Manipur State. I believe that after the passing of this Constitution such a state of things will never occur and that immediately after the passing of this Constitution steps will be taken to allow us free ingress and egress to those parts of the States which are now inhabited by the scheduled tribes. There should be greater friendliness
between the scheduled tribes and the people of the plains and all steps should be taken to remove the barriers to our movement in those places.

Then, Sir, I am glad to find in this article that people will be free to carry on their profession in any part of India. That is quite good in so far as it stands on paper, but many times the British Government said they would never allow a lawyer to practise in any of these hills. I believe, Sir, after the passing of this article of the Constitution, steps will be taken to remove any restriction on any professional man practising in any part of India.

It is now my misfortune to have to say a few words about Professor Shah's amendment No. 416. It is very easy, I should say much easier, to deal with one who writes out his amendments and thinks over them. But it is very difficult and dangerous to deal with one who carries all his amendments, thousand and one of them, in his brain and then directly pours them out from his brain on the floor of this House. Sir, amendment No. 416 introduces certain words about things being subject to the provisions of this Constitution, and all those things. On the one hand we find that the House has practically agreed to remove these words "Subject to the provisions of this Constitution".

But we find the Professor Sahib has put that jumble of words in that amendment. Does he want to use these words to rhyme in the Constitution? Poets are fond of using several words just for the sake of rhyming. If it is intended for the sake of rhyming to use all those words, I can understand it, but otherwise I think they are meaningless. I would also warn my friends against the use of the word 'guaranteed'. We have seen, Sir, advertisements of all and sundry articles promising guarantee. I have myself been a victim of such an advertisement. A big full-page advertisement of a certain medicine guaranteed that if you use that medicine for seven or fourteen days you will benefit your health and become strong like Sandow. The word 'guarantee' was actually there. But what I found after using that medicine for seven or fourteen days was that the medicine had no effect. It did not bring about any improvement in my health. Also in the case of a lot of jewellery in the market, though they were all chemical jewels, the merchants offer guarantee to the effect that the jewellery will retain its brightness and quality. But after a fortnight the brightness disappears and the thing becomes black in colour. So, the use of the word 'guarantee' is very perilous. It is not necessary to use that word in this country. We in India are so much used to this word that when we see it used we begin to suspect it. When we see anything guaranteed, we understand that it is not guaranteed and is not genuine. Therefore it is better to leave the Constitution as it is without the word 'guarantee'. Without that word we can understand it better. Then we shall know that there is no attempt to cover-up anything not wanted. The clause, as it is without the word 'guarantee' is quite all right.

Sir, this article with the amendments which have been accepted has my whole-hearted acceptance.
Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, this article may be truly stated to bethe charter of our liberties and this is probably the most important article in the whole Draft Constitution. In the original form in which it was presented to this House, it was open to many criticisms and they were justified. Now I think it has been materially altered. The promise made by Dr. Ambedkar to accept the amendment of Mr. Bhargava and others gives me hope that this article in its final form will be a real charter of our liberty.

Sir, let us analyse the criticisms made in some of the amendments moved by my friends. First of all, the criticism is that all the provisos were meant to nullify the liberties given in the first clause. But if we carefully examine each of the sub-clauses, we will find that this criticism is not justified. In clause (2), the word 'sedition' has been taken away, and the word 'authority' has been dropped. So that, what remain in clause (2) are the exemptions of laws relating to libel, slander, defamation, or any matter which offends against decency or morality or undermines the foundation of the State. These alone will remain on the Statute Book.

As was pointed out yesterday, even in America where the courts are given absolute power, the Supreme Court has been obliged to limit it. What we are doing is that instead of the Supreme Court we ourselves are limiting this thing. This limitation in the present form is less wide than it originally was. I think this should satisfy the House.

In this connection I only want to say one word more. Clause (1) (a) says that every citizen shall have the right to freedom of speech and expression. As proposed in one of my amendments we should bring in here the freedom of the press. I hope Dr. Ambedkar would bring in some amendment to include freedom of the press in this sub-clause.

As regards clause (3), I am glad that after the addition of the word 'reasonable' it has become a much wider charter of liberty. It now reads:

"Nothing in sub-clause (b) of the said clause shall affect the operation of any law, or prevent the State from making any law, imposing in the interests of public order 'reasonable' restrictions on the exercise of the 'right conferred by the said sub-clause'."

Under this, the existing laws, in so far as they impose restrictions which are not in the interests of public order or morality, are nullified. Everybody will admit that public order has to be provided for. The sub-clause as amended is much better than what it was. The Supreme Court could now lay down what offends against public order and what does not.

Coming to clause (4), I must say that labour will now feel that today they have got their charter of liberty. They can now form unions subject to reasonable restrictions in the interests of public order or morality. So, labour today will thank Dr. Ambedkar for accepting amendments which modified the original clause. In the original form you could not hold a meeting because it would be against the wishes of the general public. Now you will have to
prove that the decision to ban a meeting is in the public interest or morality. This is the great charter of liberty for labour.

Then I come to clause (5). This qualifies sub-clauses (d), (e) and (f). It says: "Nothing in sub-clauses (d), (e) and (f), shall affect the operations etc. etc. " or for the protection of the interests of the Scheduled Castes". We have added the word 'reasonable' therein. It is very important. The rights such as freedom to move about throughout the country are very important. Some friends pointed out that there are many laws at present in existence in the East Punjab, for instance, which are really very bad and that this clause will not nullify many of them.

And then there is clause (6) which relates to carrying on of professions. After the amendments that have been accepted this clause also has become much better.

One thing more I want to say. Mr. Kamath in his amendment wants the right to bear arms. In most Constitutions throughout the world this right has been recognised. We ourselves throughout recent history have asked that this should be our right. In fact I remember, when Mahatma Gandhi wrote to Lord Irwin in 1930 about the Eight Points, which he wanted to be accepted, one was about his right to bear arms. The question of this right to bear arms dates back to 1878 when, after the mutiny, the British Government disarmed the Nation. I think that after freedom we should at least allow this thing, as only an armed people can support the Government. I hope Dr. Ambedkar will do something about it.

Then as regards sedition, our great leaders like Lokmanya Tilak and others were the victims of section 124-A. I congratulate Dr. Ambedkar for having put in the clause as it has emerged.

Shri H. J. Khandekar (C. P. and Berar: General): *Mr. Vice-President, I rise to submit to the House my views on article 13. I believe that if the man-in-the-street were to read this article up to sub-clause (g) he would most likely begin to believe that this country has secured its freedom and that every individual within it has also been granted the right of freedom. But if the same person were to proceed further in his study of this article and go through the sub-clauses (2), (3), (4), (5) and (6) he would revise his opinion and become fully convinced that our country has not yet attained Swaraj in its correct sense. It would mean that what had been granted by the right hand has been taken away by the left, in the succeeding sub-clauses.

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*[] Translation of Hindustani speech.

I believe that a majority of the Members of this House hold the same view in this respect as I do.

If we confine ourselves to an examination of clause (1), we find, Sir, that the rights granted to the citizens of India under this article are many. Sub-clause (a) specifically grants freedom of speech and expression--for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousands, nay, hundreds of thousands...
of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

I may point out that the Provincial Governments have recently enacted many repressive laws. I am afraid that article 13 will allow these laws to remain in force even in the future. What is worse, this article leaves scope for the enactment of further repressive laws in future. In several provinces such laws as the Goonda Act, Essential Services Act, and Public Safety Act have been passed. It may come as a surprise if I inform the House that, since the advent of the Popular Ministries, Section 144 has been constantly reigning in the big cities of this country. Consequently there cannot be a public gathering of even five or seven persons in cities, nay, not even for carrying on conversation among themselves or giving vent to their ideas and feelings. If this situation continues also in the future, I am afraid that the freedom which he had been wishing to establish in this country, the freedom that has been granted in Clause (1) (a) of article 13, will be entirely lost under clause (2) of that article.

I feel, Sir, that I should discuss before you each of these sub-clauses, one by one, so that I may be in a position to request you in the end that this article should be sent back to the Drafting Committee with a request that, after having carefully reconsidered it and having put in it what is really required in the circumstances of the country, it should resubmit it to the House. I believe that the House would then pass it with pleasure. But I am afraid that all would be lost if the article is passed as it is today.

Again sub-clause (b) of clause (1) grants, Sir, the right "to assemble peacefully and without arms." But clause (3) of the article takes away the entire significance of this sub-clause. Similarly sub-clause (c) grants the right to form associations or unions. Thus we are given the impression that we would have the right to form associations or unions and thus to carry on organised agitation. For instance, we are given to believe that we could carry on organised agitation for the welfare of Labour, that we can make, in an organised fashion, a demand for the grant of bonus, and if necessary can assemble in public meetings to back up this demand. The truth is that the law restricting the right of holding public meetings would be enforced. Consequently in view of such a law or laws of this kind to be passed in future it may not be possible to hold any public meeting. Thus it is clear that the Government would be in a position to prevent if it so desires, any agitation by Labour for demanding bonus, since all these restrictive laws would be applicable to the workers also. I, therefore, fail to see the significance of the right of forming associations when I find that its substance is taken away by clause (4). I submit that this article is neither for the good of labour nor of the general community.
Further we read of the right to 'move freely throughout the territory of India'. This is sub-clause (d). Under it every citizen of India would have the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a person is considered a criminal from the moment of his birth. There are also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mang Garodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust.

Similarly further on we find the right 'to acquire, hold and dispose of property'. My friend Prof. Yashwant Rai has said with reference to this freedom that there is an unfortunate section—the scheduled castes—in the Punjab who cannot purchase land on account of the provisions of the Land Alienation Act. Moreover the right that you have granted by this sub-clause to every citizen has been taken away by the clause which permits the Land Alienation Act to remain in force even in future. Thus the right which the Harijans should also, like other citizens, get under this Constitution would not be available to the Harijans of the Punjab on account of the Land Alienation Act of the Punjab.

Pandit Thakur Dass Bhargava (East Punjab: General): *[This article would most certainly confer this right.]

Shri H. J. Khandekar: By what article please?

Pandit Thakur Dass Bhargava: It will be conferred by this very article 13.

Shri H. J. Khandekar: I do not find this specified here. If this article is passed as it is, the rights that the Harijans of the Punjab should get will not be available to them.

Mr. Vice-President: May I point out to you that it would be better if you address the Chair and not carry on conversation among yourselves?

Shri H. J. Khandekar: Very well, Sir, Sub-clause (g) grants the right to practise profession or to carry on any business etc. But all these rights are taken away by clause (6). I would like to place before you, Sir, the difficulty we would be placed in by these provisions. The
most unfortunate people in this country, in my opinion, are the sweepers. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their "freedom to practise any profession or trade" is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him. I am of the view that even the very name of sweeper is a matter of contempt by people. I have consequently held the opinion and have repeatedly said to the sweepers, and I would like again to communicate this opinion through your, Sir, to the sweepers of this country, to give up their present occupation which makes them looked down upon as untouchable by the people of the country, because their work is considered to be so dirty and polluting. I advise them to take to such occupations as are followed by other people. If the sweepers of the whole country were to leave, on my advice, their present occupation, and which they could in exercise of the freedom granted by the clause (8), I am sure that they would invite against them the objection of clause (6) which refers to 'service in public interest'. The fact is that if all the sweepers of Delhi, or Bombay or Calcutta were to stop cleaning latrines, sweeping the streets, they would be said to be acting against public interest; and under this law and under the Essential Services Act they would be compelled to do this work. Then how can you say that all human beings shall have equal rights under this sub-clause? The handicaps from which we suffer, from which the peasant suffers, from which the workers suffer, from which the sweepers suffer would continue to remain even under this article, if it remains as it is. It is, therefore, my submission, and I believe that the House after having heard what I have already said, would consider it proper, that this article should be referred back to the Drafting Committee for being amended. It may then be placed before the House for adoption. This is my proposal, with these words I resume my seat.

Shri Algu Rai Shastri (United Provinces: General): [*Mr. Vice-President, all the important aspects of fundamental freedom have been dealt with in article 13. From this point of view this article is very important. It is going to be accepted with some minor amendments. Many friends have attacked its provisions on the grounds that the fundamental rights conferred by this article have been taken away by the limitations imposed therein. I feel that along with freedom responsibility is essential. The friends who urge that the rights given in this article have been taken away under the sub-clauses (2), (3), (4), (5) and (6), have not taken have not*]
taken into consideration the people who will elect members to the legislatures which have been authorised under these provisions to apply these restrictions, and the people who would compose these legislatures. I submit that those who would sit in the legislatures would be representatives of the people and they will impose only those restrictions which they consider proper. Such restrictions would be in the interest of the people. Only those restrictions will be imposed which would be necessary in the interest of public health, unavoidably necessary for the maintenance of public peace and desirable from the viewpoint of public safety. No restriction will be imposed merely to destroy the liberties of the people.

Freedom is a great art--even greater than the art of music and dancing. One who is adept in music or dancing keeps his voice under control and maintains restraint and control over his bodily movement, and on the movement of his feet. He has to move in accordance with certain recognised rules of music and dancing. He cannot sing and dance out of tune and time, in an unrestrained manner. He remains fully bound to the rules. Full freedom is being conferred upon us but it can never mean that we should not be under any restrictions whatsoever. Freedom of speech does not mean

[*] Translation of Hindustani speech.

that we can give expression to whatever comes to our mind without observing any limitation or rule in this respect. In legislatures we have to follow certain rules and regulations. We are here as the representatives of the sovereign people but even then there are hundreds of restrictions upon us. Freedom by its nature implies limitations and restrictions.

`KAVIHIN ARTH AKHAR BAL SANCHA, KARTAL TAL GATIHIN NAT NACHA’

The dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timings and never makes a false movement. His movements are in harmony with the tal. When a nation or a community attains freedom, it begins to bear a great responsibility on its shoulders. We cannot therefore say that the restrictions that have been imposed will retardour progress.

One of my friends made a reference to the Bhangi community. I have been working amongst them since 1924. I have thus a personal experience extending over a period of twenty four years. There can be no doubt about the indescribable wretchedness of the Bhangis and of our otherso called untouchable brethren. It is indeed very deplorable. But the restrictions provided for in article 13 do not imply that Bhangis will continue to remain bound to their present occupation. Under this article there would be no compulsion for any person to follow any particular occupation. This article as a matter of fact, instead of prescribing the compulsory pursuit of any occupation, provides for unrestricted freedom to every individual to follow any vocation he pleases. I think that the freedoms granted under sub-clauses (f) and (g) need clarification. In sub-clause (f) is specified the right of a person to acquire, hold and
dispose of property; while in sub-clause (g) it is stated that there is freedom of a person to practise any profession or to carry on any occupation, trade or business or other means of livelihood of one's choice. It is true that the State has been authorised to restrict this freedom in sub-clauses (5) and (6). But a little reflection would show that it was necessary to limit the freedom so widely provided for in sub-clauses (f) and (g) of clause (1) of article 13. Such unrestricted freedom as is provided in these two sub-clauses could not be free from grave danger. For instance, we have in our society the practice of prostitution. Is this to continue in future also as it has done till now? It should not in any circumstances be permitted to continue. Evidently there must be some provision whereby its practice may disappear by providing for a profession worthy of being adopted. Evidently restrictions have to be imposed on it.

Again, there is freedom in our society to earn one's livelihood by selling intoxicants. In the directive Principles we have now included a provision for the introduction of Prohibition but in the Fundamental Rights we have given every one the unrestricted rights to earn his livelihood. Both the provisions appear to be contradictory to each other. Thus it is necessary to provide that no one shall be permitted to earn a living by selling intoxicants except for medicinal purposes.

Again begging is a common profession in our society today. Should it be permitted to continue as it is? I submit that there should be a good arrangement for bringing it to an end.

We have now attained freedom. We should do nothing which may endanger it. It is our duty to be good citizens. We have also to see that freedom is not misused. Up till now we were under foreign rule. Indian subjects received step-motherly treatment from the rulers. In England no intoxicant can be mixed with any medicine other than in the prescribed proportion but here bottles of country wine are being sold openly in the market. Our `Freedom'--our own mother--cannot permit us--her children--to have this because she cannot permit her children to go astray.

Good citizenship implies restrictions:
"SATYAM BRUYAT PRIYAM BRUYAT NA BRUYAT SATYAMAPRIYAM"

Be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth, but not the freedom to speak out the unpleasant truth. This is a restriction and good citizens have to accept this restriction. I beg, therefore, to express my appreciation of article 13 read with the amendment moved by Dr. Ambedkar and which already been referred to.

I would like to make another observation. I feel that the rights guaranteed in sub-clauses (f) and (g) are rather too wide. I have already said something about freedom of making a living. I shall resume my seat after saying a few words about the right to acquire property. The type of freedom being guaranteed implies that the capitalists and feudal aristocrats would have full rights to acquire and dispose of property. But the mode in which property is being acquired and
held is such as permits the property owners to have all the benefits while workers who create
this property have all the toil as their share. "The ox produces and the horse consumes"—this
saying is being fulfilled. Of course, this should not be so. I submit that this right of
property should be so interpreted in future as to permit the transformation of individualistic
capitalism into State capitalism. All the means of production and the distribution of the
commodity should be owned and controlled by the State and not by the individual. "Unless the
individual ownership yields place to collective ownership—social ownership—there cannot be
real Swaraj."

To reach this goal it is necessary that these restrictive provisions should be interpreted in this
way. With these words I express my support for this article.

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, we are dealing today
with one of the most important clauses of this Constitution. We are dealing with the freedom
of citizens. That is to say what rights the Indian people have under this Constitution. On
reading the entire clause, I feel that the rights which have been recognised under sub-clause (1)
of this article have been to a great extent abrogated by the subsequent provisos. In a Constitution,
there are two important points, namely what are our rights and what form of Government we are going to have. These are the two important subjects in a Constitution and others flow from them and therefore one expects that so far as the rights of the people are concerned, they should be expressed in clear, simple and straight language, so that a common man when he reads the Constitution can understand exactly and precisely what are his rights and what are the checks to his rights. I do not propose to say that at times of emergencies or grave needs, freedom does not require to be checked to a certain extent. I believe in checks and balances, but at the same time, I must say that those checks should be very precise, and clear and should not be couched in ambiguous language and left to courts for decisions.

Now you will find, Sir, that in all these sub-clauses (2), (3), (4), (5) and (6) we have used the
words "interest of general public", 'general public interest' 'public order' and 'property' without defining them and I think it will take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the Central and the Provincial Legislatures to frame laws by which they can restrict the freedom which has been given to the people under sub-clause (1) of this article. I do not like to enter into any criticism of this article, but the only thing I want to say is that the entire clause is very disappointing.

Specially, I will draw the attention of the Honourable Dr. B. R. Ambedkar to sub clause (5). Now, Sir, in this sub-clause (5) the rights which have been recognised in sub-clauses (1) (d), (e) and (f) above have been practically negatived and have given rise to grave anxiety in the minds of many regarding the exact position in matters of residence, acquisition and disposition of properties. The exact significance of clause (5) in respect of (e) and (f) requires further
clarification. Next I cannot understand why in this clause, the words, "for the protection of the interests of any aboriginal tribe" have been incorporated. What it exactly means I fail to understand. Does it mean the 'tribal area' or does it mean that wherever any aboriginal tribe lives, irrespective of their numbers the legislatures can frame laws safeguarding their interest as, for instance, if there be 15 aboriginals living in Delhi, can the Central Legislature frame a law by which they can restrict the rights of other people in the interests of these fifteen or sixteen aboriginals? I could understand that wherever there may be some aboriginals the legislature can make a law, by which they can restrict the rights of all others for the protection of those few.

Sir, I feel the position is ambiguous and clumsy and should be made clear. I fail to understand why clause (d) has been tacked with sub-clause (5). Free movement has been restricted by that sub-clause. My own personal view is that there should not have been any restriction regarding movement. The citizens should have been given a free right to move. Only on administrative or political grounds the Central or provincial legislatures could be empowered to frame laws judiciously by which they can restrict the movement of the people and this power should be worked sparingly and in very emergent circumstances. In every matter of freedom, restrictions have been imposed in the interest of general public. What this interest is, we do not know and has not been stated anywhere. Such words can be interpreted differently in different States and the Centre and may give rise to separate and conflicting laws. Sir, this would create great confusion. Therefore, I submit, if this article is read and viewed, it only gives rise to disappointment, and with a little more effort and with a slight inclination this article could have been framed in such a language that it would have been a model article in the whole of the Constitution.

Mr. Vice-President: Mr. T. T. Krishnamachari.

Shri Mahavir Tyagi: May I know, Sir, is it by reference to the slips that you are calling the speakers?

Mr. Vice-President: I am not prepared to give you information as to how I conduct my work.

Shri Gopal Narain (United Provinces: General): So that we need not stand every time. Have we to stand every time or send slips, Sir?

Mr. Vice-President: The remedy lies in your hands; you can do both, you can send a slip and stand, or you can doneither.

Shri T. T. Krishnamachari (Madras: General): Sir, as the speaker that spoke before me said, this is perhaps the most important article in this Part and one which enumerates the rights for the attainment of which we in India have undergone all the troubles to obtain our freedom. Actually, Sir, it is in the manner in which the State is going to allow the people to use the rights enumerated in this particular article that the people can feel that all that they have done
in the past and the sacrifices that they have made in the past to obtain freedom was worth while.
Thursday, the 2nd December 1948

Sir, I do not say that this article is perfectly worded; nor can I maintain that the exceptions to parts of this article provided by clauses (2), (3), (4), (5) and (6) do not curtail the liberty and the right conceded to individual citizens in clause (1). But, as a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhindered and flourish.

Sir, language is always rather a difficult affair. What language conveys to me it may not convey to another person, and as my honourable Friend Dr. Ambedkar put it, we are legislating in a language which is foreign to us, the exact import of which we do not understand. Should we do it in one of our own languages? The difficulty would be all the greater for the reason that the language of one set of people is not the language of another set of people. Besides, precise thinking in our own language so that we could adopt it for constitutional purposes has not yet developed. Actually we have to depend for the interpretation of the particular restrictions that are enumerated herein on the Supreme Court or some other authority that would come into being in the future, to ensure that the people’s rights are not abridged.

Speaking today in the context of the situation in which we are placed, we cannot but envisage that those rights will be abridged in order to maintain the stability of the State. This State that
has now been brought into being has been put a lot of travail in the first eighteen months of its existence and every Member of this House knows it. Special powers are needed by the Government to meet not merely with the refugee problem, not merely with the fact that there are various forces in this country which do not like this Stateto grow in the present form, but also with the various economic troubles that now face this country. Are we to build up our Constitution, putting in these restrictions which are necessary today in the light of things that stand as they stand today, or are we to visualise a time when things will be normal and when it will not be necessary for the State to use these powers, is the problem. Again, I think, the Drafting Committee and my honourable Friend Dr. Ambedkar have chosen the golden mean in this particular matter.

There is one other matter on which I would like to lay stress before I sit down. We in this House, though the bulk of us belong to one party, have got different ideas on economic matters. We were all together in one particular fact that the British should go; we are all united in the desire that we should have a stable constitution which will ensure to the common man what he needs most, what he did not obtain in the former regime. But, in the achievement of that goal in the methodology to be adopted for the achievement of that goal our ideas vary considerably, and vary from one end to the other. I am happy to see that the Drafting Committee has chosen to avoid importing into this particular article the economic implications in the enumeration of fundamental rights that obtain in other constitutions. I think it has been a very wise thing. I know a friend of mine in this House has objected to one particular sub-clause (f) of article 13, namely, to acquire, hold and dispose of property. I would like to assure him and those who hold the opinion that he holds that this does not really mean that there is any particular right in regard to private property as such, no more than what any person even in absolutely socialistic regime will desire, that what he possesses, what are absolutely necessary for his life, the house in which he lives, the movables that he has to possess, the things which he has to buy, should be secured to him, which I think any socialistic regime, unless it be communistic, will concede, is a right that is due to an individual.

Actually the economic significance that attaches to any enumeration of Fundamental Rights, such as the rights conceded in the Bill of Rights in the American Constitution and the addition to these in the Fourteenth Amendment, finds no place so far as this particular Constitution is concerned, and I am able to say that that is one of the bull features of this Draft Constitution. We have chosen to avoid as far as possible, in spite of the fact that the vested interests are still with us and they have a certain amount of influence—we have chosen to avoid as far as possible—laying that stress on the importance of the economic surroundings which is a significant feature of the American Constitution, and I do hope that my honourable Friend, who objected to a particular sub-clause in this article namely clause (f), will now realise that it
has no meaning so far as property rights are concerned except in something that is dear to an individual and which is very necessary to concede an enumeration of rights of this nature.

Sir, the future, what it is going to be none of us really know, but we allmost of us—envision that the future will be one which will be bright, the future will be one where the State is going to be progressive, where the State will go to interfere more and more in the economic life of the people not for the purpose of abridgment of rights of individuals, but for the purpose of bettering the lot of individuals. That is the State that I envisage, a State which will not be inactive, but will be active and interfere for the purpose of bettering the lot of the individual in this country; and I do feel, Sir, that as it is a well known canon that in any Constitution that is forged there should be a reconciliation of past political thought which will at once pave the way for a new level of thinking, a new level of progressive and critical thinking. I think those conditions are at any rate possible in an enumeration of the Rights such as is found in article 13. Sir, there is no use our comparing this particular article which happens to be the crux of the Fundamental Rights with either what obtains in the commentaries of the English Constitution or what obtains in the text of the American Constitution or any other Constitution, for the reason that the setting is totally different. There is no use anybody saying that a particular feature is not found in the English Constitution. English jurisprudence is something totally different for the reason that English Parliament does not provide for the enumeration of all these rights which is absolutely based on custom on which you cannot depend for ever because Parliament there is supreme and can make laws contravening every recognised custom. They do not have to have a Constitutional amendment for that purpose. Parliament can formulate new laws which might cut right across the conventions, and the usages of the Constitution established over centuries. But so far as the American example is concerned—and certainly there are other examples which are modelled on the American example—there is one distinction between our own way of thinking and what the Founding Fathers in America thought and what was sustained in America until recently, viz., the economic basis of the American Constitution is something totally different from what we envisage to be the economic basis of our Constitution. So any analogy is only applicable up to a point, and therefore any of our friends who seek to import particular provisions of the American Constitution or particular words either in this particular article or in later articles, have to recognize that the bulk of the opinion of this House is something totally different from the economic bias that more or less determined the American Constitution, right at the inception and later on as well, on which bias legal literature has built up several conventions attached to that Constitution.

Sir, I would like to say this that the amendments proposed by my honourable Friend Dr. Ambedkar particularly to clauses (4), (5) and (6) are a great improvement on the original draft and my own view is that they do take away the lacunae that existed in the original draft. But I
should like to lay emphasis on one particular amendment moved by my Friend Mr. Munshi who is not here. The value of that amendment happens to be only, to a very large extent, sentimental. The word `sedition' does not appear therein. Sir, in this country we resent even the mention of the word `sedition' because all through the long period of our political agitation that word `sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique. Students of Constitutional law would recollect that there was a provision in the American Statute Book towards the end of the 18th Century providing for a particular law to deal with sedition which was intended only for a period of years and became more or less defunct in 1802. That kind of abhorrence to this word seems to have been more or less universal even from people who did not have to suffer as much from the import and content of that word as we did. Just all the same the amendment of my honourable Friend Mr. Munshi ensures a very necessary thing so far as this State is concerned. It is quite possible that ten years hence the necessity for providing in the Fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think it is very necessary that there should be some express prohibition of application of these rights to their logical end. The State here as it means in the amendment moved by my honourable Friend Mr. Munshi as I understand it, means the Constitution and I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

Sir, one other matter which I would like to mention before I sit down is this. Sub-clause (c) of art. 13 (1) is very important. I do not know if people really realise as they would know in other countries and particularly in U.S., labour has had to undergo an enormous amount of trouble to obtain elementary rights on matters of the recognition of their rights, in the matter of the right to assemble together as a Union. I do not think that in my view clause (4) of this particular article unnecessarily abridges the rights conferred by sub-clause (c) of clause (1). My own feeling is that we have more or less sought to cut across the difficulties which the other countries have faced in this particular matter and we have ensured for labour the very legitimate right to come together, to agitate and to obtain for themselves and for the members of their Union the rights that are justly theirs. That I think is more or less a charter for workers in this country and I am happy to see that the vested interests have not tried in any way to abridge this particular right. On the
whole, Sir, this particular article with the amendments proposed by my honourable Friend Mr. Munshi and the three amendments proposed for clauses (4), (5) and (6) by Dr. Ambedkar and also the addition of the word 'reasonable' which has been brought in by my honourable Friend Mr. Thakur Dass Bhargava, represents in my opinion a fairly reasonable enumeration of our rights and a fairly conservative abridgment of those rights. The working of these particular rights depends upon the genius of our people, upon how we develop ideas of liberty which are still today in a very undeveloped state. It is no doubt true that our leaders are sometimes hasty, they want more powers, when they are faced with difficult situations and they think the only way in which they could deal with them is to have more powers. They do not recognize that they are leaders of the people the chosen leaders of this country each one with a personality of his own and the aggregate effect of their personality and their influence can cut right across the necessity for any drastic powers. That kind of confidence will come only later on--at the moment they merely want to follow in the footsteps of people who preceded us in the government of this country, who had no touch or contact with the people, who could never get on to a platform and persuade the people to do any particular thing, who only wanted powers which could be exercised through the medium of the bureaucracy. That mentality will change, and will surely change, because our leaders are very eminent people. Surely, the House will realize that the Prime Minister and the Deputy Prime Minister, if they get upon a platform can sway millions of people if they could only get their voices to reach them. It only depends upon the type of leaders that we get for the abridgment of these rights which are enumerated here to become a dead letter, and that is in the lap of the gods. For the time being we have done the very best possible which human ingenuity can devise. Sir, I support the article before us.

Shri Lakshmi Narayan Sahu (Orissa: General): *[Mr. Vice-President, I would like to make an observation with regard to article 13 which is now under discussion. The article confers certain rights on the citizens, but the words 'subject to the other provisions of this article' occurring in the very beginning of the article, serve as a warning to us that the article confers freedom, no doubt, but that it is only within a limited sphere. Moreover the sub-clauses (2), (3), (4), (5) and (6) that follow, re-emphasise that unless the freedom granted is enjoyed within the prescribed limits, people would get into great difficulty. I feel, however, that both the words 'subject to other provisions of this article' and the sub-clauses (2), (3), (4), (5) and (6) should be deleted from the article. We shall be able to visualize the true picture of our freedom only when this has been done. So long as the sub-clauses remain, we can not have a correct picture of our freedom. Moreover I feel that liberty has been considerably narrowed during the drafting process. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple. It is of no
Translation of Hindustani speech.

use whatever. There is an Oriya proverb which is meant for such a situation. It is-
Ghare na pasuna chal vaguchi Devalku Mukhashala Bil Gala.
It means that it is no use making a house with so small an entrance that one's entry into the house is rendered difficult without striking his head against the door-frame. Though there has been considerable discussion on the article, we wish that we discuss it more thoroughly and that the Drafting Committee gives more consideration to it. Thus, whatever drawback we find in the article should be removed. In my opinion sub-clauses (2), (3), (4), (5) and (6), must be deleted. Unless this is done we shall not have the taste of freedom and shall continue to remain in a condition of fear. Those who till recently were seeking to organised disobedience of laws are, being today, in the seat of power, apprehensive of the violation of laws by other people, and under this apprehension, are seeking to make the law so comprehensive and rigid as to prevent any one outside the ruling group from going beyond its control. I would like to say that article 13 which is now under discussion betrays an understandable apprehension on the part of authority. The fact is that there are many provisions in this Draft Constitution which would prevent the citizens from committing any disorder. Thus article 25 provides that "The right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". I submit, therefore, that all the restrictive provisions contained in article 13 should be deleted. My belief is that article 25 will be as helpful to the government as to good citizens. Unless the restrictive provisions of this article are deleted, we cannot properly enjoy our National Freedom. Moreover it had always been our loud assertion that self-government is better than good government. Now we have grown indifferent to self-government and are raising the slogan of good government. With so many rigid provisions what good government can you have and for whom?

Those who are in power at present are apprehensive that the people and political parties other than those of the ruling group would practise disobedience of laws. That is why so many restrictive provisos have been included in the Draft Constitution. It is precisely why I insist that the Fundamental Rights should be treated as fundamental and inviolable. It is not proper therefore to delimit them by so many restrictive clauses and sub-clauses.

There is one observation I would like to make about the Adibasis. I agree to a certain extent with what Shri Jaipal Singh has said. Adibasis move about with arms. This article lays down that all citizens shall have the right "to assemble peaceably and without arms". We should therefore consider whether or not this clause takes away from the Adibasis their customary right to bear arms. In view of the provisions contained elsewhere in the constitution, I think, this will not affect the right of Adibasis to bear arms. If this view be correct, Adibasis need not fear the loss of their right. Though I have no objection to the words "assemble
peaceably and without arms” being put in here, yet I feel that nowhere in the Draft Constitution can be found any provision regarding the repeal of the Arms Act and the grant of the right to the people to bear arms—a right which is essential to make our people fearless. Therefore, I would like that a provision for the repeal of the Arms Act and making it permissible to the people to bear arms be included in the Draft. I would not like to say anything more about this matter.

We often talk of minorities today but we should stop this kind of talk now. What is a minority? When we are going to make one and the same provision for all, I fail to see who remains to constitute the minority. It may be said against this view that the Depressed Classes are a minority, the aboriginals are in a minority and the Muslims are in a minority. But once it is conceded that a particular group is a minority there is the danger that many other groups would begin to clamour for being considered as minorities. Formerly in the political sphere the Muslims were considered a minority. But then the Depressed Classes got themselves included in this category. I am afraid that among the Depressed Classes themselves new groups would begin demanding the status of a new minority. The same is, in my opinion, the case of the aboriginals. I would, therefore, like that the word ‘minority’ wherever it occurs in the Draft Constitution should be deleted and the article 13 should be so drafted that all may feel that they have got real Swaraj and that they have no cause for apprehension and that they have as unrestricted a freedom as any one else.

Shri Deshbandhu Gupta (Delhi): *[Mr. Vice-President, I have had an opportunity once before of representing my views on the recommendations of the Drafting Committee. I was not at that time in a position to congratulate my Friend, Dr. Ambedkar and the Drafting Committee, on certain of their recommendations, which related to the Chief Commissioners’ Provinces. But today, I feel that on article 13, which relates to our Fundamental Rights, and particularly after this amendment as it stands, the Drafting Committee deserves our hearty congratulations. Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? Or that the presence of those restrictions and conditions has in any way curtailed our freedom? Similarly in respect of land, it has been stated that henceforth our Harijan brethren would not be able to purchase any land for themselves and the Land Alienation Act would continue to stand as it is. It is perfectly correct to say that the
most objectionable feature of the Land Alienation Act was that certain castes had been mentioned therein. For example, a Bania or a Brahmin or a Harijan could not purchase land. It was wrong. But in fact, that restriction is being swept aside today by the conferment of the Fundamental Right that all citizens shall have the right to acquire property. From now on, if any restriction is imposed, it would have to be proved whether it is proper or improper. That question would be decided, under the provisions of this section, by the Supreme Court. It is a big gain. Formerly, the phraseology of the article was defective, but that defect has been removed by the acceptance of the amendment of my Friend, Pandit Thakur Dass Bhargava, which seeks to add the word ‘reasonable’. Now, there is nothing to warrant the imposition of any undue restriction. If there would be any, then against that an appeal could be preferred, and that would be decided by our Supreme Court which would be composed of great experts in India. That is why I feel that we should welcome this article and that it would be wrong to give an impression that it curtails our freedom in any sense. We should realise that our country is now a free country. I agree with my Friend, Shri Algu Rai Shastri that, along with rights, certain obligations and responsibilities have also come upon us. If we do not stand by those obligations then our freedom would be the freedom of the jungle. That freedom, I think, would not be such as to merit a welcome from us. Therefore, I think, this article as amended, should be accepted by us. We should realise that it forms the basis of our constitution, and it is a thing of which we can rightly feel proud and which will raise us in the estimation of the whole world.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I consider article 13 as the most important article, as it deals with some of the fundamental rights which are common to all free countries and all free citizens in the world. A number of amendments have been moved to this article which can all be classified under three heads. Some want to remove all restrictions on the rights that have been set out in clause (1). The fundamental rights guaranteed in clause (1) of article 13 are freedom of speech and expression, assembly and association, right to move freely inside the territory, right to practise any profession, right to reside—these are the fundamental rights that have been guaranteed. There are exceptions to these fundamental rights that have been set out in this clause and they are to be found in the subsequent clauses (2), (3), (4), (5) and (6). Some of the amendments are for the deletion of the clauses; and some to make improvements so that these provisos may not take away the rights that have been guaranteed under clause (1). Pandit Thakur Dass Bhargava has moved an amendment saying that if any restrictions have to be imposed upon these rights that have been guaranteed in clause (1), they must all be reasonable. I believe that that amendment would sufficiently meet the situation.
Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word ‘sedition’ has been removed. If we find that the government for the time being has a knack of entrenching itself, however had its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word ‘sedition’ has become obnoxious in the previous regime. We had therefore approved of the amendment that the word ‘sedition’ ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

Then there are certain amendments which have been given for adding to the fundamental rights that have been set out. They require some detailed consideration. The foremost of those amendments relates to guaranteeing that every citizen shall have the right to exercise his personal law. Let us see what this means. We have already discussed personal law at some length in the Directive clause where a direction has been given that a uniform code of civil law must be evolved early or late. Amendments have been moved that unless a provision is made in the Fundamental Rights there is no safety and that the majority community may introduce its own personal law or flagrantly violate the personal law of any community. Let us take the communities. There are three main religions. Let us take Muhammadanism. There is absolutely no provision in the Fundamental Rights that you ought to ride rough-shod over their personal law. The law of the land as it exists today gives sufficient guarantee so far as that is concerned. But our friends who moved the amendments wanted a double guarantee that their personal law ought not to be interfered with. My submission is that it is impracticable, for, in an advanced society, even the members who belong to a particular community may desire their personal law to be changed. Let us take the Muhammadan law. I would only refer to two or three amendments that have been made to that law as set out in the Shariat. As recently as in 1939 the Central Legislature passed a law for enabling the dissolution of Muslim marriages under certain circumstances. You will be pleased to note that under the Muslim Law, a man has got the unilateral right to declare a marriage void by pronouncing the word talak and there is another form of divorce called kulamp. Woman normally has no right to dissolve a marriage. She has to go to a court of law and various matters have to be set out such as impotency and soon. All that has been made easy now. Another consideration is that a woman who cannot lead a family life with the husband in the same household is entitled under certain conditions to separation. These have hitherto not been envisaged nor provided for in the Dissolution of Muslim Marriages Act. As a member of the Assembly I was a member of one of
the committees that considered this question. We left the question entirely for the Muslims Members concerned to settle. The Shariat Law was introduced in the Assembly and an Act was passed bringing into line with the Shariat Law the different pieces of legislation in the provinces of India. This was done four years ago. The Wakf Validation Act was passed in 1930. A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right. There is absolutely nothing in this Constitution which allows the majority to override the minority. This is only an enabling provision. Without the consent of the minority that is affected, no such law will be framed. I therefore feel it is unnecessary to include it in the Fundamental Rights.

Then my friend, Mr. Kamath wanted that we should have the right to bear arms and that this right should be put in the Fundamental Rights. It is true that for a long time the Congress has been from year to year passing resolutions that we must have the right to bear arms. The situation has changed now. We were then slaves and wanted to equip ourselves sufficiently so that in case of need we can use the arms for getting out of the foreign yoke. But, today in the civilised world I should like to ask my honourable Friend if he feels that everybody should be allowed to fight even to defend himself. Except in extreme circumstances no force should be used. Even when force has to be used, it must be concentrated in the State. The State it is that must stand between man and man and citizen and citizen when they want to fight. No individual citizen ought to be allowed to attack another. Very often the right to bear arms is abused.

Shri H. V. Kamath: Not even in self-defence?
Shri M. Ananthasayanam Ayyangar: Very often defence is offence in the hands of strong young men whose blood is very warm like that of my friend. Mr. Kamath's defence very often means offence.
Shri H. V. Kamath: I strongly protest against that remark, Sir.
Shri M. Ananthasayanam Ayyangar: I am sorry, Sir.

Mr. Vice-President: He has expressed his regret.
Shri M. Ananthasayanam Ayyangar: I have the greatest regard for my young friend and his youthful enthusiasm.

So far as the communal point is concerned, there is an amendment here which requires it to be included as a fundamental right. I am afraid it is not possible to do so. There is provision made in the Penal Code under sections 153 and 155-A for the purpose. That is ample.
As regards freedom of thought, I am surprised to see an amendment moved saying that freedom of thought ought to be allowed. Nobody can prevent freedom of thought. It is a fundamental right. It is only freedom of expression that has to be allowed. Now, freedom of press means freedom of expression. As regards the secrecy of telegraphic and telephonic communications, it is a debatable point and we ought not to allow any change in the existing provision.

Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Vice-President: An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the House as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says, Bengali are a major ity. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members: Yes, yes:

Mr. Vice-President: Then I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word 'reasonable'.

Mr. Vice-President: Will you kindly tell us how you propose to accept amendment No. 415.

The Honourable Dr. B. R. Ambedkar: The amendment which seeks to remove the words 'subject to the other provisions of this article'.

Mr. Vice-President: And then?
The Honourable Dr. B. R. Ambedkar: Then I accept No. 453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word `reasonable'.

Now, Sir, coming to the other amendments and the points raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now will be in a position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.
Shri H. V. Kamath: A very handy argument
The Honourable Dr. B. R. Ambedkar: It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which the resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath: On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar: The proviso does what? What does the proviso say? What the proviso can do is to regulate, and the term `regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to have the right to bear arms from having them. I question very much the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath: If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar: I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not theright of an individual to bear arms but his duty to bear arms. (An Honourable Member: Hear, hear.) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath: (rose to interrupt).

Mr. Vice-President: You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient attitude.
The Honourable Dr. B. R. Ambedkar: Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Christianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that, I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that was a question which could have been very properly raised when we were discussing the
Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas, scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as 'partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal",

the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific legal de jure connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable'some legal connotation and the only way it was found feasible to do it was to enumerate the communities which indifferent parts and in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognized as...
Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi Community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President: I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412.

The question is:

"That for article 13, the following be substituted:--

"12. Subject to public order or morality the citizens are guaranteed--

(a) freedom of speech and expression;
(b) freedom of the press;
(c) freedom to form associations or unions;
(d) freedom to assemble peaceably and without arms;
(e) secrecy of postal, telegraphic and telephonic communications."
13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.

The amendment was negatived.

Mr. Vice-President: Amendment No. 415. I understand it has been accepted by Dr. Ambedkar. The question is:
"That in clause (1) of article 13, the words "Subject to the other provisions of this article" be deleted".

The amendment was adopted.

Mr. Vice-President: Second part of amendment No. 416. The first part of the amendment has been already blocked as amendment No. 415 has been accepted. The question is:
"That in clause (1) of article 13, after the words "all citizens shall have" the words "and are guaranteed" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 420. The question is:
"That before sub-clause (a) of clause (1) of article 13, the following new sub-clause be inserted:--

"(a-1) to freedom of thought;"

The amendment was negatived.

Mr. Vice-President: Amendment No. 421. The question is:
"That in sub-clause (a) of clause (1) of article 13, after the word "expression", the words "of thought and worship; of press and publication:" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 422. The question is:
"That at the end of sub-clause (a) of clause (1) of article 13 the words "both in the Press and the Platform" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 428. The question is:
"That at the end of sub-clause (c) of clause (1) of article 13, the words "for any lawful purpose" be inserted."

The amendment was negatived.
Mr. Vice-President: Amendment No. 429.
The question is:
"That in sub-clause (d) of clause (1) of article 13, after the words "move freely" the words "in a lawful manner" be inserted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 430.
The question is:
"That in sub-clause (e) of clause (1) of article 13, after the words "and settle" the words "in a lawful manner" be inserted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 482.
The question is:
"That in sub-clause (g) of clause (1) of article 13, after the words "or business" the words "in a lawful manner" be inserted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 438 as modified by amendment No. 79 of List II.
The question is:
"That for amendment No. 438* of the List of amendments, the following be substituted: --
"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added: --
"(h) to keep and bear arms;"
and the following new clause be added after clause (6): --
"(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquillity, restrictions on the exercise of the right conferred by the said sub-clause."
The amendment was negatived.
Mr. Vice-President: Amendment No. 440.
The question is:
"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added: --
(h) to follow the personal law of the group or community to which he belongs or professes to belong.
(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."
The amendment was negatived.
Mr. Vice-President: Amendment No. 502.
The question is:
"That after clause (6) of article 13, the following new clauses be added: --
"(7) Nothing in clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.

"(8) Nothing in the clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

"(9) No existing law shall operate after the commencement of the Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

The amendment was negatived.

Mr. Vice-President: Amendment No. 445. I shall explain one thing. Honourable Members will note that I am calling out the amendments in the order in which they were moved. That is why the numbers are not consecutive. Amendment No. 445.

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:-

(h) to keep and bear arms in accordance with regulations or reservations made by or under Union Law."

The question is:

"That the following new clause be added after clause (1) of article 13:--

"Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India."

The amendment was negatived.

Mr. Vice-President: Amendment No. 447.

The question is:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):--

"Provided, however, that no citizens in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country."

The amendment was negatived.

Mr. Vice-President: Amendment No. 453 as modified by amendment No. 86 of List IV. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That for clause (2) of article 13, the following be substituted:--

"(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating or libel,
slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

The motion was adopted.
Mr. Vice-President: Amendment No. 449.
The question is:
"That after clause (1) of article 13, the following new clause be inserted:--
"(1-A) Nothing in sub-clause (a) shall affect the operation of any existing law or prevent any State frommaking any law relating to sedition or conspiracy.
The amendment was negatived.
Mr. Vice-President: Amendment No. 450.
The question is:
"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."
The amendment was negatived.
Mr. Vice-President: The second alternative in amendment No. 451.
The question is:
"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:--
"Without prejudice and subject to the provisions of article 8."
The amendment was negatived.
Mr. Vice-President: Amendment No. 452.
The question is:
"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 458.
The question is:
"That in clause (2) of article 13, after the word "sedition" the words "communal passion" be inserted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 465.
The question is:
"That clauses (3) and (4) of article 13 be deleted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 478.
The question is:
"That clauses (5) of article 13 be deleted."
The amendment was negatived.
Mr. Vice-President: Amendment No. 454 as modified by amendment No. 49 of List I. I understand it has been accepted by Dr. Ambedkar.

The question is:
"That with reference to amendment No. 454 of the List of amendments-(i) in clauses (3), (4), (5) and (6) of article 13, after the words "any existing law" the words "in so far it imposes" be inserted, and
(ii) in clause (6) of article 13, after the words "in particular" the words "nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law, be inserted."
The motion was adopted.

Mr. Vice-President:
The question is:
"That in clauses (3), (4), (5) and (6) of article 13, before the word "restrictions" the word "reasonable" be inserted."
The amendment was adopted.

Mr. Vice-President: Amendment No. 485.
The question is:
"That in clause (5) of article 13, the word "affect the operation of any existing law, or" be deleted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 467.
The question is:
"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."
I think the `Ayes' have it.
But before I declare the result finally I must point out that there is some kind of misunderstanding. Let me read the amendment. It was moved by Mr. Syamanandan Sahaya:
"That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."
**"That in clauses (2), (3), (4), (5) and (6) of article 13, the words "affect the operation of any existing law, or" be deleted."
I definitely remember that several people spoke against it. I am going to put the amendment once again. Amendment No. 467.
The question is:
"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."
The amendment was negatived.
Mr. Vice-President: I trust that in future, honourable Members will take more care before they give their verdict.

Mr. Vice-President: I put amendment No. 474 to vote.

The question is:
"That in clauses (4) of article 13 after the word "restrictions" the words "for a defined period" be added."
The amendment was negatived.

Mr. Vice-President: Amendment No. 476.

The question is:
"That in clause (4) of article 13, for the words "the general public" the words "public order or morality" be substituted."
The amendment was adopted.

Mr. Vice-President: Amendment No. 483.

The question is:
"That in clause (5) of article 13, after the words "existing law" the word "which is not repugnant to the spirit of the provisions of article 8" be inserted."
The amendment was negatived.

Mr. Vice-President: I put No. 485 (second part), to vote.

The question is:
"That in clause (5) of article 13, for the word "State" the word "Parliament" be substituted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 489.

The question is:
"That in clause (5) of article 13, the word "either" and the words "or for the protection of the interests of any aboriginal tribe" be omitted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 491.

The question is:
"That in clause (5) of article 13, for the word "aboriginal" the word "Scheduled" be substituted."
The amendment was adopted.

Mr. Vice-President: Amendment No. 497.

The question is:
"That in clause (6) of article 13, for the words "morality or health" the words "the general public" be substituted."
The amendment was adopted.

Mr. Vice-President: I put amendment No. 500 to vote.
The question is:
"That after clause (6) of article 13, the following new clause be added:
`(7) The occupation of beggary in any form or shape for person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law."

The amendment was negatived.

Mr. Vice-President: The question is:
"That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution."

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President: We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President: That has been held over. I was referring to No. 504.

Now the motion is:
"That article 14 form part of the Constitution."

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Dass Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not mercy verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, I beg to move:
"That in clause (1) of article 14, after the words "greater than", the words "or of a kind other than' be inserted."

Sir, clause (1) provides-I am reading only the material part--
"No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence."

It guards against any punishment 'greater than' is provided to be inflicted upon a person. I have attempted to insert after the words 'greater than' the words 'or other than' that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is
provided for, an imprisonment may be substituted on the ground that it is not greater than that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments -- fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided. You cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of moveables only is provided, you cannot forfeit immovables. Where forfeiture of articles relating to which crime has been committed is provided, you cannot forfeit other kinds of things. So if we leave the powers of the courts as in the clause it gives the Court the power to give any punishment not sanctioned by law. If clause (1) is to be retained, the Court should also be limited to the class of punishment provided. To me it seems that there is here a lacuna-rather oversight which should be corrected.

Mr. Vice-President: As regards amendment No. 505, I can allow the Member to move the second part of it. Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: Sir, I beg to move.

"That in clause (1) of article 14, for the words 'under the law at the time of the commission' the words 'under the law in force at the time of the commission' be substituted."

Sir, if you kindly examine the definition of the expression 'law in force' as given in the explanation under article 307, it would appear that the words 'the law' and the words 'the law in force' have different meanings. Moreover, as the words in the previous part of the article also appear as 'law in force', it is very necessary and proper in this juxtaposition that the amendment that I have suggested should be accepted. That is all I have to submit.

Mr. Vice-President: Amendment Nos. 507, 508 and 511 are of the same import. The most comprehensive one, i.e., No. 507, may be moved.

(Amendments Nos. 507, 508 and 511 were not moved.)

Amendments Nos. 509 and 510 are of similar import and may be moved together. They are in the name of Mr. Naziruddin Ahmad.

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

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898' be added."

Sir, I am moving these amendments with considerable anxiety in my mind. The first anxiety is that I may perhaps overstep my time limit; the second anxiety is that there are a large number of observant and powerful eyes directed against me and I am afraid that a point of order may be taken at any time; and the third...
anxiety is the huge `No' against me will be echoed by honourable Members and this will reverberate as thunder clap under which my feeble `Aye' will be lost. Then the other difficulty is that I have to crave the indulgent attention of the Honourable the Chairman of the Drafting Committee to the point I am raising. I shall restrict my point strictly to the limits of relevancy.

Sir, the words which I seek to insert deals with an important principle of criminal procedure. Clause (2) which I seek to amend runs as follows:

“(2) No person shall be punished for the same offence more than once.”

A very sacred sentiment has prompted the introduction of this clause; but considered from the point of view of criminal law, it has its loopholes. Clause (2) seems to be rather sweeping. There are cases where a man may be legally punished twice for the same offence, and I shall submit the circumstances, with the relevant laws. Sir, the principal which deals with this subject finds a place in section 403, sub-section (1) of the Code of Criminal Procedure. The point of this. The law of punishment twice has been enacted.

Shri T. T. Krishnamachari: Sir, on a point of order. Can any Member of this House move an amendment referring to an enactment made by a legislature subordinate to this House? I am afraid the amendment itself is out of order.

Mr. Naziruddin Ahmad: Anything else may be out of order, but not the amendment. We have already referred to and saved `existing laws'—enactments of subordinate legislatures in article 9 and in other places. I was only referring for handy consideration to the Criminal Procedure Code. I cannot pretend to submit that Section 403, or any principle embodied in it, or any sound principle even is binding upon this House, not even the soundest of propositions, because this is a sovereign House.

I was submitting for consideration certain principles of the Criminal Procedure, not that I suggested at all that they will be binding on this House, but only that they are worthy of consideration.

Sir, it often happens—I shall submit examples from general principles because I think they would be more acceptable to Mr. Krishnamachari—it often happens that a man is punished by a Court which has no jurisdiction; it is a very ordinary experience in criminal Courts that the Judge on appeal or the High Court or the Privy Council—and now the Federal Court and later on the future Supreme Court—may and does find that the conviction is without jurisdiction. Meantime, the man has been convicted. If you say that he cannot be convicted twice, then orders of re-trial by appellate and revisional Courts would be absolutely out of the question. If a man is tried by a Magistrate or a Court having no jurisdiction, and if he is punished, that is the first punishment.
And then if it is found that the Court had no jurisdiction to try the case, what is often done is that there is a re-trial. But if you enact the principle of clause (2) that a man shall not be punished for the same offence more than once, the effect would be that if a man is punished by a Court of competent jurisdiction but there is a lacuna in the trial, or by a Court of competent jurisdiction the result will be to shut out any further trial at all. Are-trial after a conviction is an ordinary incident of daily experience in criminal Courts.

Sometimes, Sir,.............

(After a pause)

Sir, I desire to monopolise the attention of the Honourable Member the Chairman of the Drafting Committee; otherwise it will be useless to argue. If he says "No", the whole House will echo him.

Mr. Vice-President: Dr. Ambedkar, Mr. Naziruddin demands your wholehearted attention. He says that if you say "No", the House will say "No". (Laughter).

Mr. Naziruddin Ahmad: The point which I was submitting is a point of general importance. The point is that if a man is convicted by a court of law—that is the first conviction—it may be that there is some lacuna in the trial. The accused appeals to the Court of Sessions. The Court finds that there was a lacuna in the trial or that the Court had no jurisdiction. But it may order a re-trial. Clause (2) which would effectively prevent further trial because it may involve a second conviction. There may be a first conviction of an offender in the hands of a Court, and this clause will effectively prevent a re-trial order by a superior court. This is one of the simplest examples. The principle should be not merely convicted, but the principle should be that a man cannot be tried again, tried twice, if he is acquitted or convicted by a Court of competent jurisdiction, while the conviction or acquittal standseffective. In fact, it is not the first conviction that is important; it is the ultimate legality and finality of the conviction that has to be respected; the finality should attach not only to conviction but also to acquittal. What are you going to do with regard to a person who is finally acquitted after a fair trial, and when the acquittal is not set aside and is therefore final and binding? You say nothing about that. You simply say that a man should not be convicted twice for the same offence. A man acquitted shall also not be liable to be tried again. You say nothing about that but confine your attention to the bogey of double punishment. I submit that the so-called theory of double punishment is not all and does not give a complete picture. Take for example, a man fined Rs. 50 for an offence by a Magistrate having no jurisdiction; then he appeals to an appellate Court. The appellate Court will, by virtue of clause (2) be precluded from sending it for re-trial on any technical ground, even on the ground that the Court had no jurisdiction.

The relevant section which caused some amount of suspicion in the mind of a distinguished Member of the House, Mr. T. T. Krishnamachari, I shall with his permission and with your
permission, Sir, and with the permission of the House, read. Not that it is binding, but it is acrystallised wisdom which has been handed down to us from generation to generation. Sub-section (1) of section 403 says:

"A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence".

I think, Sir, this is the proper form. It may be argued that the Criminal Procedure Code is a sufficient safeguard against injustice, but if you introduce it here it is a justiciable right, and we have already provided that any violation of any fundamental right is justiciable and would nullify all existing laws contrary, and therefore it will have the effect of abolishing or rather nullifying the wholesome law as laid down in sub-section (1) of section 403. I submit that the clause has got to be very carefully considered and, if necessary, should be re-drafted.

I submit that double punishment for the same offence in such cases does not in fact work injustice. What happens in such cases is that the punishment already suffered or inflicted is taken into account or adjusted in giving the final punishment in a re-trial. That is the effect of this amendment.

Mr. Vice-President: Do you intend to move amendment No. 509?

Mr. Naziruddin Ahmad: No, Sir. It deals with the same principle and I do not wish to move it.

Mr. Vice-President: I have found from the last two days’ experience that 9.30 A.M. is too early an hour for many Members of the House. They seem to think that others will come at the proper time and they need not come, with the result that there is difficulty in starting our work at the proper time. I have therefore decided that from tomorrow we shall start at 10 A.M. and break up at 1.30 P.M.

The Assembly then adjourned till Ten of the Clock on Friday the 3rd December, 1948.
Friday, the 3rd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT RE. EIRE ACT

Mr. Vice-President (Dr. H. C. Mookherjee): When our Prime Minister laid before the House the conditions which govern the entry, or rather, the withdrawal of Ireland from the United Kingdom, there were a few Members ......( Interruption).

The Honourable Pandit Jawaharlal Nehru (UnitedProvinces: General): May I say something on this, Sir?

Mr. Vice-President: Yes.

The Honourable Pandit Jawaharlal Nehru: I merely wish to state that I have placed on the Table of the House a telegram that I have received from the Foreign Minister of Eire. In the course of some discussion, I remember--I forget who it was--when an honourable Member wanted to have a copy of the new Bill which is being considered by the Irish Parliament, I said I would enquire. I asked for it by telegram; we do not have it here. We have been informed that the actual Bill is coming by air mail, but by telegram they have sent us the text of the Bill which is a very short one, four or five Sections of a line each. That is laid on the Table of the House for such Members as wish to see it.

Shri S. V. Krishnamurthy Rao (Mysore State): Will you please have it cyclo-styled and circulated to all members?

The Honourable Pandit Jawaharlal Nehru: No, Sir, I object. The telegram is laid on the Table and members can see it.

Mr. Vice-President: Before we begin the business of the House, I would like to inform honourable Members that I have received a letter from or President informing me that he is making rapid improvement and that it is very likely that he will be able to resume his duties from the 27th. He has expressed his regret on account of his inability to preside over the deliberations of this House and I have informed him already that we are fully aware of the circumstances which are responsible for his absence. I understand from the papers that he reaches his 64th year today. May I, with the permission of the House, send him our congratulations and at the same time assure him how much we feel his absence? In this
connection, I shall also tell him that though I am fully aware of my many lapses from the technicalities of parliamentary practice, I have been able to carry on so far with the goodwill of the House.

Honourable Members: Certainly.

Mr. Vice-President: We shall now resume discussion of article 14. Amendment 510 was moved. 509 will be put to vote. So we next come to 512.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, I beg to move--

That in article 14, the following be added as clause(4):

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

This is a very important amendment. You will be pleased to find that this finds place as article 4 in the American Constitution and in the Irish Constitution there are clauses(2) and (5) which are similar and in the German Constitution there are articles 114 and 115 on the same lines. In the book of Dr. Ambedkar—Minorities and States—on page 11, item No. 10, a similar provision has been made. Thus, this is an amendment, the correctness of which cannot be challenged. What is the situation in India today? In India, in practically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches.

We have seen in

1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken only under protective custody, why were their women and children who were outside not taken under this protective custody?
Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted.

Mr. Vice-President: The next amendment in the List is the one standing in the name of Mr. Kakkan.

Shri P. Kakkan (Madras: General): Sir, I do not want to move it. But, with your permission I wish to speak on it.

Mr. Vice-President: That I cannot permit. I can give the honourable Member an opportunity to speak in the course of the general discussion on article 14. I think, as there are no other amendments to this article, the House can now take up the general discussion of this article. Mr. Kakkan may now make the speech he wanted to.

Shri P. Kakkan: Mr. Vice-President, I had given notice of an amendment to this article only with a view to speak on it.

Sir, what I have got to say concerns the jail administration. In the jails they make a distinction between prisoners and prisoners in allotting duties in the jails. If a prisoner belongs to the Harijan community he is compelled to do scavenging work, no matter what his class or rank or education is. Prisoners belonging to other communities are not similarly forced to do scavenging work. On this occasion I desire to express my opinion and my feeling that this distinction in the matter of the allotment of work to prisoners inside the jails should be removed forthwith. Sir, I know from experience that the members of the Harijan community are treated in jails very cruelly, as if they are God's creatures and that He created them for doing scavenging work. I earnestly hope that this distinction will be removed hereafter and that Harijans will get impartial treatment everywhere. It is with this object that I have stated in my amendment that no person convicted for any offence shall be compelled to work in jail (caste) in respect of religion, caste, race or class. I thank you, Sir, for giving me this opportunity to speak.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this article 14, clause (2) reads thus: `No person shall be punished for the same offence more than once'. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, per contra, if a Government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is
capable of interpretation whether this provision in this particular clause in the Fundamental Rights will affect the discretion of Government acting under the rules of conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus: "No person shall be prosecuted and punished for the same offence more than once." If my Honourable Friend Dr. Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you, Sir, and the House will give him permission to do so, it will not merely be a wise thing to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President: Does the House give the permission asked for by Shri T.T. Krishnamachari?
Honourable Members: Yes.
Mr. Vice-President: Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T.T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say that I am prepared to accept the amendment moved by Mr. T.T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished".

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad............,

Mr. Naziruddin Ahmad: It is No. 510.

The Honourable Dr. B. R. Ambedkar: Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan......
An Honourable Member: It was not moved.
Mr. Vice-President: What about amendments Nos. 505 and 506?
The Honourable Dr. B. R. Ambedkar: I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President: Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V? Perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar: I accept the amendment moved by him.

Mr. Vice-President: I am putting the amendments one by one to the vote.

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"That in clause (1) of article 14, for the words `under the law at the time of the commission' the words `under the law in force at the time of the commission' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 506. The question is:

"That in clause (1) of article 14, after the words "greater than" the words "or of a kind other than" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 510. The question is:

"That at the end of clause (2) of article 14, the words `other wise than as permitted by the Code of Criminal Procedure, 1898' be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is:

That in article 14, the following be added as clause (4):

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: The Noes have it.

Mr. Vice-President: I will again put it to the vote.

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: No, Sir, the Noes have it.

Mr. Vice-President: I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces: General): May I propose that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes
converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President: I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this?

The Honourable Pandit Jawaharlal Nehru: Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members’ minds on this point, I think, Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces: General): Can it be done after the division bell has rung?

Mr. Vice-President: I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members: Yes.

Article 15

Mr. Vice-President: Then we shall pass on to the next article. The next amendment is No. 514 but as Mr. Lari is absent, I shall pass on to the next article.

Shri T. T. Krishnamachari: May I suggest that discussion of this article be postponed, as it is being examined and the Members of the House would like to take some more time for the consideration of this particular article?

Article 15-A

Mr. Vice-President: Very well: Then I pass on to article 15-A (New article). Amendment No. 534 seeks to rule out capital punishment. I think it is blocked in view of the fact that a similar amendment was put to vote and rejected.

(Amendments Nos. 535 and 536 were not moved.)

Article 16

Mr. Vice-President: The motion before the House is that article 16 form part of the Constitution.

An Honourable Member: What about article 15?

Mr. Vice-President: Article 15 has been held over--Honourable Members must have been inattentive not to hear the suggestion made by Mr. T. T. Krishnamachari and accepted by the Chair. Amendment No. 537 I rule out of order as it is a negative amendment.

(Amendments Nos. 538, 539 and 540 were not moved.)
Amendment No. 542 is already covered by the provision relating to ban on cow-killing passed by the House previously.

Shri C. Subramaniam (Madras: General): Mr. Vice-President, Sir, I find some difficulty in accepting this article as an article coming under fundamental rights. The article reads: "Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free." Before referring to the difficulty, which I feel, I will refer the House to the sections in the Draft Constitution which deals with trade and commerce.

There are three articles 243, 244 and 245 which deal with this subject 'interstate trade and commerce' in the body of the Draft. Then in the list of legislative powers in the Union list, we find in article 73 "inter-state trade and commerce subject to the provisions of entry 33 of List No.II". Then item 32 in List II is "trade and commerce within the state; markets and fairs"; and item 33 refers to the "regulation of trade, commerce and intercourse on other states for the purposes of the provisions of article 244 of this Constitution." Therefore, you will find inter-state trade and commerce, subject to article 244, is a Union subject. Parliament can deal with it. Trade and commerce within the state and inter-state commerce as provided in article 244 are given to the State Legislatures. You will find, Sir, that in article 244, even though it might be inter-state trade and commerce, the State Legislature is given certain powers to impose certain taxes and impose certain restrictions. Having this in mind, if we come to article 16, we find the words "subject to the provisions of article 244 of this Constitution", that is, even in respect of inter-state trade and commerce, the State Legislature has been given certain powers and that is not touched by this article. Therefore leaving that, the article would read "subject to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". I really fail to understand how this can be a fundamental right and whether there is any right at all reserved. The very conception of a fundamental right is that there is a certain right taken out of the province of the legislature either of the Union or the State. To put it in other words, the sovereignty vests in the public, but that sovereignty is delegated to the legislatures or the sovereignty is expressed through the legislatures in respect of certain subjects.

But, in respect of certain fundamental rights we say the Parliament or the Government shall have no power of interference. So much so, the sovereignty of the people is absolute in that respect. It is neither delegated, nor is anybody else authorised to deal with that sovereignty. If we examine this article in that view, what is the residue of right left which could not be touched either by the legislature of the Union or by the legislature of the State? You find stated here, "Subject to the provisions of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free". Here, the sovereignty of the Parliament is absolute. There is no right which is taken out of the province of the legislatures.
The right which is reserved here as a Fundamental right should be one, which neither the Union Legislature nor the State Legislature can touch. There is no such right left here. Mind you, here the wording in article 16 is, "Subject to any law made by Parliament' without any limitation whatsoever. So much so, it comes to this: there shall be free trade throughout the territories of India, subject to the powers of Parliament. I respectfully submit that that would not be a fundamental right.

I know there are certain friends of mine who think that the vesting of powers in the Parliament as against the State itself is a fundamental right. That was what was expressed by certain friends. If that logic is extended to its conclusion, all the subjects dealt with in List I would be fundamental rights. That is not the case. The very conception of a fundamental right is that neither the Parliament, nor the State legislatures shall have power to interfere. Here, you make the Parliament sovereign. Only subject to the powers of Parliament, there shall be free trade, commerce and intercourse throughout the territories of India. I find it difficult to see what is the right which has been taken out of the province of the legislatures, either the Parliament or the State legislatures, and which has been reserved here as a fundamental right. It may be all right to say that in respect of free trade, only the Parliament shall have power. That is allocation of administrative powers or legislative powers between the Union legislature and the State legislature. Certainly, that is not a fundamental right. As one of my friends pithily put it, it is a fundamental right in favour of the Parliament; it is not a right in favour of any citizen or class of citizens. In these circumstances, I wish the honourable Mover, though I find him preoccupied with other things, to explain how this comes under the Chapter on Fundamental Rights, and what is the right reserved.

Mr. Vice-President: May I suggest, Mr. Subramaniam, that you make a definite suggestion so that Dr. Ambedkar may be in a position to reply?

Shri C. Subramaniam: The definite suggestion is this. For the sake of Dr. Ambedkar, I shall state my point again. My complaint in regard to article 16 is this. There is no right which has been taken out of the province of the legislature, either of the Union or of the States, to say that a fundamental right has been reserved in article 16. Because, you will find it is stated here, "Subject (leaving alone reference to article 244) to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". You see the right is subject to any law made by Parliament without any restrictions whatsoever. You have secured the sovereignty of the Parliament in respect of this subject, and Parliament can do anything. To be a fundamental right, it should have been taken out of the province of the legislatures, either of the Union or of the States. I find there is left no residue of any right which could not be touched either by Parliament or by the State legislature and as such, it would not properly come under the Chapter on Fundamental Rights. It may be a matter
of allocation of powers between the Parliament and the State legislatures insaying that the Parliament alone shall deal with subjects relating to free trade within the territories of India. We can as well put in entry 73 of List I. You can also make some restriction in entries 32 and 33 of List II, that it shall be subject to matters relating to free trade in India. I would request the Honourable mover, to enlighten me whether, as a matter of fact, there is any right left which has been taken out of the province of the legislatures and the Government and whether it will be proper to have article 16 here, in this chapter dealing with fundamental rights.

The Honourable Shri K. Santhanam (Madras: General): Sir, the only way to test whether article 16 is necessary is to find out the consequences of deleting article 16. Suppose article 16 is not there, what will happen? According to the lists in the schedule, the Centre will have the right to legislate on all matters of trade between the various provinces, and according to article 243, no province can make any discrimination against any province or State. According to article 244, there can be no discrimination in taxation. According to article 244 (b), every State (this includes every provincial legislature) will have the right to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests. Therefore, each provincial legislature and each State legislature will have the right to impose restrictions on the freedom of trade, commerce or intercourse. Supposing a variety of restrictions are imposed by all the legislatures and it is found desirable to rationalise them, to bring them into some kind of uniformity, there will be no power vested in any agency. Article 16 gives that power to the Parliament. It cannot interfere with the provincial jurisdiction so far as trade and commerce are concerned within that particular province.

Shri C. Subramaniam: That authority is provided for in article 245.

The Honourable Shri K. Santhanam: Article 245 says: "Parliament may by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary". This is only for the purpose of regulation; it does not provide any legislative power for any co-ordination, correlation or standardisation of all the restrictions that may be imposed by the various legislatures, and therefore, that power is contained in article 16. Mr. Subramaniam asks, then it means that the whole power is taken out of the hands of the province. Is it, it is not.

Shri C. Subramaniam: My point is this: A fundamental right is not a question of conferring power on Parliament or on the State legislature; it is taking away both from the Union Parliament and from the State legislature; that alone is a fundamental right. Fundamental rights do not deal with allocation of powers at all.
The Honourable Shri K. Santhanam: I do not think Mr. Subramaniam is correct. A fundamental right may consist of this provision that the State legislature shall not interfere in one matter and that that matter can be interfered with only by Parliament; or a fundamental right may be that the Parliament shall not interfere with a matter and only the State legislature may do it. Distribution of powers and the consequent results on the citizens are as much matters of fundamental rights which accrue to the individual. If all the clauses on fundamental rights are scrutinised you will find that in many cases, we have made provision that in this matter, the Parliament may interfere, but the State legislature may not interfere. Therefore, I think that in the interests of freedom of trade, Article 16 is absolutely essential and without Article 16, the whole structure may become so complicated that almost fancy restrictions and fancy laws may be made by the provincial legislatures, and the internal trade of India may become clogged and obstructed. Therefore, I suggest that Article 16 should continue.

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, I do not find any inconsistency nor do I find Article 16 unnecessary. I agree with my friend, Mr. Subramaniam that if there is nothing left and the whole sphere of inter-state commerce can be regulated either by the States concerned or by the Parliament, there is no need for Fundamental right but I do not agree that there is nothing left as he expects or as he is afraid. Some rights of freedom of speech etc. are given under Article 13. Article 16 ensures freedom of trade, commerce and intercourse throughout the territory of India. That is the Fundamental Right. Exceptions are made under Article 244 in favour of the States and of any law made by Parliament under the other article. So far as laws made by Parliament are concerned, Parliament can act only so far as certain powers are conferred on it under list I. So far as States are concerned they can come under list II. Entry No. 32 in the State List refers to trade and commerce within the States. Now so far as trade and commerce within the State is concerned, it is the exclusive jurisdiction of the States. I am only giving an instance as to why this article is necessary in the Chapter on Fundamental Rights.

In my presidency there are two districts; one is in the north and the other is in the south, growing cotton, one is in the Andhra and the other is in the Tamil Nadu. Today the district in the south is a progressive district and it has a number of cotton mills and is utilising all cotton and sending out yarn and cloth to other parts of the Presidency. There is a move in the northern district which grows cotton to establish certain spinning mills. We will assume that the Madras Government tries to impose certain restrictions and says that the new spinning mill that is going to be established in Cuddapah shall not send any of its yarn to any of the districts which have been already served by the Coimbatore mills. There is absolutely no provision here which prevents this. Unless a proviso is given to that extent, there is nothing preventing any State or any particular State making discrimination between one district and
another. Under article 243 we cannot make any distinction between one state and another. But
within the State itself there is nothing preventing a State from exercising its right by
way of discrimination. There is a possibility. Let us take Bombay Presidency. Ahmedabad
has got textile mills. Bombay also has got some mills. Now it is open to the legislature to
prevent, as it is, the Southern portion of the Bombay Presidency from developing its resources
altogether by imposing a restriction that it shall not send any of its produce or products to any
other part of the Bombay Presidency.

Shri C. Subramaniam: May I point out it is covered by 13(g)?
Shri M. Ananthasayanam Ayyangar: 13 (g) says:--
"to practice any profession or to carry on any occupation, trade or business."
You are allowed to carry on an occupation by manufacturing this but it is not as if you can
carry on a business irrespective of any other consideration.

Pandit Lakshmi Kanta Maitra (West Bengal: General): It deals with commerce and
intercourse.

Shri M. Ananthasayanam Ayyangar: It deals with commerce and trade and there is a third
word `intercourse' also. I am coming to it. So far as commerce and trade is concerned I beg to
submit that it is not covered by article 13(g). Let us now refer to sub-clause (6) which says--
"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law,
or prevent the State from making any law, imposing in the interests of public order, morality or
health, restrictions on the exercise of the right conferred by the said sub-clause and in
particular prescribing or empowering any authority to prescribe, the professional or technical
qualifications necessary for practising any profession or carrying on any occupation, trade or
business."

But it does not mean that you can impose any sort of restriction. It comes under clause (g). It
comes under clause (6) of article 13 and therefore there is necessity for an independent clause
like article 16, which gives to every man freedom of trade, commerce and
intercourse throughout the length and breadth of India.

As regards the word `intercourse' also, apart from trade and commerce, for various purposes
intercourse from one province to another is necessary. That is also not provided for in the
Fundamental rights either in article 13 or elsewhere.

Shri C. Subramaniam: That is purely the province of the Parliament.

Shri M. Ananthasayanam Ayyangar: With reference to States, what happens?

Shri C. Subramaniam: You cannot discriminate.

Mr. Vice-President: I am afraid there is a lot of infringement of Parliamentary procedure and of
irregularity among people who have more experience than I have.

Shri M. Ananthasayanam Ayyangar: Article 243 says--
"No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air."

This prevents discrimination between one State and another State. There is no article here which says that you ought not to discriminate between one part of a State and another part of the State. This is also covered by article 16; I beg to submit, Sir, that so far as discrimination between one area of the State and another is concerned there is no provision: and if not for any other reason, at least for this, this article is necessary.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Subramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Subramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian States would join the Union only on three subjects--foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include trade and commerce in list I, which means that parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the
mater of trade and commerce throughout India, under some head. After exercising considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring it under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was not other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244 or has misread that article. Article 244 has a very limited scope. All that it does is to give power to the provincial legislatures in dealing with inter-state commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam: The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse... as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar: Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore submit that the article as it stands is perfectly in order and I commend it to the House.

Mr. Vice-President: I shall now put the article to the vote.

The question before us is that:--

Article 16 stand part of the Constitution.

The motion was adopted.

Article 16 was added to the Constitution.

Article 17

Mr. Vice-President: Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No. 543. It is a negative one and is therefore ruled out.
There is an amendment to this amendment, that is No. 93 in List V, standing in the name of Shri Ram Chandra Upadhyaya.

( Interruption by Mr. Kamath.)

Yes, Mr. Kamath, you are observing that there are other amendments?

Shri H. V. Kamath (C. P. and Berar: General): Yes, Sir. No. 544.

Mr. Vice-President: But I have not called out that. I was dealing with No. 543, and amendment No. 93 to amendment No. 543.

Shri H. V. Kamath: But Sir, that has not been moved. How can an amendment to that amendment be moved or even called?

Mr. Vice-President: Are you pointing out my mistake? Have I not already confessed that I am innocent of all these rules? Is it necessary to rub it in every time, Mr. Kamath?

Now, we come to amendment No. 544, standing in the name of Kazi Syed Karimuddin.

Shri H. V. Kamath: I do not in the least presume to advise you, Sir.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

That for article 17, the following be substituted:

"17. Neither slavery nor involuntary servitude such as begar except as a punishment for crime shall exist within the Union State."

Sir, there is not much of a change in the amendment I am moving. But article 17(1) does not cover cases in which prisoners are asked to work, a prisoner is asked to work against his own free will. If this article is allowed to remain as it is, then the jail authorities will not be allowed to take work from the prisoners. Therefore I have mentioned the words "except as a punishment for crime". I may point out that such an article finds a place in the American Constitution also.

Mr. Vice-President: Amendment No. 545. Shri Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

"That the following words be added at the beginning of clause (1) of article 17:--

`Servitude and servdom in all forms as well as'."

I do not think this is a point on which one is required to speak at length. I will therefore, only like to submit that in some States servdom and servitude in some form or another prevails. Moreover, in the South customs like devadasis have taken root.

Pandit Lakshmi Kanta Maitra (West Bengal: General): What is servdom as distinguished from servitude?

Mr. Vice-President: The Honourable Member wants to know from you what is the meaning of servdom.

Shri Damodar Swarup Seth: It is a form of servitude or I may say, `slavery' that prevails in States.
Mr. Vice-President: Probably it is his idea with respect to this distinction between serfdom and servitude.

The next three amendments are Nos. 546, 547 and 548, of which the most comprehensive is No. 546, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar. General): Sir, I move:

"That in clause (1) of article 17, for the words 'Traffic in human beings and begar', the words 'Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation and begar' be substituted."

In commending this motion I should like to point out that by "Traffic in human beings". I understand the possibility of buying and selling as if these human beings were chattels, and as such ought to be prohibited. The common understanding interprets these words to mean slavery as it was practised in olden countries, and, until recent times, even in the so-called civilized countries of Europe or America. It is but right that such traffic should be abolished.

But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens, -- and perhaps it happens on a much larger scale than innocent Members of this House may be aware -- in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of commercialised vice probably for life.

This is covered no doubt by ordinary forms of legal contract, where the contracting parties are presumed to be free agents. How far such legal contracts are truly lawful if interpreted in the spirit of the law, I cannot say. But that these contracts offend very much against the commonsense of all civilized humanity, I am prepared to assert.

Accordingly, I would like it very clearly to be understood by this amendment that "traffic in human beings" does not consist only of buying and selling of what were formerly known as slaves: but also this new type of slavery which in effect is a very large scale commercialised vice that the so-called civilized countries have popularised, or, may I say, have made an industry of.

This may not perhaps have been in the minds of the draftsman of this clause. But I think the House would do well to bear it in mind, and to accept this amendment by which such a practice would be perfectly clearly and expressly prohibited.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be Devadasis, and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic; and the Constitution should make no bones about prohibiting this,
if I am right in reading the spirit of this article which would prohibit all kinds of traffic in human beings.

Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word "begar", that is to say of compulsory work without payment, and work at command, should also be stopped. But more than anything else, I would like by this amendment to emphasize this highly immoral, and; I was going to say, inhuman traffic, which prevail on a very large scale, much larger than perhaps the House realizes, and as such I commend this amendment to the House.

Mr. Vice-President: Amendment No. 547.
Shri B. Das (Orissa: General): Sir, I do not move but I wish to speak.
Mr. Vice-President: I cannot allow you to speak. Do you want that it should be put to the vote?
Shri B. Das: No Sir, I do not move. Could you not allow me to say a word?
Mr. Vice-President: I cannot because that will create a general flutter in the House. You will have to take your chance.
Mr. Vice-President: Amendment No. 548.
Giani Gurmukh Singh Musafir (East Punjab: Sikh): Sir, my amendment reads:
"That in clause (1) of article 17, after the words, 'human beings' the words 'including prostitution' be inserted."
Mr. Vice-President: Do you want to move it?
Giani Gurmukh Singh Musafir: *[I merely want to say something.
Mr. Vice-President: I cannot say that every Member who has sent in an amendment would find time to speak. I must make this clear, because we have to hurry.
(Amendments 549, 550 and 552 were not moved.)
Amendment No. 551: This is a verbal amendment and therefore it is disallowed.
(Amendment 553 was not moved.)
Amendment No. 554: This is a verbal amendment and therefore it is disallowed.
Amendments Nos. 555, 558 and 560 are to be considered together, I can allow No. 555 to be moved.
Shri Jaspat Roy Kapoor (United Provinces: General): I am not moving amendment No. 555.
Sardar Bhopinder Singh Man (East Punjab: General): Mr. Vice-President, Sir, I beg to move--
"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."
Sir, with the addition of my amendment clause (2) will read thus:
"Nothing in this article shall prevent the State from imposing compulsory service for public purposes and shall pay adequate compensation for it."
Begar is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his labour, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it.

Shri H. V. Kamath: Mr. Vice-President, Sir, I beg to move--

"That in clause (2) of article 17, for the word "public" the words "social or national be substituted."

At the outset, may I just say that the non-English word in this article--begar--has nowhere been defined and it will be better if we define it somewhere in the constitution, if not in this article itself. Now, coming to the amendment, to my mind the word "public" does not bring out the meaning or significance of the purport of clause (2) of this article as much as the word "social" or "national" will. We all know that the services of the State--Government services--are referred to as "public services", but "national service" or "social service" has got a wider and a higher, a more comprehensive connotation than the word "public service". I remember very well that during the proceedings of the National Planning Committee, which was brought into being by Netaji Subhas Chandra Bose and presided over by Pandit Jawaharlal Nehru and to which my friend Prof. K. T. Shah rendered yeoman service for a period of well over three or four years, in that report it was suggested that all citizens should be conscripted for some social service; and Pandit Nehru when speaking on this subject went to the length of saying that no student should be awarded his academic degree unless and until he puts in six months or a year of some kind of social service. The word used there was "social service", not "public service". The word "national" has got even a still higher connotation than the word "social". My friend Dr. Ambedkar yesterday referred to this type of national service. When there is a war; when there is an emergency; when the stability of the State is threatened; when there is an emergency; when the stability of the State is threatened; when there is an insurrection; then in particular the question of national service will arise and then also will arise, as he referred to yesterday, the duty of the citizens to bear arms. In these cases, I say there must be conscription, I do not mean for military service only but for some kind of service in the national cause. Even conscientious objectors must be asked to do some kind of service, though not necessarily to bear arms and go to the front line.

[] Translation of Hindustani Speech.
Here, I would also suggest that not merely there should be no discrimination of religion, race, caste or class, but there should be no discrimination of sex either. In this connection, however, I would like to sound a note of caution and that is, against the unqualified enforcement of the duty to bear arms. The duty to bear arms, to my mind, without the corresponding right to bear arms, is one of the characteristics of a totalitarian State, a police raj or a military dictatorship, and not of a democratic State which the Preamble says our future India is going to be. Then enforcement of the duty to bear arms is only the outward expression of the idea or doctrine of "dying" for the State. We must die for the State. The expression of this doctrine is the duty to bear arms. But every citizen has a higher duty to perform, and that is to "live" for the State--live for the State, and not merely die for the State--and this doctrine of "live for the State" is connected with the right to bear arms.

In the end I suggest that clause (2) of this article may be re-worded, and for the word "public service" the words "social or national" should be substituted. I would have had no objection if they had said just "public service", but "service for public purposes" is hardly appropriate, and to my mind the significance and meaning of this clause would be better expressed if we say that "nothing in this article shall prevent the State from imposing compulsory service for social or national purposes". Sir, I move.

(Amendment No. 557 was not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move--

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

This, Sir, is a very small, but in my opinion, a very important amendment. If it is accepted the clause would read:

".....in imposing such service the State shall not make discrimination on the ground only of race, religion caste or class."

The significance of this is so clear that, even though I have moved it, I trust the Draftsmen will accept it.

Mr. Vice-President: The clause is now open for general discussion.

Giani Gurmukh Singh will now speak. I give him five minutes.

Giani Gurmukh Singh Musafir: Mr. Vice-President, article 17 is a useful provision in the Constitution, but there are one or two shortcomings which should be removed. In this connection I had given notice of an amendment but I could not get an opportunity to speak on it. I would like to say that prostitution is not in accord with the Indian civilization. It was imported from the West and with the departure of Western rulers it must come to an end. In clause (1) of article 17, after the words
"Traffic in human beings" the word "Prostitution" must be included, for then alone the dignity of this clause will be increased, and defect removed. Another suggestion has been moved by Sardar Bhopendra Singh Man. It is a very good suggestion that, if the Government imposes compulsory service in the public interest, then the workers must get adequate compensation. It is good to specify in clause (2) of this article that in imposing compulsory service no discrimination on the ground of race, religion, caste or class shall be made. The right of imposing compulsory service conceded to the Government by this clause, is more or less absolutely vested in them. Even now, the government officials through their influence impose compulsory service. If provision is made to pay compensation, then this defect will disappear and the usefulness of this clause will be enhanced. Hitherto the practice of `Begar' was a source of oppression to the poor. Now this clause would not fit in, if it is passed without providing for payment of compensation. I do not propose to say more, as the Vice-President has already ruled; and therefore, without taking much of the time of the House, I shall mention only two points, firstly that the curse of prostitution should go from this country and secondly, compensation must be paid for compulsory service.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, let me assure you that I will take up only one or two minutes of the valuable time of the Assembly. I want to say a few words on this article. There is the amendment of Professor Shah intended to substitute in clause (1) `Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as begar', for the words `Traffic inhuman beings and begar.'

Sir, if any province has suffered from this bad practice of dedication of devadasis in the name of religion, it is the province of Madras. The worst form of this custom existed in Madras for a long time. I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this was practised. But, I do not think, while appreciating the object of Professor Shah in bringing forward this amendment and while being thankful to him for having realised the necessity for removing this evil, that this amendment is necessary. Madras has already prohibited this practice under a law passed a few years ago. It is no more in vogue there. Though some relics of that system still exist, these, I am sure, will disappear in course of time. I should mention in this connection my appreciation of the efforts put in by reformers like Mrs. Muthulakshmi Reddi. It is mainly on account of her efforts that this evil is no more there. Our deep debt of gratitude is due to her for her efforts. As I said, Madras has passed a law prohibiting this custom. I do not therefore think it necessary to include this provision in article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.
Mr. Vice-President: I now call upon Shri B. Das to speak. He is almost the father of the House and must set an example of brevity.

Shri B. Das: Sir, on the previous occasion when we were discussing the Fundamental Principles I pointed out the need for including in the Draft Constitution the removal of this great social evil, the traffic in women. This traffic means the use of force to compel women to life of prostitution. When we talk of traffic in women—which is a great social evil all over the world—I did dilate upon it last time and said that we should not be prudes and attempt to hide the fact that there existed this traffic in women in India. Sir, I have to the decision elsewhere that I should not move my amendment which sought to add the words 'particularly in women' after the words 'Traffic in human beings'.

Sir, let us confess and admit that there is this traffic in women for which men everywhere are responsible. Women were often removed from Orissa. I pointed out that in the great Bengal disaster in 1943-44, lakhs of women were spirited away to the Punjab and North-West Frontier Province. Sir, young women were taken away by the alien Government into the camps of soldiers and they were thus lost to humanity, lost to family, lost to us as good citizens. So, we mere men should not fight shy of this and feel that by including an amendment of this kind we will be confessing the existence of this traffic in women in this country. That is why I gave notice of the amendment. If the House is willing to accept Shrimati Durgabai's amendment or even the amendment of Professor Shah who has confined his amendment to the Devadasi system and has not thought of the influence of dances before temples which preserve our national art and music from time immemorial.

Shri H. V. Kamath: Has Shrimati Durgabai given notice of any amendment to this article, Sir?

Mr. Vice-President: She has not.

Shri B. Das: She has sent in one to Dr. Ambedkar.

Mr. Vice-President: I have no knowledge of it.

Shri B. Das: I am sorry, I misunderstood. However, I think we will not be justifying our constitution on fundamental rights if we do not accept and admit our great sins by including the words "traffic in women" and try to save the situation now and hereafter.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, begar like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this begar, this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this begar is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their
game and people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terriblereading if the whole story is told. I know that very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this begar. While making my observations on this article, I would like to say that I am opposed to the amendment which has been moved by Sardar Bhopindra Singh Man providing for compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that article 13 constitutes the charter of freedom for the common man, and this article is a sort of complement to that charter of freedom. This frees the poor, downtrodden and dumb people of the Indian States--I cannot say anything of other provinces--from this curse of begar. This begar has been a blot on humanity and has been a denial of all that has been good and noble in human civilisation. Through the centuries this curse has remained as a dead weight on the shoulders of the common man like the practice of slavery. The members of the Drafting Committee and this Constituent Assembly are entitled to the grateful thanks of the dumb downtrodden millions who would be freed by this article from this curse of begar.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, I shall try to be as brief as possible.

The awakened conscience of women in India and the world is fully alive to the problem of the traffic in women and cannot tolerate its continuance. Sir, if we do not accept the amendment of Mr. B. Das, it is not because we do not appreciate his purpose. We realise that he wishes to place particular emphasis on the problem of the traffic in women, but I do think that the article as it stands does cover it. I am merely pointing this out because it may be thought that the women members of this House are not alive to this problem. It is one of the most urgent of all problems on which women's organisations in this country, have focused their attention for some time past.

As for the amendment that my honourable Friend, Mr. K.T. Shah, moved, I agree with Shrimati Durgabai that legislation has covered this problem in regard to Madras, but I think that if Mr. Shah's amendment could be accepted by this House so that the Devadasi system—the dedication of women in temples—is abolished by a categorical provision in the Constitution, it would be better procedure as the custom still lingers in some areas. Otherwise
it is to be hoped that legislation abolishing the custom in other parts where it still exists will soon come in. I want to stress the fact that women are fully alive to the fact that it is the dual standards of morality that have led to traffic in women. It is when society realises fully the need for doing away with dual standards of morality that this article that is being adopted can really come into effect and become a reality and not merely a paper provision in the Constitution.

Acts for the prevention of immoral traffic in women do exist already in this country but their operation is noteffective and even if legal flaws are amended, these can only become really effective when men's minds change towards this problem, whereby a section of women are at the mercy of exploiters whereby the very dignity of womenhood is lowered.

Mr. Vice-President: Mr. Nagappa, please show that you deserve the confidence that the House has placed in you by limiting yourself to five minutes.

Shri S. Nagappa (Madras: General): I will not take much time, Sir.

This practice of begar is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish begar. Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and white wash his whole house, for which they will be given nothing except food for the day. This sort of forced labour is still prevalent in most parts of the presidency.

Another thing that I want to bring to the notice of the course is that whenever the big zamindar's lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say: "All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so-called civilised country. I am very thankful to this Drafting Committee. I support this article.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here primarily to oppose the amendment moved by my honourable Friend, Prof. K. T. Shah, in that it imports into the consideration of this article facts which ought not to be taken into account in a consideration of the fundamental rights that are to be incorporated in the Constitution.
Sir, if the House would permit me a moment to deal with the general principles which are the basis of this particular Part, it is that we want to ensure certain amount of rights to the individual, so that he will be ennobled. We also want to bar legislation from creeping in into those rights, which it is absolutely necessary should be maintained intact so that the individual’s status might be protected. There is no point in our trying to import into this particular Part reform of all the abuses, which our society is now heir to. If those abuses are such where vested interests are likely to seek perpetuation of those abuses, well, I think we have to provide against them, but if public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear all at once by our putting a ban on them in the constitution. Looking as I do at such matters in that light, I wish most of my Honourable Friends in this House will not try to import into these fundamental rights age-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years. My Honourable Friend Shrimati Durgabai pointed out that this system of Devadasis obtaining in India has been abolished by legislation in Madras. There is nothing to bar other provinces from following suit and I think public opinion is sufficiently mobilised for all provinces undertaking legislation of that type. Why then put it into the fundamental rights, a thing which is vanishing tomorrow? I think the same principle might be adopted in the rest of the article that would come before the House in this particular part, namely, what we could achieve in the matter of social reform by normal legislation, we need not seek to put into the fundamental rights, but if it is a matter where the vested interests for purposes of economic gain want to perpetuate a particular anti-social custom that obtains amongst us, well, I think, it is perfectly right that we should put it into the Fundamental Rights. I think some form of forced labour does exist in practically all parts of India, call it ‘begar’ or anything like that and in my part of the country, the tenant oftentimes is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave.

We are trying to root it out, and by putting it in the fundamental rights it will hasten legislation to wipe out evils of that kind as it will then become an obligation of the State.

I would only mention to the House that let us not seek to enlarge the scope of these articles by putting in evils which can be wiped out by legislation, on which public opinion is sufficiently mobilised, but only import into it such considerations against which vested interests might conceivably take a firm stand. Sir, I support the article that is being considered by the House.

Shri Mahavir Tyagi: May I seek your permission, Mr. Vice-President. I want to clear some doubts which arise in my mind in regard to this article.

Mr. Vice-President: I am sorry, it is too late.
Shri Mahavir Tyagi: I must be told as to how I can catch your eye or draw your attention.
Honourable Members: Order, order.
Mr. Vice-President: The House has pronounced its decision.
Shri Mahavir Tyagi: Can anyone, by handing over slips or by standing every time, catch your eye, Sir?
Mr. Vice-President: The House has pronounced its decision.
Shri Mahavir Tyagi: What is the decision?
Mr. Vice-President: You ask the House.
Shri Mahavir Tyagi: I feel it is very unfair.
The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K.T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word `devadasis' Now I understand that his arguments for including `devadasis' have been replied to by other members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.
With regard to the amendment of my honourable Friend, Mr. H. V. Kamath, he wants the words `social and national' in place of the word `public'. I should have thought that the word `public' was wide enough to cover both `national' as well as `social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that is the correct attitude to take.
With regard to the amendment of my honourable Friend, Shri Damodar Swarup Seth, it seems to be unnecessary and, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called `hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.
In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath: On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that it consists of two words in place of one? In that case, I shall be happy if the wording is either 'social' or 'national' in place of 'public'.

The Honourable Dr. B. R. Ambedkar: It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri: (Assam: General): May I know, Sir, does the honourable Member accept amendment No. 548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir?

The Honourable Dr. B. R. Ambedkar: I understand it was not moved.

Mr. Vice-President: It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin.

The question is:

"That for article 17, the following be substituted:--

"17. Neither slavery nor involuntary servitude such as begar except as a punishment for crime shall exist within the Union State."

The amendment was negatived.

Mr. Vice-President: Amendment No. 545 standing in the name of Shri Damodar Swarup Seth.

The question is:

"That the following words be added at the beginning of clause (1) of article 17.

"Servitude and serfdom in all forms as well as."

The amendment was negatived.

Mr. Vice-President: Amendment No. 546 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (1) of article 17, for the words "Traffic in human beings and begar", the words "Traffic inhuman beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as begar" be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man.
The question is:
"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sardar Bhopinder Singh Man: Sir, I request the permission of the House to withdraw it.
The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 556 standing in the name of Mr. Kamath.
The question is:
"That in clause (2) of article 17, for the word "public" the words "social or national" be substituted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 559 standing in the name of Professor K. T. Shah, accepted by Dr. Ambedkar.
The question is:
"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."
The amendment was adopted.

Mr. Vice-President: I shall now put the article as a whole as modified by amendment No. 559 to vote.
The question is:
That article 17 as modified by amendment No. 559 form part of the Constitution.
The motion was adopted.

Article 17, as amended, was added to the Constitution.

Article 18

Mr. Vice-President: We now go to the next article.
The motion is that Article 18 form part of the Constitution.
The first amendment is No. 561. This is negative and therefore, it is out of order.
Amendments numbers 562 and 564: No. 562 standing in the name of Professor Shibban Lal Saksena and 564 standing in the name of Shri Damodar Swarup Seth and others are of similar import and have therefore to be considered together. Amendment No. 562 is allowed to be moved.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am not moving the amendment; but I would like to speak on the article.

Mr. Vice-President: Then, I will allow amendment No. 564 to be moved.

Shri Damodar Swarup Seth: Sir, I beg to move:
"That the following be added at the end of article 18:
'Nor shall women be employed at night, in mines or in industries detrimental to their health."
Sir, it is a matter of great satisfaction that in article 18 protection has been afforded to children of minorage. But, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at nighttime and in industries which are injurious to their health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine.

Mr. Vice-President: Then, comes amendment No. 563.

(Amendments 563 and 565 were not moved.)

The article is open for general discussion.

Prof. Shibban Lal Saksena: Sir, I am very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive Principles, although I think, properly, they should be in this Chapter. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. Sir, if this important thing had been done, we would have been hailed by innumerable women workers in the country -- especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment moved by Mr. Damodar Swarup -- No. 564.

Mr. Vice-President: I put the amendment No. 564 to vote.
The question is:
"That the following be added at the end of article 18:-
`Nor shall women be employed at night, in mines or inindustries detrimental to health.'"
The amendment was negatived.
Mr. Vice-President: Now I put the motion--
The question is:
"That article 18 stand part of the Constitution."
The motion was adopted.
Article 18 was added to the Constitution.

Article 18-A
Mr. Vice-President: Now we come to a new article in theform of amendment No. 566.
Prof. K. T. Shah: Mr. Vice-President, I beg to move .
"That the following new article be inserted under theheading "Rights relating to Religion"
occurring afterarticle 18:--
`18-A. The State in India being secular shall have no concern with any religion, creed or
profession of faith; and shall observe an attitude of absolute neutrality in all matters relating
to the religion of any class of its citizens or other persons in the Union."
This, Sir, ought not to be a controversial matter atall. We have proclaimed it time and again
that the State inIndia is secular; and as such it should have no concern--I should think that
would follow logically--with the affairs of any religion, with the profession of any particular
faith, creed or belief.
By this I do not wish to suggest that the neutrality of the State in matters of religion should
mean the utterignorance or neglect of institutions or services which may,in the name of
religion or belief, be conducted by peopleprofessing a particular form of faith. All I wish to
say isthat with the actual profession of faith or belief, theState should
have no concern. Nor should it, by any actionof it, give any indication that it is partial to one
or theother. All classes of citizens should have the sametreatment in matters mundane from
the State. And even thosewho may not be citizens of this State, by living within it,should
receive the same treatment.
The citizens of this Union obviously belong to allprofessions, a wide variety of faiths or
religious beliefs.To take one or the other, or even to suggest that one or theother is favoured
or assisted or aided by the State in itsmundane affairs at any time--if I may put it so.--would
notbe in the interest of the State. For it would give any othersection of the people professing
another belief, theimpression that any particular section is preferred.
If the State can--and I believe it can very easily--promote all mundane services, all worldly
activities andutilities which are for the benefit of the communitycollectively--no matter by
what section they are carried on--then, according to my amendment, there ought to be
no objection. But if the State is associated in any way with the promotion of any particular form of profession or faith, then I think it would be highly objectionable for a secular organization to do so.

Accordingly I am suggesting that "The State in India being secular shall have no concern with any religion, creed or profession of faith". I am again and again emphasizing this aspect of religion because that is by its very essence, a non-worldly activity, and as such the State which is—may I say it without any disrespect—essentially an earthly organization, should have no concern.

One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I therefore will not take the time of the House in going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.

(Amendment No. 567 was not moved.)

Mr. Vice-President: No. 568.

Shri T. T. Krishnamachari: May I point out that this amendment relates to a matter more or less akin to 13-A which you were good enough to keep in abeyance for the time being?

Mr. Vice-President: Then it may stand over.

(Amendment No. 569 was not moved.)

Mr. Vice-President: I put amendment No. 566 to vote.

The question is:—

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.'"

The amendment was negatived.

New articles 19 to 22.

Mr. Vice-President: Then we go to No. 570.

The first part is naturally disallowed.

Prof. Shibbanlal Saksena: First put the article to vote.

Mr. Vice-President: The article has been put to vote and passed. Now the second alternative is the same as No. 591 and will be considered along with that. The third amendment or alternative is the same as 618 and will be considered along with the other one. The last amendment has a negative effect.

Shri Lokanath Misra (Orissa: General): I do not think, Sir.
Mr. Vice-President: I am afraid you are challenging the competence of the Chair which you are not entitled to dounder the Rules.

Shri Lokanath Misra: The first part of my alternative is not the same as 591, because in that I wanted to drop the word `propagate' while it is different in 591.

Article 19
Mr. Vice-President: That was considered when the decision was made.

The motion before the House is:
"That article 19 from part of the Constitution."

I shall go over the amendments one by one.

(Amendment No. 571 was not moved.)

No. 572, first alternative.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I do not wish to move part one of my amendment. I have put my amendment into two parts, and with your permission, Sir, I would like to move the second part.

Mr. Vice-President: You can do that later.

Mr. Tajamul Husain: But then, Sir, later on comes the amendment No. 573 in the name of my Friend Mr. Himatsingka, and if that is not moved, then my amendment which is similar to it also goes out.

Mr. Vice-President: No, if he does not move it then you will get your chance. And if No. 573 is moved, even then you can have your say during the general discussion. Nos. 573, 576, 577 and lastly 582 may be considered together. Of them, I take No. 573 standing in the name of Mr. Himatsingka. Is he in the House?

(The Member was not present and Amendment No. 573 was not moved.)

The next would be No. 572, second part.

Mr. Tajamul Husain: Sir, I beg to move--

"That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted."

Sir, under article 19, clause (1) all persons are entitled to freedom of conscience and the right freely to progress, practise, and propagate religion. (I agree, Sir, that people should have the right to freely profess and practise religion, but I am afraid, it will be wrong to allow people to propagate religion in this country.) Sir, my speech will be brief, because I have been seriously ill and feel the strain while speaking.

I feel, Sir, that (religion is a private affair between oneself and his Creator. It has nothing to do with others.) My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion, and why should I interfere with your religion? Religion is only a means for the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you
Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or way, should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion?) As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate for the sake of propagating. Do not show to the people that this is your religion for the sake of showing. (If you start propagating religion in this country, you will become a nuisance to others.) So far it has become a nuisance.

I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately. That is all I wish to say, Sir, because I am not keeping good health. I commend my amendment to the Honourable House and especially to the Honourable Dr Ambedkar, hoping that he will accept it. With these words, I sit down.

Mr. Vice-President: Amendment No. 570 in the name of Mr. Misra. Do you want it to be put to the vote?

Shri Lokanath Misra: Sir, I wanted to move it.

Mr. Vice-President: I know. But that has been disallowed. I want to know if you want it to be put to the vote.

Shri Lokanath Misra: Yes, Sir.

(Amendment Nos. 576, 577, First Part of 582 and 575 were not moved.)

Mr. Vice-President: Then the next amendment is No. 578 in the name of Mr. Naziruddin Ahmad. This is disallowed as being a verbal amendment. Then I come to amendments No. 579 and No. 580. They are almost identical, and therefore I am asking the mover to move No. 579. That also stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (1) of article 19, for the words `are equally entitled to freedom of conscience and the right', the words `shall have the right' be substituted."

It is almost a verbal amendment.

Mr. Vice-President: Do you want me to put amendment No. 580 to the vote?

Mr. Naziruddin Ahmad: Yes, sir.

Mr. Vice-President: Amendments Nos. 574, 581, 582 (second part), 587, 588 and 589 are of similar import and are to be considered together. Amendment No. 581 is allowed to be moved.

Mr. Naziruddin Ahmad: I am not moving it.

[Amendments Nos. 574, 582 (second part) and 587 were not moved.]

Mr. Tajamul Husain: Sir, I beg to move:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:"
"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised."

Mr. Naziruddin Ahmad: On a point of order. Does the Honourable Member refer to invisible signs or marks or names? By banning visible signs, does he prefer invisible signs and marks? How can there be invisible names?

Mr. Vice-President: Do you like to say anything?

Mr. Tajamul Husain: I have not been able to follow my honourable Friend, Mr. Naziruddin Ahmad. He seeks clarification on the point as to how there could be invisible signs. My intention is that there should be no visible sign, or mark or name by which a person shall be recognised. You have a name "Pershad", by which you know a person is a "Kayasth". You have the name "Syed" by which you know that a person is a Muhammadan. My amendment may be badly worded but my friend Mr. Naziruddin only knows about commas, semi-colons and full-stops.

Mr. Vice-President: You need not dilate on it.

Mr. Tajamul Husain: I wish to point out that religion is a private affair between man and his God. It has no concern with anyone else in the world. What is the religion of others is also no concern of mine. Then why have visible signs by which one's religion may be recognised? You will find, Sir, that in all civilized countries--and civilized countries now-a-days are the countries in Europe and America--there is no visible sign or mark by which a man can be recognised as to what religion he professes. In this country unfortunately, you can find out a man's religion by his visible sign or mark. I need not dilate on this. I will only give the points. In civilized countries people have family names, namely, Disraeli or Birkenhead. From these names you cannot say that Disraeli was a Jew and Birkenhead was Christian. If you hear the name of Lord Reading, you cannot say to what religion he belongs. There was a man in England whose name was Lovegrove. You cannot say to what religion he belongs, though I know he was a Muslim. There are many Christians in England who have become Muhammadans. So in those countries you cannot find out to what religion a man belongs simply by his name. In this country, of course, I have told you, Sir, from a person's name you can find out his religion. You hear of the name of Pershad. In my province it means a kayasth. If you hear of Ojha or Jha you know that the person is a Brahmin. In Bengal you know that a person of the name of Mookerjea must be a Brahmin, and so forth. So I do not want these things. I know I am 100 years ahead of the present times. But still, I shall have my say.

In civilized countries in England there was a time when there was no uniformity of dress. In this country you find all sorts of dresses.

You find dhoties, you find pyjamas, you find kurtas, you find shirts, and again, no shirts, no dhoties, nakedness, all sorts of things. That was the same thing in England at one time.
Maulana Hasrat Mohani: On a point of order,—whatever Mr. Tajamul Husain is suggesting, he must adopt it himself first. He must change his own name, because seeing his name one can say he is a Muslim.

Mr. Tajamul Husain: I am sorry for the interruption of the Maulana. My name I will change when the whole country adopts my resolution. Then, he will not be able to find out what I am and who I am.

Now, Sir, I was talking about dress. There was a time in England when there was no uniformity, but the Honourable the Law Minister will agree with me that an Act was actually passed in Parliament by which there was uniformity of dress and now in England and in the whole of Europe and in Americathere is uniformity of dress. We are one nation. Let us all have one kind of dress; one kind of name; and no visible signs. In conclusion, I say we are going to be a secular State. We should not, being a secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with. With these words, I move my amendment.

(Amendment 589 and 583 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, I beg to move—

"That the following proviso be added to clause (1) of article 19:

"Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein. Sir, the main article gives the right of freedom of propaganda. I have no quarrel with the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others. My only condition—and the amendment tries to incorporate that—is that this freedom should not be abused, as it has been in the past. In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular religion and as such result in conversion. That is not a genuine change of opinion, but is the result of undue influence that ought to be stopped.

(I have no quarrel at all with those who would change their opinion after full and mature consideration of such material as may be available to them regarding the beliefs that they..."
Most of the religious beliefs in this world are not---may I say without any offence---a matter of reasoned conviction; they are an acquired habit or an inherited prejudice which may not stand the strain of conviction on the opposite side, or reasoning on the controverting side. Accordingly, anybody who desires the mind of the public to be alert free from prejudice and open to conviction, will not object to permitting such freedom of propaganda that may result in conversion.

I have no objection therefore to anybody speaking, writing, preaching, in any place of public resort, in any open space, in parks, gardens, theatres or any other public place, even to people of tender age or even to people of unsound mind or body; because in those places they are not suffering from any disability, nor are those who are teaching or preaching in those public places in a place of authority, in a place where they can exercise undue influence; and as such it can be presumed that it is rather the force of their argument, the strength of their reasoning that has resulted in proselytising without any undue influence, or unfair authority, upon those people. But when, as in a school or a college, in an hospital or asylum, those who are set in authority as teacher or preacher, physician, guardian or nurse, take advantage of their peculiar position to influence them, to place before them another way of looking at life and its purpose than that they have had from birth, then I think undue influence is exercised and as such objectionable.

Even that may be permitted so far as that particular institution does not benefit in any way from public revenues, or is not aided, protected, or encouraged by any public authority in the Union or in any part of it.) I hope the House realises the extreme moderation of my amendment, and the tightness of the restriction that I have put so far as this proviso is concerned, namely, that it will operate only on people in a place or institution where they are suffering from some kind of disability, whether of age or of unsound mind or body, and where, therefore, their change of belief if it is brought about would be open to suspicion.

That is one reason. Then again, the preaching or propaganda which may be objected to is by or from people who are set in authority above the young, the helpless, disabled or of unsound mind, that is, a teacher or nurse or guardian. That is also a very substantial limitation.

Thirdly, the institutions or places carrying on propaganda of this kind resulting in conversion from one religion to another to which we object are places which are maintained wholly or partly by public revenues. They may be receiving financial grant; or they may be receiving recognition, which is perhaps more valuable than a direct money grant, and charging fees from the public, so that they may benefit even though nominally they may not be taking any grants from public revenues, or they may be aided or protected by any public authority.

With these three very substantial restrictions I am sure nobody would quarrel or object to my amendment, especially to the idea of propaganda of a kind which is calculated to change the religion or form of belief or worship inherited with one's parentage, if that propaganda is done
by people in author ity above them; and they in themeantime are suffering from some kind of
disability of thetype I have illustrated.
(I know, Sir, this is liable to excite strong feeling. There are religions which are professedly
proselytising. There are religions which leave the matter of religion toever y person's own
conscience, and do not indulge inproselytising. Whatever that be, without quarrelling with
the freedom of preaching one's religion, I hold that it isthe most moderate form of request to
the professors orpreachers of those religions, which want to proselytise, that they should at
least observe this much self-restraint, viz., that any institutions maintained by any form of
publicassistance or receiving any form of public encouragementshould not be utilised by them
for propaganda orproselytisation, so that the minds not quite free from otherinfluences, minds
suffering from some kind of handicap, shall not be unduly influenced.
Sir, I have tried to use no expression in the course of these few remarks which might give the
 slightest occasion for anybody to feel alarmed at the restraint which I amsuggesting should be
put upon their right to propagatereligion. I have not quoted a single instance which may
befound in plenty, where undue advantage has been taken to effect conversions in a manner
which may be regarded as mostprehensible. Those who are blinded by their faith
arewelcome to their belief. But I would beg them to realisethat in suggesting that those who
are suffering fromdisabilities shall be free from activities of this kind, they will not
misunderstand me when I say that I have notthe slightest objection to their holding their
beliefs andeven propagating them but that they should not indulge in this illicit form for
carrying on their religious activity.
Professing no particular religion myself, I can giv e anassurance to the House that I am not
actuated by any feelingof partiality for one or opp osition to another. I only wish that this may
be left as a matter of purely personalconcern. When you meet at a social gathering
orcongregational union this much decency should be observed that you shall not carry on your
influence in an undue manner, but only rely upon the convincing character of your arguments.
Sir, I commend the motion to the House.

The Honourable Shri Ghanshyam Singh Gupta: (C. P. andBerar: General): Sir, I move:
That in the Explanation to clause (1) of article 19, for the word 'profession', the word
'practice' be substituted.

Article 19. Sir, is very comprehensive. It says: "Allpersons are equally entitled to freedom of
conscience and the right freely to profess, practise and propagatereligion." Now, as to
freedom of conscience: It means that aman
is free either to have a religion or no religion. If aman has a religion, then he is free to profess
whatever religion he likes, either Islam, or Hinduism, or Buddhism or Sikhism and so
on. Then, professing that religion, he is free to practise thedictates of that religion. For
instance, if Islam requiresthat there should be a namaz, a Muslim is free to practisedit and also
to propagate it. What I would humbly submit is this: The wearing of kirpan may more appropriately be called the practice of religion than the profession of the Sikh religion. This is all I have to say.

Mr. Vice-President: It seems that there is an amendment to this amendment. As I understand that it is not going to be moved, the next one that can be moved is only 591 standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra: Mr. Vice-President, if you will permit me to speak on the general discussion of the article as a whole I would not move this amendment at all.

Mr. Vice-President: How can I guarantee that? I must observe a timetable. Whether you get a chance or not will depend upon the shape the debate takes. You are at liberty to move this amendment.

Shri Lokanath Misra: I beg to move--

"That at the end of Explanation to clause (1) of article 19, the words "and for the matter of that of any other religion" be inserted."

I would have been very glad if I had a chance to speak generally on article 19 and not move this amendment. To my mind, if article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word 'propaganda' as a Fundamental Right, relating to religion.

Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared. Does it not mean that we have nothing to do with any religion? (You know that propagation of religion brought India into this unfortunate state and India had to be divided into Pakistan and India.) If Islam had not come to impose its will on this land, India would have been a perfectly secular State and a homogenous state. There would have been no question of Partition. Therefore, we have rightly tabooed religion. (And now to say that as a fundamental right everybody has a right to propagate his religion is not right.) Do we want to say that we want one religion other than Hinduism and that religion has not yet taken sufficient root in the soil of India and do we taboo all religions? Why do you make it a Secular State? The reason may be that religion is not necessary or it may be that religion is necessary, but as India has many religions, Hinduism, Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore let us have no religions. No. That cannot be. If you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India.

Mr. Vice-President: We shall resume the discussion on Monday. A request has come to me from my Muslim brethren that as today is Friday we should now adjourn. I think we ought to show consideration to them an adjourn now to meet again on Monday at Ten of the clock.
Mr. Misra may then deliver the rest of his speech.

The House then adjourned till Ten of the Clock on Monday, the 6th December 1948.
Monday, the 6th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

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

Shri K. Chengalaraya Reddy (Mysore).

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 19.

Shri Lokanath Misra (Orissa: General): Sir, it has been repeated to our ears that ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.

The Honourable Pandit Jawaharlal Nehru (UnitedProvinces: General): Sir, are manuscripts allowed to be read in this House?

Mr. Vice-President: Ordinarily I do not allow manuscripts to be read, but if a Member feels that he cannot otherwise do full justice to the subject on hand, I allow him to read from his manuscript.

The Honourable Pandit Jawaharlal Nehru: May I know what is the subject?

Mr. Vice-President: Mr. Lokanath Misra is moving an amendment to article 19. I ask the indulgence of the House because Mr. Lokanath Misra represents a particular point of view which I hold should be given expression to in this House.

Shri Lokanath Misra: Gradually it seems to me that our ‘secular State’ is a slippery phrase, a device to by-pass the ancient culture of the land.

The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.
Shri S. Nagappa (Madras: General): The honourable Member is reading so fast that we are not able to follow him.

Mr. Vice-President: Order, order.

Shri Lokanath Misra: But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is somewhat uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression.

We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now (the cry of religion is a dangerous cry.) It denominates, it divides and encamps people to warring ways. (In the present context what can this word ‘propagation’ in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics has overrun Hindu culture. Today religion in India serves no higher purpose than collecting ignorance, poverty and ambition under a banner that flies for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in the dust. Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities anymore. It is a device to swallow the major ity in the long run. This is intolerable and unjust.

Indeed in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. We in India are shy of such recognition. U.S.S.R. gives freedom of religious worship and freedom of anti-religious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda.

If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are in alienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word ‘propagate’ in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.
Mr. Vice-President: There are two amendments in my list, i.e., 592 and 593. They are of similar import and may be considered together. Of these two, amendment No. 593 standing in the name of Mr. Kamath is more comprehensive and I allow it to be moved.

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

That after clause (1) of article 19, the following new sub-clause be added:--

"(2) The State shall not establish, endow, or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment consists of two parts, the first relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and the second relates to the deeper import of religion, namely, the eternal values of the spirit.

As regards the first part of the amendment, I need only observe that the history of Europe and of England during the middle ages, the bloody history of those ages bears witness to the pernicious effects that flowed from the union of Church and State. It is true enough that in India during the reign of Asoka, when the State identified itself with a particular religion, that is, Buddhism, there was no `civil' strife, but you will have to remember that at that time in India, there was only one other religion and that was Hinduism. Personally, I believe that because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that (If a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people, who live within its territories, and, therefore, it cannot afford to identify itself with the religion of any particular section of the population. But, Sir, let me not be misunderstood. When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared that India would be a secular State. But to my mind a secular state is neither a God-less State nor an irreligious nor an anti-religious State.)

Now, Sir, coming to the real meaning of this word `religion', I assert that `Dharma' in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. `Dharma', which we have adopted in the crest or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: ("Dharma Chakra pravartanaya")--that spirit, Sir, to my mind, should be inculcated in the citizens of the Indian Union. If honourable Members will care to go just outside this Assembly hall and look at the dome above, they will see a sloka in Sanskrit:

"Na
sa Sabha yatra na santi vriiddha
Vriddha na te ye na vadanti dharman."

That `Dharma', Sir, must be our religion. `Dharma' of which the poet has said.
Yenedam dharyate jagat (that by which this world is supported.)

That, Sir, which is embodied which is incorporated in the great sutras, the Mahavakyas of our religions, in Sanskrit, in Hinduism, the Mahavakya `Aham Brahman Asmi', then `Anal Haq' in Sufism and `I and my Father are one'--in the Christian religion--these doctrines, Sir, if they are inculcated and practised to-day, will lead to the cessation of strife in the world. It is these which India has got to take up and teach, not merely to her own citizens, but to the world. It is the only way out for the spiritual malaise, in which the world is caught today, because the House will agree, I am sure, with what has been said by the Maha Yogi, Sri Aurobindo, in one of his famous books, where he says:

"The master idea that has governed the life, the culture, social ideals of the Indian people has been the seeking of man for his true, spiritual self and the use of life as a frame and means for that discovery and for man's ascent from the ignorant natural into the spiritual existence."

I am happy, Sir, to see in this Assembly today our learned scholar and philosopher, Prof. Radhakrishnan. He has been telling the world during the last two or three years that the malaise, the sickness of this world is at bottom spiritual and therefore, our duty, our mission, India's mission comes into play.

If we have to make this disunited Nations--so called United, but really disunited nations--really United, if we have got to convert this Insecurity Council into a real Security Council, we have to go back to the values of the spirit, we have to go back to God in spirit and truth, and (India has stood for these eternal values of the spirit from time immemorial.)

Coming to the second part of the amendment, which reads: "Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union". I attach great importance to the same. India has stood through the ages for a certain system of spiritual discipline,) spiritual instruction, which has been known throughout the world by the name of "Yoga"; and Sri Aurobindo, the Maha Yogi, has said again and again, that the greatest need today is a transformation of consciousness, the upliftment of humanity to a higher level through the discipline of Yoga.

May I, Sir, by your leave, read what a Western writer, Arthur Koestler has written in one of his recent books called "Yogi or commissar"? "Yogi" stands for spirituality and "commissar" stands for materialism. In that book the writer observes: "Will mankind find a doctor or a dictator? Will he be yogi or commissar? The yogi does in order to be; the commissar, the capitalist, does in order to have; Western democracy needs more yogis"; that is the conclusion reached by this Western author.

Here, Sir, I would like to draw the attention of the House to the value and the importance that all our teachers, from time immemorial, from the Rishis and the Seers of the Upanishads down to Mahatma Gandhi and Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction. Netaji Subhas Chandra Bose went to the length of prescribing spiritual
training and spiritual instruction to the soldiers of the Azad Hind Fouj. In the curriculum, in the syllabus of the Azad Hind Fouj, this item of spiritual instruction was included. (When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the word; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union.)

In the end, I would only say this. We are living in a war-torn, war-weary world, where the values of the spirit are at a low ebb, or at a discount. Nemesis has overtaken the world which has lost its spiritual value, and unless this world returns to the Spirit, to God in spirit and in truth, it is doomed. Sir, I commend my amendment to the acceptance of the House.

Mr. Vice-President: Amendment Nos. 594 and 595 are identical. I can allow amendment No. 595 to be moved.

(Amendments Nos. 595 and 594 were not moved.)

Mr. Vice-President: Amendment No. 596, Dr. Ambedkar.

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

“That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted.”

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

Mr. Vice-President: There are a number of amendments to this amendment. The first is amendment No. 11 of list I, standing in the name of Pandit Thakur Dass Bhargava.

(Amendments Nos. 11 and 12 in list I were not moved.)

Amendment No. 13 standing in the name of Mr. Naziruddin Ahmad is disallowed. For the words "the State" he wants the words "any State" to be substituted.

(Amendments Nos. 597, 598, 599 and 600 were not moved.)

Amendment No. 601, Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

“That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity” be substituted."

The clause as amended would read:

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law--

(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice:........."
These are the words that I have ventured to add, and I think they are necessary. (If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary) that those words be added and form part of the article.

(I am not content with merely "regulating or restricting" them; I should like the State also to have the power positively and absolutely "to prohibit" any such practice.) Such practices in my opinion, only degrade the very name of religion. Nothing has caused more the popular disfavour of some of the most well-known and most widely spread religions in the world than the association of those religions with secular activities, and with excesses that are connected with those activities. Material possessions, worldly wealth and worldly grandeur are things which have been the doom of many an established Church. Many a well-known Religion, which has ceased to follow the original spirit or the precepts of its Founders, has, nevertheless, carried on, in the popular eye, business, trade, and political activity of a most reprehensible character. The State in India, if it claims to be secular, if it claims to have an open mind, should have, in my opinion, a right not merely to regulate and restrict such practices but also absolutely to prohibit them.

I do not wish to hurt anybody's feelings by citing specific examples of religious heads, or those claiming to be acting in the name of religion, carrying on a number of worldly activities of a most undesir able kind. They not only minister to the benefit or aggrandisement of the particular sect or class to which they belong, but, more often than not, they relate to the particular individual who for the moment claims to be the head or representative of that religion. The association of private property, the possession of material wealth, and the possibility of developing that wealth by trading, by speculation, by economic activity, which many of those carry on in the name of religion, or in virtue of their being heads of religion, are productive of evils of which perhaps the innocent Members of this House have no conception.

The facts are well-known, however, to those who have at all discerned in this matter not only that the heads of religions in the name of their religion claim exemption from income-tax out of the receipts of their own domain, but also right of any further gains that they may make by open or illicit trading, speculation, investments, or what not. I suggest that it is absolutely necessary and but right and proper, in the interests of the State, and more so in the interests of the general policy and principles on which the State is founded in India, that power be reserved in this Constitution absolutely to prohibit any such non-religious, non-spiritual activity, that in the name of religion, may be carried on, to the grave prejudice of the country as a whole, and even to the same religion of which they claim to be heads.
I have no desire as observed already, to cite illustrations. I know in advance the fate of my amendment, and, therefore, it is unnecessary for me to make the House wiser than it is by citing examples, and incurring for me further displeasure of particular classes affected thereby.)

Mr. Vice-President: Professor Shah--I cannot allow you to indulge in these remarks--I mean referring to the fate of your amendments and casting reflections on particular groups.

Prof. K. T. Shah: I was only trying to say that I know the fate of my amendments in advance; but I would not make it worse by citing examples, which might affect particular classes, and might incur for me their displeasure. If I have said anything improper I am sorry and I would apologize for it.

Mr. Vice-President: I did not say "improper". But it is bound to affect the calmness of the House and I would implore you.....

Prof. K. T. Shah: Sir, I would obey all your commands and even if you put them in the name of request, I would treat them as commands. But with the experience that I have had of my amendments--however good they are I was entitled to say this. If you think otherwise, I will submit to your ruling and take my seat.

(Amendments Nos. 602 and 603 were not moved.)

Mr. Vice-President: Nos. 604, 605, 607 and 608 are similar. I allow 604 and 607 to be moved.

Mr. Vice-President: No. 607--Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move--

"That in sub-clause (b) of clause (2) of article 19, after the words "or throwing open Hindu" the words "Jain, Buddhist, or Christian" be added."

The clause as I suggest would read--

"...........for social welfare and reform or forthrowing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."

Sir, I do not see why this right or obligation should be restricted only to Hindu Religious institutions to be thrown open to public. I think the intention of this clause would be served if it is more generalised, and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate, and who therefore may not see any violation of their religious freedom, or their religious exclusiveness, by having this clause about throwing open their places of worship to the public.

I think, Sir, that the freedom of religion being guaranteed by this constitution, and promised as one of the Fundamental Rights, the possibility of all religious institutions being accessible and open for all communities is a very healthy sign, and would promote harmony and brotherhood amongst the peoples following various forms of beliefs in this country, and therefore I think, Sir, that this amendment at any rate should find acceptance from those who have sponsored this clause.
Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:--

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words "all classes and sections" be substituted."

Sir, if my amendment is accepted, the clause would read thus:--

"That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus--

".........for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious maths, and educational institutions or Pathasalas conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as Pathasalas, educational institutions and others managed or conducted by these religious institutions. As I have already explained, my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

Mr. Vice-President: Amendment No. 610 is disallowed because it has already been covered by something allied, under the Directive Principles.

(Amendment No. 611 was not moved.)

No. 612, standing in the joint names of Mr. Mohammed Ismail Sahib and Mr. Pocker Sahib.
The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

Mohamed Ismail Sahib (Madras: Muslim): Sir, I beg to submit that my amendment is quite in order under this article, because this article speaks of the religious rights of the citizens, and personal law is based upon religion. I have made it quite clear on a previous occasion that personal law is part of the religion of the people who are observing that personal law. I only want to make it clear that this article shall not preclude people from observing their personal law. I am putting it in a negative form, because here, the article says

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law--

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

This practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion. Therefore, (I propose to make it clear that so far as personal law is concerned, this article shall not affect the observance thereof by the people concerned.) That is my point.

The Honourable Shri K. Santhanam: Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think, this is altogether inappropriate in this connection.

Mr. Vice-President: Would you like to say anything on this matter, Dr. Ambedkar? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar: I was discussing another amendment with Mr. Ranga here and so......

The Honourable Shri K. Santhanam: Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar: This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

Mr. Mohamed Ismail Sahib: On a previous occasion I put it in the positive form and here I put it in the negative form. So far as the Directive Principles are concerned, they speak of the attempts which the Government have to make in evolving a uniform civil code. Suppose they have exempted personal law, that does not mean that there can be no uniform civil code in the country. Whatever that may be, here I say under this article, in the matter of religion, people are given certain rights and this question of personal law shall not be brought in. That is what I
say. The question of personal law shall not be affected when this article comes into operation. That is my point.

Mr. Vice-President: I do not know whether I am technically correct or not; but in view of the peculiar circumstances in which our Muslim brethren are placed, I am allowing Mr. Mohamed Ismail Sahib to say what he has to say and to place his views before the House.

Mr. Mohamed Ismail Sahib: Thank you very much, Sir, forgiving me another opportunity to put my views before the House on this very important matter. I beg to move: "That after clause (2) of article 19, the following new clause be added: 

'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong.'"

Sir, this provision which I am suggesting would only recognise the age-long right of the people to follow their own personal law, within the limits of their families and communities. This does not affect in any way the members of other communities. This does not encroach upon the rights of the members of other communities to follow their own personal law. It does not mean any sacrifice at all on the part of the members of any other community. Sir, here what we are concerned with is only the practice of the members of certain families coming under one community. It is a family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that we are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong. Therefore, this will not in any way detract from the desirable amount of uniformity which the State may try to bring about, in the matter of the civil law.

This practice of following personal law has been there amongst the people for ages. What I want under this amendment is that that practice should not be disturbed now and I want only the continuance of a practice that has been going on among the people for ages past. On a previous occasion Dr. Ambedkar spoke about certain enactments concerning Muslim personal law, enactments relating to Wakf, Shariat law and Muslim marriage law. Here there was no question of the abrogation of the Muslim personal law at all. There was no revision at all and in all those cases what was done was that the Muslim personal law was elucidated and it was made clear that these laws shall apply to the Muslims. They did not modify them at all. Therefore those enactments and legislations cannot be cited now as matters of precedents for us to do anything contravening the personal law of the people. Under this amendment what I want the House to accept is that when we speak of the State doing anything with reference to the secular aspect of religion, the question of the personal law shall not be brought in and it shall not be affected.
Sir, by way of general remarks I want to say a few words on this article. My friend Mr. Tajamul Husain brought forward certain amendments, Nos. 572 and 588. To tell you the truth, Sir, I did not know at that time nor do I know now whether he was serious at all when he made those proposals and what were the points which he urged in favour of his proposals I could not understand. I did not take him, and I make bold to say that the House also did not take him seriously and therefore I do not want to waste the time of the House in replying to him.

The question of professing, practising and propagating one’s faith is a right which the human being had from the very beginning of time and that has been recognised as an inalienable right of every human being, not only in this land but the whole world over and I think that nothing should be done to affect that right of man as a human being. That part of the article as it stands is properly worded and it should stand as it is. That is my view.

Another honourable Member spoke about the troubles that had arisen as a result of the propagation of religion. I would say that the troubles were not the result of the propagation of religion or the professing or practising of religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that this is the correct point of view, is that if only people understand their respective religions aright and if they practise them aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way.

Mr. Vice-President: The clause is now open for discussion.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I feel myself called upon to put in a few words to explain the general implications of this article so as to remove some of the misconceptions that have arisen in the minds of some of my honourable Friends over it.

This article 19 of the Draft Constitution confers on all person the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under this part of the Constitution. Some of my Friends argued that this right ought not to be permitted in this Draft Constitution for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse the normal life of the State. I would say at once that this conception of a secular State is wholly wrong. (By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the
State will receive any State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words in the affairs of the State the professing of any particular religion will not be taken into consideration at all.) This I consider to be the essence of a secular state. At the same time we must be very careful to see that this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here.

The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage. The western world, strong with all the strength of a materialistic civilisation, rich with the acquisitions of science, having a dominating position in the world, is poor today because of its utter lack of spiritual treasure. And here does India step in. India has to import this rich spiritual treasure, this message of hers to the west. If we are to do that, if we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be inherent, the right to profess and propagate her religious faith must be conceded. I have listened to some of the speeches that have been made in connection with this article. It has been objected to and it has been said that the right to propagate should be taken away. One honourable Member suggested that if we conceded the right, the bloody upheaval which this country has witnessed of late would again recur with full vehemence in the near future. I do not at all share that pessimism of my honourable Friend. Apparently my honourable Friend has not given special consideration to the conditions that are imposed in this article. The power that this article imposes upon the State to intervene on certain occasions completely demolishes all chances of the kind of cataclysm which we have seen.

It has also been said, and I am very sorry that an observation was made by an honourable Member of considerable eminence and standing, that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified. An instance of Bombay was cited in defence of his position.
Mr. Vice-President: I am afraid you are making an mistake there. No particular instance, so far as I remember, was cited.

Pandit Lakshmi Kanta Maitra: Anyway I believe that was at the back of his mind. I am sorry if I have not got at it correctly. I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most inoffensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that proposition. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs. 2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it. Look at the numerous educational institutions, dispensaries and hospitals they have been running so effectively and efficiently, catering to all classes and communities. If this vast amount of Rs. 2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian Christian community which comprises only 70 millions would have gone up to.........

Mr. Vice-President: You are mistaken there: it is only 7 millions.

Pandit Lakshmi Kanta Maitra: I beg your pardon. From 7 millions it would have gone to 70 millions. But the point, Mr. Vice-President, is not in the figures. The point of my whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that misconception. Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion. We are passing through an era of absolute irreligion. Why is there so much vice or corruption in every stratum of society? Because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. (If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms, by the sword, or by coercion. But why should obstacles stand in the way if by exposition, illustration and persuasion you could convey your own religious faith to others?) I do not see any harm in it. And I do feel that this would be the very essence of our fundamental right the right to profess and practise any particular religion. Therefore this right should not be taken away, in my opinion. (If in this country the different religious faiths would go on expounding their religious tenets and doctrines, then probably a good deal of misconception prevailing in the minds of people about different religions would be removed, and probably a stage would be reached when by mutual understanding we could avoid in future all manner of conflicts that
arise in the name of religion. From that point of view I am convinced that the word 'propagate' should be there and should not be deleted.)

In this connection I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support, and I feel that with the amendments moved by my honourable Friend Dr. Ambedkar and Shrimati Durgabai this clause should stand as part of the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I thought it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word 'propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word 'propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore this word ought to be there. This right ought to there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore this is absolutely necessary and essential.

Again, it is not at all inconsistent with the secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. Its citizens have their own religion and its communities have their own religions. And I have no doubt, whatever, seeing from past history, that there will not be any quarrel on this account. It was only yesterday His Excellency the Governor-General Sri Rajaji spoke on this matter. It is very necessary that we should show tolerance. That is the spirit of all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.

Let me also, in this connection, remind the House that the matter was thoroughly discussed at all stages in the Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general
community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India.

Sir, on this occasion I may also mention that you, Mr. Vice-President, are willing to give up reservation of seats in the Assembly and the local Legislatures of Madras and Bombay, and have been good enough to give notice of an amendment to delete the clause giving reservation to the Christian community. That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privilege for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to allow this right. I am therefore strongly in favour of the retention of the word 'propagate' in this clause.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form associations or unions. The above rights include the right of religious speech and expression and the right to form religious associations or unions. Therefore, article 19 is really not so much an article on religious freedom. But an article on what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, viz., "Subject to public order, morality and health".

Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health. The full implications of this qualification are not easy to discover. Naturally, they will grow with the growing social and moral conscience of the people. For instance, I do not know if for a considerable period of time the people of India will think that purdah is consistent with the health of the people. Similarly, there are many institutions of Hindu religion which the future conscience of the Hindu community will consider as inconsistent with morality.

Sir, some discussion has taken place on the word 'propagate'. After all, propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken by the people to that. [Those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community or
another to have mass conversion through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity.

Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration—toleration for all, irrespective of their religious practice or profession. And this toleration is subject to public order, morality and health.

Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entitled to our wholehearted support.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, I am grateful to you for giving me this opportunity for making a few observations on this very important article. It struck me as very peculiar that, although as many as four articles have dealt with religion, there is no mention of God anywhere in the whole Chapter. At first I considered it extremely strange, but after going through the matter more carefully, I found every justification for it. From the way in which the world is progressing, there is very little doubt that a time will come when we may be in a position to dispense with God altogether. That has happened in other more advanced countries and therefore I believe, in order to make room for such a state of things, the word "God" has been purposely avoided in dealing with religion itself.

It reminds me of a story, Sir, which I had heard in my student life. There was a great scientist who presented to the king something like a globe in which the whole solar system, the sun, moon and everything, was shown. Then the king who had some faith in God asked the scientist, "Where have you placed God?". The scientist said, "I have done without him". That is exactly the position today. We are framing a Constitution where we speak of religion but there is no mention of God anywhere in the whole chapter. Sir, (my honourable Friend Mr. Kamath introduced 'God' in his speech but at the same time he spoke about spiritual matters.)

The term "Spiritual training" is somewhat ambiguous. The word "spirit" is defined in the Chambers Dictionary as a 'ghost'. There are people in this world who do not fear God but they fear ghosts all the same because ghosts bring troubles while God does not. (The term 'spiritual training' is very difficult for me to follow. What did my honourable Friend Mr. Kamath mean by spiritual training? What is the spiritual training to which he is referring? Is it training to believe in ghosts or to avoid them or is it the training to have more recourse to spirit to keep up your spirits in the evening. (What actually he meant by spiritual training is very difficult to follow. Does he mean the teaching of the great books like the Bible, the Koran and the Gita in all institutions and that the State should be in a position to endow any institution which is dealing only with the teaching of the Koran, or the Bible or the Gita? I do not think that is the aim. That point ought to be made clear.)

Another point is the propagation of religion. (I have no objection to the propagation of any religion. If anyone thinks that his religion is something ennobling and that it is his duty to ask
others to follow that religion, he is welcome to do so. But what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion.) For instance, Sir, in the past we remember how missionaries went round the country and described Sri Krishna in the most abominable terms. They would bring up particular activities of Sri Krishna and say, "Look here, this is your Lord Krishna and this is his conduct". We also remember with great pain how they used to decry the worship of the idols and call them names. (Sir, in the new Constitution we must make it perfectly clear that no such thing will be tolerated. It is not necessary in the course of propagating any particular religion to throw mud at other religions, to decry them and bring out their unsatisfactory features according to the particular supporters of a particular religion. There should be a provision in the law in the Constitution itself that such conduct will be met with exemplary punishment. With these words, Sir, I support the amendment subject to such verbal alterations as have been suggested by Shrimati Durgabai and the Honourable Dr. Ambedkar.)

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here to support the motion before the House, viz., to approve of article 19. Many speakers before me have emphasised the various provisions of this particular article and the background in regard to the framing of this article. What I would like to stress in this: Sir, we are not concerned here with compromises arrived at between the various communities. We are not really concerned whether some advantage might be derived from the wording of this article later on by certain communities in regard to the furtherance of their own religious beliefs and practices, but I think emphasis should be laid on the fact that a new government and the new Constitution have to take things as they are, and unless the status quo has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse. In achieving that particular object, I think this article has gone a long way.

Sir, objection has been taken to the inclusion of the word "propagate" along with the words "profess and practise" in the matter of religion. (Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Buddhists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of the country, which will not create disorder and which will not create undue conflict in the minds of...
the people. That, I feel, is the point that has to be stressed in regard to this particular article.)

Sir, I know as a person who has studied for about fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is concerned. It depends upon the way in which certain religionists and certain communities treat their less fortunate brethren. The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and if we remove the need to obtain that particular advantage that he might probably get--it is undoubtedly an important advantage, apart from the fact that he has faith in the religion itself--well, the incentive for any body to become a Christian will not probably exist. I have no doubt, Sir, we have come to a stage when it does not matter to what religion a man belongs, it does not matter to what sub-sect or community in a particular religion a man belongs, he will be equal in the eyes of law and in society and in regard to the exercise of all rights that are given to those who are more fortunately placed. So I feel that any undue influence that might be brought to bear on people to change their religion or any other extraneous consideration for discarding their own faith in a particular religion and accepting another faith will no longer exist; and in the circumstances, I think it is only fair that we should take the status quo as it is in regard to religion and put it into our Fundamental rights, giving the same right to every religionist, as I said before, to propagate his religion and to convert people, if he felt that it is a thing that he has to do and that is a thing for which he has been born and that is his duty towards his God and his community.

Subject to the overriding considerations of the maintenance of the integrity of the State and the well-being of the people,--these conditions are satisfied by this article--I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into one nation in the future but also doing injustice to their own religion and to their own community. Sir, I support the article as it is.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, Sir, I have only a few submissions to make to the House. As regards amendment No. 607, moved by my honourable Friend, Prof. K. T. Shah, I entirely agree with him that the word 'Hindu' used in this section should be widely defined. As a matter of fact, the Hindu Bill which is now before this House in its legislative capacity has defined 'Hindu' so as to include the various sub-
sections, but it will be more appropriate to have this definition in the interpretation clause than in this.

I have only a few words to say with regard to the objections taken to the word "propagate". Many honourable Members have spoken before me placing the point of view that they need not be afraid of the word "propagate" in this particular article. (When we object to this word, we think in terms of the old regime. In the old regime, the Christian missionaries, particularly those who were British were at an advantage.) But since 1938, I know, in my part of Bombay, the influence which was derived from their political influence and power has disappeared. If I may mention a fact within my knowledge in 1937 when the first Congress Ministry came into power in Bombay, the Christian missionaries who till then had great influence with the Collectors of the Districts and through their influence acquired converts, lost it and since then whatever conversions take place in that part of the country are only the result of persuasion and not because of material advantages offered to them. (In the present set up that we are now creating under this Constitution, there is a secular State. There is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word 'propagate' cannot possibly have dangerous implications, which some of the Members think that it has.)

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a fundamental part of their tenet. Even if the word were not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences. Speaking frankly, whatever its results we ought to respect the compromise. The Minorities Committee the year before the last performed a great achievement by having an unanimous vote on almost every provision of its report.

This unanimity created an atmosphere of harmony and confidence in the majority community. Therefore, the word 'propagate' should be maintained in this article in order that the compromise so laudably achieved by the Minority Committee should not be disturbed.

That is all that I want to submit.

Mr. Vice-President: I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.
The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

Shri H. V. Kamath: May I ask whether it will be enough if Dr. Ambedkar says: "I oppose: I have nothing to say." I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President: I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment?

Mr. Vice-President: It will be recorded in the proceedings. We shall now consider the amendments one by one.

The question is:

"That in clause (1) of article 19, for the words ‘practice and propagate religion’ the words ‘and practice religion privately’ be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, for the words ‘practise and propagate’ the words ‘and practise’ be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, for the words ‘are equally entitled to freedom of conscience and the right’ the words ‘shall have the right’ be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, the words ‘freedom of conscience and’ be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:--

"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised."

The amendment was negatived.
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Mr. Vice-President: The question is:

"That the following proviso be added to clause (1) of article 19:--

"Provided that no propaganda in favour of any one religion which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in the Explanation to clause (1) of article 19, for the word 'progression' the word 'practice' be substituted."

The Honourable Shri Ghanshyam Singh Gupta: (C. P. & Berar: General): Sir, I wish to withdraw the amendment.

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

Mr. Vice-President: The question is:

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that any other religion' be inserted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause (1) of article 19, the following new sub-clause be added:--

"(2) The State shall not establish, endow or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 19, the following be inserted as clause (1a):--
"(1a) The Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The amendment was negatived.

Mr. Vice-President: The question is:
"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."
The amendment was adopted.

Mr. Vice-President: The question is:
"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted."
The amendment was negatived.

Mr. Vice-President: The question is:
"That in sub-clause (b) of clause (2) of article 19, after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added."
The amendment was negatived.

Mr. Vice-President: The question is:
"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words 'all classes and sections' be substituted."

Have you accepted it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: Yes, Sir.

Mr. Vice-President: The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

Mr. Vice-President: The question is:
"That after clause 2, of article 19, the following new clause be added:--
"(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong."

The amendment was negatived.

Mr. Vice-President: I shall now put article 19, as amended by amendment numbers 596 and 609 to vote. The question is:
"That article 19, as amended, from part of the Constitution."

The motion was adopted.

Article 19, as amended, was added to the Constitution.

Mr. Vice-President: We shall go back to Article 14. So far as I remember --I am sorry I have mislaid my notes-- in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was
amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion—am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari? Mr. T. T. Krishnamachari, will you please enlighten me? Was it a suggestion or was it a short notice amendment?

Shri T. T. Krishnamachari: It was a short notice amendment.

Mr. Vice-President: It was a short notice amendment admitted by me. These two only remained to be put to the vote.

Mr. Naziruddin Ahmad: With regard to amendment No. 512 I have a point of order, Mr. Vice-President.

You will be pleased to remember, Sir, that amendment No. 512 was moved in the House. It was accepted by Dr. Ambedkar and then it was put to the vote. The shouts according to your estimate were in favour of its acceptance. Then some trouble arose and then shouts were again called. The shouts according to your estimate were again in favour of the amendment. What is very important in this connection, Sir, is that you declared the amendment to be carried.

Mr. Vice-President: Did I declare the amendment to be carried?

Mr. Naziruddin Ahmad: Yes, Sir. I remember.

Mr. Vice-President: Do the records show that?

Mr. Naziruddin Ahmad: The shorthand notes may be referred to. My recollection is it was declared carried ( Interruption ).

Mr. Vice-President: Kindly, in order to preserve the dignity of the House, do not interrupt Mr. Naziruddin Ahmad only because he is putting forward a point of view which may not be agreeable to a certain section of the House.

( To Mr. Naziruddin Ahmad ) Kindly confine your remarks to the business on hand.

Mr. Naziruddin Ahmad: Sir, I do not wish to obstruct the majority in dealing with this amendment in any way they please. I simply suggest that if it is carried, it cannot be put again. It is against the Rules. But I have a way out, which I shall suggest and which will be constitutional. There is a rule, in our Rules, that with the consent of twenty five per cent of the Members of the House, any resolution that has been carried may be re-opened. I suggest, Sir, that if I am right that it was declared to be carried, then, it should be re-opened in the regular constitutional manner.

Mr. Vice-President: The official records of the deliberations read this way.

"Just before the voting was called, however, Shri Mahavir Tyagi made a suggestion, which was later supported by the Prime Minister, that the voting on this particular amendment be postponed as there appeared to be some confusion as to the full implications of this provision. The House agreed to the suggestion and voting on this amendment and on the article as a whole was accordingly postponed."

That shows that your whole objection falls to the ground.
(Mr. Naziruddin Ahmad rose to speak.)
Please do not argue.
I want to make certain other things clear to the House. I want to make clear the point of view from which I regard this. As I have said already, the House is the ultimate authority in this as in all matters. The House has laid down certain Rules for the conduct of the business. These Rules have been laid down mainly because the aim of the House is that the work should proceed smoothly. The smooth working of the House I regard as the really essential thing, and much more important than sticking to the Rules which the House has made and which the House can un-make at any time. When there was this confusion, to use the language of Mr. Naziruddin Ahmad, I made a reference to the House and the House agreed that the matter should be reconsidered. The House is fully competent to do so and if the House is still of that view, then the matter will be considered here and now.
Maulana Hasrat Mohani: (United Provinces: Muslim): May I know, Sir, whether the House has reconsidered or whether it is a mandate from the Congress Party who has issued a whip that it should be opposed? Do you decide to allow the House to reconsider or is it only a mandate from the Congress Party? I have got a copy of that whip in my hand, that this must be opposed.
Shri Mahavir Tyagi: (United Provinces: General): Sir, I protest against the language used and the honourable Member's referring to the whip of the Congress Party.
Mr. Vice-President: You have done your duty as a Congress man; now I shall do my duty as the presiding officer here.
Maulana Hasrat Mohani: Sir, I stick to what I have said.
Mr. Vice-President: I am sorry.
Shri Mahavir Tyagi: Will you please ask him to give back the whip, which the honourable Member has no right to handle?
Mr. Vice-President: You are always the stormy petrel. While I am trying to bring peace and good humour you are interfering. I will not allow you to do so again.
As I was saying, I am very sorry that an old and experienced public man like Maulana Hasrat Mohani should have permitted himself to make references to things which are no concern of this House. As I have said more than once, though I belong to a particular political party, so long as I am in the Chair, I recognise no party at all. It is in that spirit that proceedings of this House are being conducted. I regret very much that anything should have been said challenging the way in which the proceedings have been conducted or are going to be conducted. I ask the permission of the House once again as to whether I can re-open the matter.
Honourable Members: Yes.
Mr. Vice-President: Thank you. I am going to put amendment No. 512 to the vote.
The Honourable Shri Ghanshyam Singh Gupta: Sir, there is no question of re-opening. You had not finally said that the amendment was carried or was not carried. I want to impress upon the House that the Chair had not declared that it was either carried or it was not carried and therefore there is no question of re-opening at all. The matter is absolutely in the discretion of the Chair now. The Rules are quite clear. A vote is taken. Once it is challenged, the division bell rings. After the division bell rings, the Chair again puts it to the vote and then sends Ayes and Noes to the lobbies. The Teller counts the votes and after that, it is declared that a certain motion is lost or is carried. This was not done at all. In fact, it was in the process of declaration by the Chair that the motion is not carried that the Chair was pleased to say that this thing stands over. Anybody who says that the Chair finally declared that that motion was carried or lost is wrong.

Mr. Vice-President: It merely shows the depth of my ignorance. I used the word which should not have been used. I used the word 'reopen'. I am glad that the matter has been set right. I only wish that I had sufficient--what shall I say--ability to act in the way in which the Honourable Mr. Gupta has done. I now put amendment No. 512 to vote.

The question is:

"That in article 14, the following be added as clause (4):--

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The amendment was negatived.

Mr. Vice-President: We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath: Is it necessary to say that Dr. Ambedkar has accepted or rejected everytime?

Mr. Vice-President: Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is:

"That in clause 2 of article 14 after the word `shall be' the words `prosecuted and' be inserted."

The amendment was adopted.

Mr. Vice-President: Now the question is:

"That article 14, as amended, stand part of the Constitution."

The motion was adopted.

Article 14, as amended was added to the Constitution.

Article 15
Mr. Vice-President: Now the motion before the House is:that article 15 form part of the Constitution.

We shall go over the amendments one after another. 515 is ruled out of order. Nos. 516, 517, 518 and 532 are similar and of these I can allow 516 to be moved as also 517 both standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: (Bihar: General): Sir, I am not moving 516 and 517.

(Amendments Nos. 518, 532, 519 and 520 were not moved.)

Mr. Vice-President: No. 521 is blocked. Then 522, 523, 524, 525, 528 and 530 are similar. I can allow 523 to be moved.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, Sir, if the proposed amendment by the Drafting Committee is accepted and the article is allowed to stand as it is:-

"No person shall be deprived of his life or personal liberty except according to procedure established by law........" then in my opinion, it will open a sad chapter in the history of constitutional law. Sir, the Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had suggested that no person shall be deprived of his life or liberty without due process of law; and I really do not understand how the words "personal" and "according to procedure established by law" have been brought into article 15 by the Drafting Committee.

Shri Lakshmi Kanta Maitra: Sir, is the honourable Member moving his amendment or not?

Mr. Vice-President: In order to meet the requirements of technicalities, please move your amendment first.

Kazi Syed Karimuddin: Sir, I beg to move-

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted. Continuing my arguments Sir, if the words "according to procedure established by law" are enacted, there will be every great injustice to the law courts in the country, because as soon as a procedure according to law is complied with by a court, there will be an end to the duties of the court and if the court is satisfied that the procedure has been complied with, then the judges cannot interfere with any law which might have been capricious, unjust or iniquitous. The clause, as it stands, can do great mischief in a country which is the storm centre of political parties and where discipline is unknown. Sir, let us guarantee to individuals inalienable rights in such a way that the political parties that come into power cannot extend their jurisdiction in curtailing and invading the Fundamental rights laid down in this Constitution.
Sir, there is an instance in the American Constitutional law in a case reported, Chambers vs. Florida where an act was challenged in a court of law on the ground that the law was not sound and that it was capricious and unjust. Therefore, my submission is that if the words "according to procedure established by law" are kept then it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law. As soon as the procedure is complied with, there will be an end to everything and the judges will be only spectators. Therefore, my submission is, first, that the words, "except according to procedure established by law" be deleted, and then that the words "without due process of law" be inserted.

Sir, actually I had sent two amendments, one about the word "personal" before the words 'liberty', and the other about substitution of the words "without due process of law" for the words "except according to procedure established by law". But somehow or other, these two amendments have been consolidated, and I am required to move one amendment. Even if my amendment about "personal liberty" is not accepted by the Drafting Committee or Dr. Ambedkar, I do not mind; but the second portion of my amendment should be accepted.

(Amendment No. 524 was not moved.)

Mr. Vice-President: Amendment No. 525. Mr. Naziruddin Ahmad. Do you want to press it?
Mr. Naziruddin Ahmad: Sir, there is a printing mistake which I want to point out.

Mr. Vice-President: All right. Then we come to No. 528 standing in the names of Shri Upendranath Barman, Shri Damodar Swarup Seth and Shri S. V. Krishnamurthy Rao.
Kazi Syed Karimuddin: Sir, I have to raise a point of order here. I said in my speech that I have tabled two separate amendments, one regarding the word 'personal' and the other regarding 'due process of law'. Both these amendments have been consolidated by mistake of the Secretariat. So I have had to move the second part of my amendment. But then, according to the list supplied to us, No. 528 has been bracketted with No. 523—that is my amendment. I have moved mine, and so No. 528 cannot be moved now, but only put to vote, according to the practice followed in this House.

Mr. Vice-President: All right. We need not move No. 528.
Shri S. V. Krishnamurthy Rao (Mysore): But there is a difference, in that in No. 528 there is no reference to the word 'personal', whereas No. 523 refers to deletion of this word.
Mr. Vice-President: But they are of similar import and I have already given my decision. We shall put No. 528 to vote.

Then No. 530 in the name of Mr. Z. H. Lari. Do you want it to be put to the vote?
Mr. Z. H. Lari: (United Provinces: Muslim): Yes, Sir.

Mr. Vice-President: Then in my list come No. 524, second part, No. 526 and No. 527. These are almost the same. No. 526 may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras: General): Sir, I beg to move:
"That in article 15 for the words "except according to procedure established by law" the words, "save in accordance with law" be substituted."

In the note given by the Drafting Committee, it is stated that they made two changes from the proposition or article passed by this Assembly in the month of August, April or May of 1947. The first is the insertion of the word `personal' before liberty, and the reason given is that unless this word `personal' finds a place there, the clause may be construed very widely so as to include even the freedoms already dealt with in article 13. That is the reason given for the addition of the word `personal'. As regards why the original words "without due process of law" were omitted and the present words "except according to procedure established by law" are inserted, the reason is stated to be that the expression is more definite and such a provision finds place in article 31 of the Japanese Constitution of 1946. I will try to confine myself to the second change.

It is no doubt true that in the Japanese Constitution article 31 reads like this but if the other articles that find place in the Japanese Constitution (viz., articles 32, 34 and 35) had also been incorporated in this Draft Constitution that would have been a complete safeguarding of the personal liberty of the citizen. This Draft Constitution has conveniently omitted those provisions.

Article 32 of the Japanese Constitution provides that "no person shall be denied the right of access to the court." According to the present expression it may be argued that the legislature might pass a law that a person will have no right to go to a court of law to establish his innocence. But according to the Japanese Constitution article 32 clearly says that "no person shall be denied the right of access to the court". Is there such a corresponding provision in this Draft Constitution? That is the question. It does not find any place at all.

Article 34 of the Japanese Constitution provides that "no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall be detained without adequate cause and upon demand of any such person such cause should be immediately shown in open court in his presence and in the presence of his counsel." Such a clear right has not been given in these draft provisions.

Further, article 35 provides that the right of all persons to be secured in their homes and against entry, searches, etc. shall not be impaired, except upon warrant issued only for probable cause and so on. If for the sake of clarity and definiteness you have imported into this Draft Constitution article 31 of the Japanese Constitution you should in fairness have incorporated the other articles of the Japanese Constitution, which are relevant and which were enacted for safeguarding the personal liberty of the honest citizen. May I ask the Drafting Committee through its Chairman whether it is clear from this constitution that a man who has been arrested and detained has got the right to resort to a court and prove his innocence? It may be said that the expression
"except according to procedure established by law" covers the point but the expression means "procedure established by law" of the legislature and it will competent for the legislature to lay down a provision that in the matter of detention of persons whether for political or other reasons, the jurisdiction of the courts is ousted. We know the decision of the High Courts of India, especially of Madras and some other High Courts, where it has been laid down by these courts that it is open to the legislature to say that the courts shall not interfere with the action taken by the Government in the case of certain citizens whom they consider to be committing an offence or about to commit an offence or are likely to commit an offence. It is not open to the court to go into the merits or demerits of the grounds on which a person has been detained. The only extent to which the courts can go is to find out whether there is bona fides or mala fides for the action of the Government, and the burden is laid upon the person to prove that there is mala fides on the part of the Government in having issued a warrant of detention or arrest. Therefore the words "except according to procedure established by law" would mean, and according to me it does mean, that the future legislature might pass a law by which the right of a citizen to be tried by a court to establish his innocence could be taken away. I do not by this mean to convey that under certain circumstances it may not be necessary for Government to prevent a person from committing an offence and to take the precaution of arresting him and thus prevent him from committing an offence. But I submit that there must be the right of the citizen to go to a court to prove that the ground on which he has been arrested is wrong and he is innocent. That is the elementary right of the citizen against the executive which might be clothed with power by a party legislature which might pass a law saying that the executive is empowered to take away the liberty of a person under certain circumstances and he will have no right to go to court and prove his innocence. If the framers of the Draft Constitution are able to tell us that these words "except according to procedure established by law" do not deprive a person of his right to go before the court and establish his innocence and he is not prevented from such an course, then it will be another matter. But we must understand that the words "without due process of law" have been held in England and other countries to convey the meaning that every citizen has got the right, when an action has been taken against him depriving him of his personal liberty, to go before the court and say that he is innocent. That right is given under the expression "without due process of law" or "save in accordance with law". In England the law of the land does not deprive a man of this fundamental and elementary right. All laws that may be made are subject to the relevant principle that no man shall be convicted and no man shall be deprived of his liberty without a chance being given to him to prove that he is innocent. Therefore it must be a law, as I have submitted, which will hear him before it condemns a man. The only reason which has been advanced in the footnote is that this is more definite and that it finds a place in the Japanese Constitution. As I have already stated, let us not sacrifice the
liberty of the subject to prove his innocence, by resorting to the provisions of the Japanese Act and not complete that right of the citizen to be tried-that liberty-by omitting the other provisions of the Japanese Act. I shall be satisfied if all the provisions of the Japanese Constitution find a place here, because the other provisions clearly state that no person can be deprived of his liberty without his being given the chance to go to court and assistance given to him. I therefore object to the words "except according to procedure established by law." If by any other method which may be said to be definite provision they can ensure that the citizen cannot be condemned without being heard by a court, I shall be satisfied. That is my reason for moving this amendment.

Mr. Vice-President: Amendments Nos. 529 and 531 are disallowed as verbal amendments. (Amendment No. 533 was not moved.)

We can now proceed with the general discussion on article 15.

Pandit Thakur Dass Bhargava (East Punjab: General): Sir, I sent an amendment No. 525, which I wanted to amend by amendment No. 9 on List No. 1 (Third week). This and amendment No. 528 are the same. The amendment which has been moved by Mr. Karimuddin differs from these in so far as that the word "personal" before the word "liberty" does not appear in his amendment. I am opposed to the amendment of Mr. Karimuddin. The section as it is, with this amendment namely the substitution of the words "without due process of law" for the words "except according to procedure established by law" is the one which I wish to support.

In this connection the first question that arises is what is the meaning of the word 'law'? According to the general connotation of the word, so widely accepted and the connotation which has been given to this word by Austin, law means an Act enacted by the legislatures whereas I submit that when Dicey used his words "law of the land" he meant law in another meaning.

Similarly, when the Japanese Constitution and other Constitutions used this word in the broad sense they meant to convey by the word 'law' universal principles of justice etc.

According to the present section procedure is held sacrosanct whereas the word 'law' really connotes both procedural law as well as substantive law. I have used the word 'law' in the general sense. Though these words "without due process of law" which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words "without due process of law" we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law enacted by parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court
comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect. As regards procedure also, if any legislature takes it into its head to divest itself of the ordinary rights of having a good procedural law in this country, to that extent the court will be entitled to say whether the procedure is just or not. This is within the meaning of the word `law as it is used in this amendment and as it is generally used. The word `law' has also not been defined in this Constitution. For the purpose of article 8 the word `law' has been defined. Otherwise it has not been defined. I would therefore submit that if the words as used in the section remained, namely `procedure established by law', we will have to find out what is the meaning of the word `law'. These words would remain vague and it will result in misconceptions and misconstructions. Therefore, unless and until we understand the meaning of "due process of law" we will not be doing justice to the amendment proposed. I therefore want to suggest that the words "due process of law" without being defined convey to us a sense as used in the American law as opposed to other laws. What will be the effect of this change? To illustrate this I would refer the House to Act XIV of 1908 called the Black Law under which thousands, if not hundreds of thousands of Congressmen were sent to jail. According to Act XIV of 1908 the Government took to themselves the powers of declaring any organisation illegal by the mere fact of a notification to that effect. This Act, when passed, was condemned by the whole of India. But the Government of the day enacted it in the teeth of full opposition. When the non-co-operation movement began it was civil disobedience of this law with which the Congress fought its battle. The Courts could not hold that thenotification of the Government was wrong. The courts were not competent to hold that any organisation or association of persons was legal though its objects were legal. The objects of the Congress were peaceful. They wanted to attain self-government but by peaceful and legitimate means. All the same, since the Government had notified, the courts were helpless. This legislation demonstrates the need of the powers of "due process."

Similarly I will give another illustration, and that is Section 26 of the Defence of India Act. We know that the Federal Court held this Section to be illegal and a new Ordinance had to be issued. Unless and until therefore you invest the court with such power and make this Section 15 really justiciable there is no guarantee that we will enjoy the freedoms that the Constitution wants to confer upon us.

The House has already accepted the word "reasonable" in article 13. At least 70 per cent. of the Acts which can affect personal liberty have now come under the jurisdiction of the courts, and the courts are competent to pronounce an opinion on such laws, whether they are reasonable or not. The House is now estopped from adopting another principle. In regard to personal property and life the question is much more important. So far as the question of life
and personalliberty are concerned they must be also under the categoryof subjects which are within the jurisdiction of the courts.

Therefore it is quite necessary that the House should accept this amendment. There are two ways, as suggested by the previous speakers: either you must put all the sectionssas in the Japanese Constitution, and we should pass many of the amendments tabled by Messrs. Lari and Karimuddin one ofwhich you were pleased to declare carried in the firstinstance and which was later declared lost. They seek tointroduce into the Constitution principles which the legislature will in future be unable to contravene. Allthose amendments regarding Fundamental Rights will becarried ipso facto if this one amendment of "due process" isaccepted. Another thing which will be achieved by the acceptance of this one amendment is a recognition in this Constitution of the real genius of the people. In the olddays we have heard of seven or eight Rishis, all very pious and intelligent people, holding real power in the land. To them, well versed in the Shastras, the ministers and theancient kings went for advice. Those Rishis controlled the whole field of administration. This old ideal will practically be achieved if the full bench of the Supreme Court Judges well versed in law and procedure and possessing concentrated wisdom had the final say in regard to peoples' rights.

Mr. Vice-President: The honourable Member's time is up.

Pandit Thakur Dass Bhargava: I have to say many things more, Sir. I know the argument against this amendment isthat these words 'due process of law' are not certain or clear. But may I know what is the exact meaning of the word 'morality' put in this Constitution.

Mr. Vice-President: I ask the indulgence of the honourable Member. I intimated to him twice that he has exhausted his time. I have half a dozen notes from people competent to speak on this point. I am quite certain that it is not the wish of the honourable Member to curtail the timewhich I can allow them.

Pandit Thakur Dass Bhargava: I do not want to curtail the time of the others.

Mr. Vice-President: Then you may have two minutes more.

Pandit Thakur Dass Bhargava: Thank you, Sir.

Shri Upendranath Barman: (West Bengal: General): May I say a few words at this stage, Sir?

Mr. Vice-President: I am sorry I cannot oblige the honourable Member.

Pandit Thakur Dass Bhargava: As I was saying, Sir, many other words used in this Constitution have an uncertain meaning. The words 'decency' and 'morality' have not got a definite meaning.

Then, Sir, it is said this will tend to weaken the administration by the uncertainties which will be imported if this amendment is carried. But, Sir, our liberties will be certain through the particular law which may be reviewed by the court may become uncertain. The administration will not be weakened thereby. I grant that it may probably bethat the administration will not
have its way. But we want to have a Government which will respect the liberties of the citizens of India. As a matter of fact, if this amendment is carried, it will constitute the bed-rock of our liberties. This will be a Magna Carta along with article 13 with the word `reasonable' in it. This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky the judiciary will save us from the tyranny of the legislature and the executive.

In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings.

I commend my amendment and beg the House to pass it.

Shri Chimanlal Chakubhai Shah [United States of Kathiawar (Saurashtra)]: Mr. Vice-President, Sir, the right conferred by article 15 is the most fundamental of the Fundamental Rights in this Chapter, because it is the right which relates to life and personal liberty without which all other rights will be meaningless. Therefore, it is necessary that in defining this right, we must make it clear and explicit as to what it is that we want to confer and not put in restrictions upon the exercise of that right which make it useless or nugatory. I therefore support the amendment which says that the words `without due process of law' should be substituted for the words `except in accordance with the procedure established by law.' Sir, the words `without due process of law' have been taken from the American Constitution and they have come to acquire a particular connotation. That connotation is that in reviewing legislation, the court will have the power to see not only that the procedure is followed, namely, that the warrant is in accordance with law or that the signature and the seal are there, but it has also the power to see that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainty in legislation. But our article is in two respects entirely different from the article in the American Constitution. In the American Constitution, the words are used in connection with life, liberty and property. In this article we have omitted the word `property', because on account of the use of this word in the American Constitution, there has been a good deal of litigation and uncertainty. There has been practically no litigation and no uncertainty as regards the interpretation of the words `due process of law' as applied to `life' and `liberty'.

Secondly, Sir, in the word `liberty' that we have used, we have added the word `personal' and made it `personal liberty' to make it clear that this article does not refer to any kind of liberty of contract or anything of that kind, but relates only to life and liberty of person. Therefore, it
would be wrong to say that the words `due process of law' are likely to lead to any uncertainty in legislation or unnecessary interference by the judiciary in reviewing legislation.

Sir, in all Federal Constitutions, the judiciary has undoubtedly the power which at times allows it to review legislation. This is inherent in all Federal Constitutions. In England, for example, the judiciary can never say that a law passed by Parliament is unconstitutional. All it can do is to interpret it. But in Federal Constitutions the judiciary has the power to say that a law is unconstitutional. In several articles of this Constitution, we have ourselves provided for this and given express power to the judiciary to pronounce any law to be unconstitutional or beyond the powers of the legislature. I have no doubt in my mind that this is a very salutary check on the arbitrary exercise of any power by the executive.

Sir, at times it does happen that the executive requires extraordinary powers to deal with extraordinary situations and they can pass emergency laws. The legislature, which is generally controlled by the executive—because it is the majority that forms the executive—gives such powers to the executive in moments of emergency. Therefore, it is but proper that we should give the right to the judiciary to review legislation.

It may be said that the judiciary may, in times of crisis, not be able to appreciate fully the necessities which have required such kind of legislation. But I have no such apprehension. I have no doubt that the judiciary will take into account fully the necessities of a situation which have required the legislature to pass such a law. But it has happened at times that the law is so comprehensive that the individual is deprived of life and liberty without any opportunity of defence. What is the worst that can happen in an article like this if we put in the words `without due process of law'? Some man may escape death or jail if the judiciary takes the view that the law is oppressive. Sir, is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

But, in these days, the executive is naturally anxious to have more and more powers and it gets them. And we have developed a kind of legislation which is called delegated legislation in which the powers are given to subordinate officers to issue warrants and the like. For example, under the Public Safety Measures Acts, if a Commissioner of Police is satisfied that a particular man is acting against the interests of the State or is dangerous to public security, he could detain the man without trial.

We know it to our cost that even the Commissioner of Police does not look into these matters personally as he is expected to do and signs or issues warrants on the reports of subordinate officials. It is better under such circumstances that there is some check upon the exercise of such powers if they are arbitrarily used. I therefore fully support the amendment which seeks to substitute the words "without due process of law" in place of the words which have been
used in the Article. As Mr. Mahboob Ali Baig has rightly pointed out, these words are taken from the Japanese Constitution but the Drafting Committee has omitted the other provisions which give meaning to these words. Mr. Baig's amendment which seeks to substitute the words "save in accordance with law", I am afraid, will not serve his own purpose. If he has in mind that the full import of all the provisions of the Japanese Constitution read along with the one which the Drafting Committee has put in, should be brought out here, it is better that he accepts the words, "without due process of law", rather than the words "save in accordance with law" which are taken from the Irish Constitution and which probably have the same meaning as the words put in by the Drafting Committee. I therefore fully support amendment No. 528.

Shri Krishna Chandra Sharma (United Provinces General): Mr. Vice-President, Sir, my amendment No. 523 sought the substitution of the words "without due process of law" for the words "except according to procedure established by law". This article guarantees the personal liberty and life of the citizen. In democratic life, liberty is guaranteed through law. Democracy means nothing except that instead of the rule by an individual, whether a king or a despot, or a multitude, we will have the rule of the law. Sir, the term "without due process of law" has a necessary limitation on the powers of the State, both executive and legislative. The doctrine implied by "without due process of law" has a long history in Anglo-American law. It does not lay down a specific rule but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but we can find their meaning through reading the various antecedents of this expression. As a matter of fact, it can be traced back to the days of King John when the barons wrung their charter from him, i.e., the Magna Carta. The expression "Per Legum Terrea" in the Magna Carta have come to mean "without due process of law". Chapter 39 of the Charter says:-

"No free man shall be taken, or imprisoned, disseised, or outlawed, exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

These words were used again in 1331, 1351 and 1355. Statute No. 28 during the reign of Edward III says:-

"No man of what state or condition so ever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor indicated, nor put to death, without he be brought to answer by due process of law."

Sir, in the American Constitution, these words were first used in 1791:-

"Nor shall any person . . . . . be deprived of life, liberty or property, without due process of law."
What this phrase means is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilised conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilised conscience of the community. Sir, various decisions of the American Supreme Court, when analysed, will stress the four fundamental principles that a fair trial must be given:

1. Second, the court or agency which takes jurisdiction in the case must be duly authorised by law to such prerogative,
2. Third that the defendant must be allowed an opportunity to present his side of the case and fourth that certain assistance including counsel and the confronting of witnesses must be extended.

These four fundamental points guarantee a fair trial in substance.

As to social progress, my Friend Pandit Bhargava has already spoken and I need not repeat the argument here; but for your enlightenment I would like to read a judgment which clarifies the position. The judgment runs (from Willoughby on the Constitution of the United States, p.1692):

"Thus, for example, in 1875, in Loan Association v. Topeka the Court said:

`It must be conceded that there are such rights in every free government beyond the control of the state,-agovernment which recognised no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, a despotism......The theory of our governments, state or municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments-implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should henceforth be the property of B."

Sir, with these words I support the amendment.

Shri H. V. Pataskar (Bombay: General): Mr. Vice-President, I have come forward only to take a few minutes of the House for supporting the amendment No. 528 which wants to substitute "except according to procedure established bylaw" by the words "without due process of law". Already the legal aspect of this matter has been discussed at length in this House, but I want to place it before the House from another point of view. We are, Sir, at the present moment in a state which is going to be a democracy. Now, democracy implies party Government and party Government, in our country, is rather new and we have instances which lead us to think that the party machine at work is likely to prescribe procedures which are
going to lead to the nullification of the provisions which we have made in the Fundamental Rights, which are being given to the people. We know from experience that in certain provinces there are already legislations which have been enacted and which prescribe certain procedures for detention, which have come in for criticism by the public in a very vehement manner. I therefore, submit, Sir, that it is very essential from the point of view of the right of personal liberty, that the words "due process of law" should be particularly there. With these words, Sir, I support the amendment and would not like to repeat what has been said in favour of this amendment already.

Shri K. M. Munshi: Mr. Vice-President, Sir, I want to support amendment No. 528 which seeks to incorporate the words "without due process of law" in substitution of the words "except according to procedure established by law". In my humble opinion, if the clause stood as it is, it would have no meaning at all, because if the procedure prescribed by law were not followed by the courts, there would be the appeal court in every case, to set things right. This clause would only have meaning if the courts could examine not merely that the conviction has been according to law or according to proper procedure, but that the procedure as well as the substantive part of the law are such as would be proper and justified by the circumstances of the case. We want to set up a democracy; the House has said it over and over again; and the essence of democracy is that a balance must be struck between individual liberty on the one hand and social control on the other. We must not forget that the majority in a legislature is more anxious to establish social control than to serve individual liberty. Some scheme therefore must be devised to adjust the needs of individual liberty and the demands of social control. Eminent American constitutional lawyers are agreed on the point that no better scheme could have been evolved to strike a balance between the two. Of course, as the House knows, lawyers delight to disagree and there is a certain volume of opinion against it in America, but as pointed out by my honourable Friend, Mr. C. C. Shah, we have made drastic changes in the American clause. The American clause says that no person shall be deprived of his life, liberty or property without due process of law. That clause created great difficulties with regard to laws relating to property. That word has been omitted. The word 'liberty' was construed widely so as to cover liberty of contract and that word has been qualified. This clause is now restricted to liberty of the person, that is, nobody can be convicted, or sentenced to death without due process of law. That is the narrow meaning of this clause which is now sought to be incorporated by amendment No. 528.

Now, the question we have to consider, I submit, is only this. What are the implications of this 'due process'? 'Due process' is now confined to personal liberty. This clause would enable the courts to examine not only the procedural part, the jurisdiction of the court, the jurisdiction of the legislature, but also the substantive law. When a law has been passed which entitles Government to take away the personal liberty of an individual, the court will consider whether
the law which has been passed is such as is required by the exigencies of the case, and, therefore, as I said, the balance will be struck between individual liberty and the social control. In the result, Governments will have to go to the court of law and justify why a particular measure infringing the personal liberty of the citizen has been imposed. As a matter of fact, the fear that in America the ‘due process’ clause has upset legislative measures, is not correct. I have not got the figures here, but I remember to have read it somewhere in over 90 per cent of the cases on the ‘due process’ clause which have gone to the American courts, action of the legislatures has been upheld. In such matters involving personal liberty Governments had to go before the court and justify the need for passing the legislation under which the person complaining was convicted. In a democracy it is necessary that there should be given an opportunity to the Governments to vindicate the measures that they take. Apart from anything else, it is a wholesome thing that a Government is given an opportunity to justify its action in a court of law.

I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view ( Interruption ). Take even our Public Safety Acts in the provinces. In view of the condition in the country they would certainly be upheld by the court of law and even if one out of several acts is not upheld, even then, I am sure, nothing is going to happen. Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained.

Therefore, my submission is that this clause is necessary for this purpose and is not likely to be abused. We have, unfortunately, in this country legislatures with large majorities, facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance, I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked? In another province, I read that the certificate or report of an executive authority -- mind you it is not a Secretary of a Government, but a subordinate executive -- is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control. Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted.
Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, the debate on this article reveals that there seems to be a leaning on the part of a good number of members in this House in favour of the expression `dueprocess' being retained and not for substituting the expression `procedure established by law', which is the expression suggested by the Drafting Committee in its last stage. I am using the words `in its last stage' because my honourable Friend Mr. Munshi has taken the opposite view.

Sir, at least in justification of the change suggested by the Drafting Committee, I owe it to myself, to my colleagues and the respected Chairman of the Drafting Committee, to say a few words, because, up to the last moment, presumably, the House is open to conviction.

The expression `due process' itself as interpreted by the English Judges connoted merely the due course of legal proceedings according to the rules and forms established for the protection of rights, and a fair trial in a court of justice according to the modes of proceeding applicable to the case. Possibly, if the expression has been understood according to its original content and according to the interpretation of English Judges, there might be no difficulty at all. The expression, however, as developed in the United States Supreme Court, has acquired a different meaning and import in a long course of American judicial decisions. Today, according to Professor Willis, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. Three gentlemen or five gentlemen sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature. In the development of the doctrine of `due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of `due process'. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that there is no definite import. It all depended upon the particular Judges that presided on the occasion. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property.

There is no sort of uniformity at all in the decisions of the United States Supreme Court. Some of my honourable Friends have spoken as if it merely applied to cases of detention and imprisonment. The Minimum Wage Law or a Restraint on Employment have in some cases been regarded as an invasion of personal liberty and freedom, by the United States Supreme
Court in its earlier decisions, the theory being that it is an essential part of personal liberty that every person in the world be she a woman, be he a child over fourteen years of age or be he a labourer, has the right to enter into any contract he or she liked and it is not the province of other people to interfere with that liberty. On that ground, in the earlier decisions of the Supreme Court it has been held that the Minimum Wage Laws are invalid as invading personal liberty. In recent times I quite realise, after the New Deal, the swing of the pendulum has been otherway. Even there, there has not been any consistency or any uniformity. I hope that if this amendment is carried, in the interpretation of this clause our Supreme Court will not follow American precedence especially in the earlier stages but will mould the interpretation to suit the conditions of India and the progress and well-being of the country. This clause may serve as a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children, and for the protection of women. It may prove fairly alright if only the Judges move with the times and bring to bear their wisdom on particular issues. But since the British days we have inherited a kind of faith in lawyers, legal arguments, legal consultations and in courts; I, for my part, having flourished in the law, have no quarrel with those people who believe in the lawyer. In the earlier stages of American history, lawyers ranged themselves on the side of great Trusts and Combines and in favour of Corporations who were in a position to fee them very well, sometimes in the name of personal liberty, sometimes in the name of protection of property. After all the word ‘personal liberty’ has not the same content and meaning as is imported into it by some of our friends who naturally feel very sensitive about people being detained without a proper trial. I equally feel it but that is not the meaning of personal liberty attributed by the American Courts in the context of ‘due process’. I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and the security of the States, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision. One thing also will have to be taken into account, viz., that the security of the State is far from being so secure as we are imagining at present. Take for example the normal detention cases. I may tell you as a lawyer, I am against the man being detained without his being given an opportunity; but an opportunity is not necessarily given in a court of law, as a result of argument, as a result of evidence, as a result of examination or cross-examination. Today I know in Madras a Special Committee has been appointed consisting of a Judge of the High Court, the Advocate-General of Madras and another person to go into the cases of detention and to find out whether there are proper materials or not. Now all these cases might have to go to Courts of law and possibly it is a good thing for lawyers. Though I am getting old I do not despair of taking part in those contests even in the future.
The support which the amendment has received revealsthe great faith which the Legislature
and Constitutionmakers have in the Judiciary of the land. The Drafting Committee in
suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of
judicial vagaries in the moulding of law. The Drafting Committee hasmade the suggestion and
it is ultimately for the House to come to the conclusion whether that is correct, taking into
consideration the security of the State, the need for the liberty of the individual and the
harmony between the two. I am still open to conviction and if other arguments are forthcoming
I might be influenced to come to a different conclusion.

Mr. Z. H. Lari: Mr. Vice-President, the last speakerwho has spoken on this article has drawn
the attention of the House to dangers to the State which are likely to arise if the article as it
stands is amended by the amendment No.528 or 530. I have not got that experience which the
learned speaker has but with the little knowledge of the working of the Legislatures during the
last ten years, I can say that it is necessary not only in the interest of individual liberty but in
the interest of proper working of legislatures that such a clause as due process of law
clauses should find a place in the Constitution. It is open to that speaker at the fag end of his life
as a lawyer to have a fling at the profession of law but I can say that assistance of lawyers is
absolutely essential to secure justice.

Shri Alladi Krishnaswami Ayyar: On a point of order. I had no fling at the profession of law.

Mr. Z. H. Lari: I stand corrected.

I feel that two things are necessary. We all know that the State, these days, is all-powerful. Its
coercive processes extend to the utmost limits but still there is a phase of life which must be
above the processes of Executive Government, and that is individual liberty. In America
such a word as `personal' existed. There the word liberty alone existed and possibly in that
state of things, it was possible to interpret it in such a way as to extend the scope of due process
of law to other spheres of life but when the word `personal liberty' has been definitely inserted
in the clause, I doubt whether any Court which is conscious of the requirements of a State as
well as conscious of the necessities of individual liberty, will be so uncharitable to the interest
of the State as to interpret it in a way to thwart the proper working of the State. My friend
admitted that in the latter rulings in America itself there has been a recognition of the
necessities of the State and the word has been interpreted in such a way as not to obstruct the
proper working of the State. My submission would be that in this land our Supreme Court will
recognise the limits of individual liberty as well as the necessities of the State and
interpret it in such a way as to ensure individual liberty of a man.

Pandit Thakur Dass Bhargava: The Drafting Committee also said so in their note.

Mr. Z. H. Lari: My friend is right; and the only reason which was given by the Drafting
Committee of which the honourable Speaker who preceded me was a member also, was that
the words `due process of law' is not specific and the word as was used in the Japanese
Constitution is more specific. No doubt the words as they stand in the Japanese Constitution are specific because the procedure is indicated and definitely laid down there. What is the essence of the due process of law? I think they are two. First is, enquiry before you condemn a man. And then there is judgment after trial. If any procedure which is adopted by any legislature provides for the hearing of a person who is suspected or is accused, and then after a proper hearing, enables him to get the benefit of a judgment based on that enquiry, my submission is, that the requirements of the due process of law are complied with. And I would beg of the House to consider whether in any country, however emergent and however unstable its conditions, is it necessary or is it not necessary that every individual citizen should feel that he will be heard before he is condemned, and that he will be dealt with in the light of the judgment based on the enquiries and not be subject to arbitrary detention? The House will also remember that lately there was the question of drafting human rights, and already such a draft has been prepared. And one of the clauses therein is that nobody should be subjected to arbitrary detention. Now, what is the way to prevent arbitrary detention? If you have the words in this clause, as they stand at present, namely, ‘procedure established by law’ it means that the legislature is all-powerful and whatever procedure is deemed proper under the circumstances will be binding upon the courts. But, Sir, there are certain procedures which are the inherent rights of man and the should not be infringed upon by any legislative Assembly. Men as well as assemblies, or any mass of people are subject to passing emotions, and you will realise that in the present state of things, particularly keeping in view the constitution that we are going to have, namely, a parliamentary government, the legislature is controlled by a Cabinet, which means by the executive. You have also the provisions about having ordinances which means that the cabinet—a body consisting of eight to ten persons—decide upon a particular course of action, issue as an ordinance, and, the legislature then has to approve of it, otherwise it would amount to a vote of censure. Therefore the legislature in the last analysis means only the cabinet or the executive and nothing but the executive. The question before us is whether you are going to give such powers to the Executive which can infringe eventhe elementary rights of a person, the elementary rights of personal liberty, or whether you should not put certain checks on the executive which can be done only if you accept the amendment which has been moved by a Congress member, i.e., amendment No. 528. My amendment No. 530 is exactly similar.

My friend who spoke on the other side gave instances of legislation in the British period, of rights which were curtailed, and of innocent persons jailed. But I submit with all humility, that every legislature and every government is liable to do such things which the British Government did. You cannot excuse excess of law simply because those excesses are committed by a popularly elected legislature. That is why there are two domains, one is the domain of individual liberty, and the other domain is where the State comes in to regulate our
life. What do you leave to the State? You leave to the State everything except personal liberty. As to stability of the State my submission would be that if there are classes or communities which are prone to violence, there are sufficient provisions in this Constitution to deal with them—they are in article 13. There, the State can come in and curtail the liberty of such persons, and even nullify their activities. What can an individual do? If there are parties which have got objectives which run counter to the stability of the State, you have already got enough provisions where-by the State can declare those bodies unlawful. But this particular clause deals with a very small sphere of action, namely, personal liberty. My submission is that our State is not so weak as to be subverted by the activities of a particular individual, and mark that, that individual will not have the liberty to do everything. He can be brought before a court. He can be judged in a court of law; no doubt, he will have the assistance of counsel and the Government will have the obligation to produce evidence against him. Does this amount to curtailing the powers of the State? Does this amount to subverting the State? Does it amount to annihilating the State? With all respect to the previous speaker, I feel he took a very uncharitable view of the citizens of our State, and took a still more uncharitable view of the strength of the State which will emerge after the promulgation of the new Constitution. No doubt, we have to go by realities. We have to take into consideration stern facts. But I may remind the House of one thing. In America, this clause is accepted and is reproduced in the Japanese Constitution. You know the Americans have been responsible for framing the Japanese Constitution. A constitution for a fascist country, a country where individuals are prone to violence—they wanted to overthrow the peace of the world—when they were drafting a constitution for such a country, composed of such citizens, they laid down clauses 31, 32, 33 and 34 which say that nobody shall be denied access to courts, nobody shall be arrested unless causes are shown against him, and nobody shall be denied the privilege of the assistance of counsel. May I say that if the framers of this latest constitution, based on experience and knowing the nature of the people living in Japan, who are not a very peace-loving people as was demonstrated in the last war, have accepted these provisions, that means that these provisions have stood the test of time and have safeguarded the liberty of the individual and also guaranteed the integrity of the state. There are two things by which we have to go. One is experience of others. No doubt, every clause can be criticised in one way or other. But we have to be guided by experience. Here is the experience of other countries, and this has shown that the words ‘due process of law’ can exist without jeopardising the existence of the State. Secondly, we know that not only here, but throughout the world every assembly is likely to misuse its power. It is bound to happen. Power corrupts. We should profit by the experience of other countries and by what has been observed for centuries. Or should we go by the ipse dixit of X, Y, Z who says that there seems to be some germ of disruption in this clause? My submission is that it is only making a bogey
out of nothing. We should not be led away by this bogey into accepting this clause. If this clause is accepted, then the whole Constitution becomes lifeless. The article, as it stands, is lifeless and it makes also the whole Constitution lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations. Therefore, Sir, I pray that this motion which has been supported by several members should be accepted.

With these words, Sir, I support the amendment.

Mr. Vice President: The House stands adjourned till 10 A.M. to-morrow.

The Constituent Assembly then adjourned till ten of the Clock on Tuesday the 7th December, 1948.
Thursday, the 9th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That under the heading "Right to Property" the following new article be added:

'23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country's wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively."

Shri B. Das (Orissa: General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah: I would point out, Sir,....

(Shri B. Das rose to speak.)

Mr. Vice-President: I want to hear what Professor Shah has to say.

Prof. K. T. Shah: There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.
Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23--cultural and educational rights--and if this article is passed....

Mr. Vice-President: The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa: I am only emphasizing it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam: Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah's amendment runs as follows: "That under the heading 'Right to Property', the following new article be added" and "Right to Property" is the heading of article 24 and not of 23.

Mr. Vice-President: I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendments Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President: Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras: General): It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Yes, Sir, I request that article No. 24 be kept back.

Mr. Vice-President: Is that the wish of the House?

Honourable Members: Yes.

Mr. Z. H. Lari (United Provinces: Muslim): Then what about article 15, Sir?

Mr. Vice-President: The consideration of that article has been postponed for the time being.

(To Mr. Kamath.) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new articles to be inserted after article 24. What about these?

Mr. Vice-President: They will be taken up after article 24.

Article 25
Kazi Syed Karimuddin (C. P. and Berar: Muslim): Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment: "That the consideration of article 25 be postponed till the consideration of Part XI of this draft constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of article 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to 280 are taken into consideration. Therefore, my submission is that before articles 275 to 280 are passed, we are incompetent to consider the provisions of article 25.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that because this article is subject to the provisions of the other articles to which my honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow.....

Kazi Syed Karimuddin: Then why not postpone this?

The Honourable Dr. B. R. Ambedkar: No.

Mr. Vice-President: I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President: The question is:

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.
Mr. Vice-President: Amendment No. 782 is disallowed. Amendment No. 783, standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, this amendment suffers from vagueness. There is no particular meaning.

Mr. Vice-President: Let us hear what Mr. Naziruddin Ahmad has to say.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.'"

Sir, it is suggested by Mr. Santhanam that the amendment is vague. I submit that it is not vague.

The Honourable Shri K. Santhanam: Appropriate proceedings,—judicial, administrative or executive?

Mr. Naziruddin Ahmad: Proceedings in a Court.

The Honourable Shri K. Santhanam: Where is the Court?

Shri M. Ananthasayanam Ayyangar (Madras: General): Neither the procedure nor the forum is indicated in the amendment.

Mr. Naziruddin Ahmad: Perhaps there is some mis-print; I do not know. If there is no mis-print, it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court....

The Honourable Dr. B. R. Ambedkar: See sub-clause (3).

Mr. Naziruddin Ahmad: That sub-clause empowers some other specified Courts to deal with this subject; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court. In fact, all Courts should be open to the people. If there is a fundamental right which is violated, and if the man whose right is violated is a poor man, it would be wrong to drive him to the Supreme Court or some other Court duly empowered in this behalf, which will be some superior Court. I want to see that all Courts have the power to decide fundamental rights or breaches of fundamental rights and this should be given to all Courts civil or criminal. If a difficult point of constitutional right is raised in any civil or criminal Court in a small case, then, that Court should be enabled to decide it immediately. Instead of that, this clause (1) would force the party to move the Supreme Court or some other selected Court duly empowered in this behalf.
I admit fully that the drafting of this amendment is certainly open to the comment that it is a little vague; but I am suggesting the principle. If the principle is acceptable, then, the amendment may be changed accordingly. This point is at the back of my mind; perhaps in a hurry, I made a mistake; it should be, "by appropriate proceedings in any Court". In fact, the actual wording of the amendment is not very important.

Mr. Vice-President: There is an amendment to this amendment. No. 43 standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate (United State of Gwalior-Indore-Malwa Madhya Bharat):
Sir, I shall move the amendment after Dr. Ambedkar has moved his.
Mr. Vice-President: Yours is an amendment to amendment No. 783.
Shri V. S. Sarwate: And also, alternatively to amendment No. 794.
Mr. Vice-President: you want to move it when we come to amendment No. 794. Is that your wish?
Shri V. S. Sarwate: Yes, Sir.

(Amendment No. 784 was not moved.)
Mr. Naziruddin Ahmad: Sir, I beg to move:
"That in clause (1) of article 25, for the words 'Supreme Court', the words 'Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court' be substituted."

Sir, we have in clause (3) already attempted to provide the authority to Courts other than the Supreme Court to exercise those rights. This is consequential upon clause (3).

(Amendment No. 786 was not moved.)
Mr. Vice-President: Amendments Nos. 787, 788 and 793 are of similar import and will be considered together. Amendment No. 788 seems to be the most comprehensive.

(Amendment No. 788 was not moved.)
Mr. Vice-President: Then, we can take up amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, I move amendment No. 787 of the List of amendments as amended by amendment No. 64 in List 4 (III week). I move:
"That for clause (2) of article 25, the following be substituted:
'(2) The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part.'"

At the outset let me make it clear that I am a more layman and not a professional lawyer or a legal or constitutional expert like my Friend Dr. Ambedkar; but I know a bit of law though not very much of it, and I will have my say on the basis of the little knowledge of law which I possess. This clause of article 25 relates to the power of the Supreme Court to issue orders for
the enforcement of any of the Fundamental Rights mentioned in part III. I think that so far as the Supreme Court is concerned, it is not necessary to lay down what particular writ it should issue. After all, Sir, it may be that with the growth of legal and constitutional precedents, other writs than these mentioned here in this article may be evolved, and whenever a particular case comes up before the Supreme Court, it may be that the Court will take all the aspects of the case into consideration and issue such a writ--might be one of these, or a new writ may be evolved. I think this particular clause of the article is a very regrettable instance to my mind of what is called in legislation--'Legislation by reference'. When we are dealing with the Supreme Court consisting of eminent judges and jurists, it is not wise for us nor desirable to lay down what particular writs the Supreme Court should issue in a particular case. Therefore, all things considered, I feel that so far as the Constitution is concerned, we should just say this much that the Supreme Court should issue such orders or directions or writs as the Court may consider necessary or appropriate in any particular case. I therefore move, Sir, that for clause (2) of this article the following be substituted:

"The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part."

I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely stand on prestige or some such consideration but will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

(Amendment No. 788 was not moved.)

Mr. Vice-President: Nos. 789 and 790 are similar and I allow 790 to be moved.

(Amendment No. 790 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad: I desire to move it if that is acceptable to the House.

Mr. Vice-President: Does the House permit Mr. Naziruddin Ahmad to move this?

Honourable Members: Yes.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the honourable Member is going to accept it. It requires no explanation.
Shri H. V. Kamath: On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad: I heard a rumour that it is going to be accepted.

Mr. Vice-President: Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President: Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar: With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows:

"That for the existing sub-clause (3) of article 25, the following clause be substituted:

`Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other Court to exercise the Supreme Court under clause (2) of this article.'"

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

Mr. Vice-President: There are two amendments to this amendment. One is No. 44 and the other is 45 of List I (III week) and Mr. Sarwate's amendment No. 43. Mr. Sarwate.

Shri V. S. Sarwate: Sir, the amendment which I move stands thus:

"That at the end of amendment No. 794 of the list of amendment, the following be added:

`Explanation.--The Supreme Court, in deciding matters arising out of this article, shall have the power to go into questions of fact.'"

Sir, the scheme which we have adopted in this Chapter regarding Fundamental Rights consists, first, that the rights themselves are enumerated in broad terms and then by clauses which follow, the Legislature has been given power to put restrictions on the rights in certain matters specified in those clauses. Lest the legislature should exceed its powers, or makes legislation in excess of the requirements of the case, a safeguard is provided by the present article. Now, it is possible to argue that the court can only see whether the legislature has passed an Act in respect of that matter, without going into the details, or it may be argued that the court has no power to go into the details, and to determine the issues whether a particular case required or necessitated or justified the passing of that particular legislation. It is necessary to provide for such a contingency, because by article 13, the legislature has been given power to make `any law'. The terms are wider than if it had been expressed in the way that the legislature has power to penalise such and such matters. The expression used is `any law' which is wider than if it had been only power to penalise. Therefore it is necessary in each case for the court to see whether the particular legislation meets exactly the requirements
of the case, whether it does not exceed the requirements of the case. Getting panicky a legislature may pass a legislation where it may not be necessary to have any such legislation. Therefore I have added this explanation. The very wording of the explanation shows that it does not add anything to or substract anything from the original clause, but it only explains something. It may be argued that this is may be a certain doubt expressed in this respect, and so to remove and to avoid such doubts being raised, and to make it more specific and more outside the pale of any doubt, I have tried to add this explanation. I commend it to the House and to the Mover, for acceptance.

Mr. Vice-President: Then amendment No. 44 and amendment No. 45 in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I do not want to move No. 45 because it is open to some objection. I shall move only No. 44.

Sir, I beg to move:

"That in amendment No. 794 of the list of Amendments, in the proposed clause (3) of article 25, the words `without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted."

Sir, the original article tries to confer powers on any other Courts, powers which may be exercised by the Supreme Court, under clause (1). As we have already stated in this clause, Parliament may by law empower any other Court. The words "any other court" indicates that this is a supplementary power to be given to other courts, without any prejudice to the powers of the Supreme Court. The powers of the Supreme Court are defined very precisely as absolutely supreme over all other Courts. So the words "without prejudice to the powers of the Supreme Court" would be unnecessary. In fact, there is no possibility of any doubt that the Supreme Court has over-riding powers. In these circumstances, the words seem to me to be unnecessary. Therefore, they should be deleted. In fact, the powers of the Supreme Court are very specific in this respect. The very name--Supreme Court--indicates that it is supreme in all matters. If we keep the words, we would suggest that the rights of the Supreme Court are not supreme, it really indicates some doubt that the Supreme Court is not perhaps supreme in legal matters. That is the reason for asking for the deletion of these words.

(Amendments Nos. 795 and 799 were not moved.)

Mr. Vice-President: Amendment No. 796 is disallowed on the ground that it is only a formal amendment.

(Amendments Nos. 797, 798, 800 were not moved.)

Amendment No. 801 standing in the joint names of Shri Kamath and Mr. Tajamul Husain.

Shri H. V. Kamath: I shall make way for Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar: Muslim): Mr. Vice-President, Sir, I beg to move:
"That clause (4) of article 25 be deleted."

Sir, under article 9, the State shall not discriminate against any citizen on the grounds of religion, caste, etc. That means that a citizen is allowed to enter any shop, restaurant, hotel etc. he is allowed to use wells, tanks, roads and other things. Under article 13, the citizen is allowed to practise his profession, and carry on his trade in any way he likes. Under article 25, a citizen can move the Supreme Court for the enforcement of his rights mentioned above, and the Supreme Court can issue order in the nature of Habeas Corpus or Mandamus etc. But Sir, clause (4) of article 25 speaks of the suspension of the rights of citizens which I have just now mentioned. Article 280 says that where a proclamation of emergency is in operation the President can suspend the fundamental rights guaranteed to the citizens. This, I submit, should not be allowed. If such a right is allowed to the President, under the Constitution, then the right of equality as mentioned in article 9 will cease to exist for the time being. And citizens will not be allowed to use wells, tanks, roads, etc. Freedom of speech will have to be suspended; right to practise one's profession will also go; protection of life as guaranteed under article 15 will go; freedom of conscience will go; the right to move the Supreme Court will go. I think it is very dangerous to give all these powers to the President. After all what are we? We are only the representatives of the people--we are the people. When we have framed the Constitution we will dissolve ourselves and another set of people will come. They will also be the representatives of the people. They will be the same as ourselves--there can be no difference between us. Have we got the right to bind down those people? Can we say to them 'Thou shalt not do this; thou shalt do this'? It is a free country. If the people want to have revolution, let them have revolution. What right have we to prevent that? Therefore I say that no powers should be given to any person, however big--to the President of the Republic or to anybody else--to suspend any Fundamental Rights guaranteed under this Constitution. With these words I commend my amendment to the House.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

"That in clause (4) of article 25, for the words "as otherwise provided for by this Constitution" the words "incase of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution" be substituted."

Sir, I cannot agree to the amendment moved by Mr. Tajamul Husain saying that the whole of clause (4) should be deleted. There are occasions in the country when actually there is an invasion and rebellion inside and no President will be so foolish as to restrict activities which have no concern with the invasion or rebellion like discrimination between man and man and even untouchability. Therefore in order to maintain peace and tranquility in the country, it would be necessary to suspend some of the provisions under articles 13 and 25, but to say that every clause and sub-clause under article 13 and 25 will be suspended as soon as there is
invasion or war is, I think unimaginable. My amendment lays down that the rights guaranteed by this article shall be suspended only when there is invasion because the provisions in articles 275 to 280 lay down that even if there is an immediate danger of war articles 13 and 25 will be suspended not only for the period of the emergency but six months even beyond that period of emergency. It has been laid down under article 280 that 'where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.' I was pleading very earnestly that the provisions of article 25 should be passed over and considered after the passing of the provisions under articles 275 to 280. Now we are taking into our hands the question of suspending the provisions of articles 13 and 25 when we do not know the picture that would emerge under the provisions of articles 275 to 280. Now the rights are to be suspended in consideration of provisions that are yet to be made and which have not been accepted by the House. I thought that Dr. Ambedkar would oppose this proposal. But I bow to the decision of the House. Now the position before us is that we are going to accept clause (4), if at all it is accepted, for considerations and provisions which are not yet passed, and the House may reject them. In reply to that it has been stated that necessary changes will be made. Well, I have made the necessary change and it is before the House to accept or reject. And it is this, namely, that in case of rebellion or invasion and when a State of Emergency is proclaimed under Part XI of the Constitution—that is, articles 275 to 280—these rights can be suspended. My submission is that unless there is a declaration of a State of Emergency and unless there is actual invasion or rebellion inside, the rights granted under articles 13 and 25 should not be suspended. For example, suppose a party in a province which is hostile to the party in power at the Centre comes into power in the province. And suppose thereis a quarrel between the Provincial Government and the Central Government and the party disobeys some of the orders issued from the Centre. Immediately the President, thinking that there is domestic violence inside the province, can suspend that part of the Constitution according to the emergency law. The result would be that every right of the individual citizen under article 13 will be suspended. Therefore, the two conditions which I have laid down in my amendment are that in cases of invasion and rebellion these rights should be suspended. I do not say that these rights should never be suspended, although in England and America there is no such provision for suspending such rights. But our country is passing through a transition and through a crisis; and if these rights are not suspended during such times there will be great turmoil in the country. I therefore plead that the amendment which I have moved should be accepted.

Mr. Vice-President: Amendment No. 803 is a verbal amendment and is disallowed.
Mr. Naziruddin Ahmad: I shall move amendment No. 805.

Shri M. Ananthasayanam Ayyangar: It is also a verbal amendment.

Mr. Naziruddin Ahmad: Sir, I move:

“That in clause (4) of article 25, for the word 'guaranteed', the word 'conferred' be substituted."

As Mr. Ananthasayanam Ayyangar has suggested that it is a verbal amendment, I shall at once explain the reason why I have moved it. I confess that it is very nearly a verbal amendment. But the only reason why I have moved it is because I have the authority of amendment No. 811 to the same effect standing in the name of Dr. Ambedkar himself. In fact, he has tried to change the word "guaranteed" by the word "conferred". My amendment is exactly the same as amendment No. 811. If No. 811 is acceptable to the House, No. 805 should also be equally acceptable. May I submit that amendment No. 791 standing in my name is not a mere verbal amendment? It changes the sense altogether, and may I be permitted to move it in a one minute speech?

Mr. Vice-President: No.

Mr. Naziruddin Ahmad: It changes the meaning. I ask you to consider it. I will be willing to bow to your considered decision.

Mr. Vice-President: In that case you will not move it.

The article is now open for general discussion.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and
a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of habeas corpus etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in these matters there is no question of res judicata. A person can move any number of courts and before any judge an application for the issue of this writ, thought the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court ingranting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application.

Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D’Souza (Madras: General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judiciary the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions
and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in
the manner provided for later on in this Constitution. Sir, it is because we all believe,--and that
is the implication of this chapter of fundamental Rights,--that man has certain rights that are
inalienable, that cannot be questioned by any humanly constituted legislative authority, that
these Fundamental Rights are framed in this manner and a sanction and a protection given to
them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the
collective action of people who may not fully appreciate his needs, his rights, his claims. And
the sacredness of the individual personality, the claims of his conscience, are, I venture to say,
based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our
people and their outlook were entirely materialistic, if right and wrong were to be judged by a
majority vote, then there is no significance in fundamental rights and the placing of
them under the protection of the High Court. It is because we believe that the fullest and the
most integral definition of democracy includes and is based upon this sacredness of
the individual, of his personality and the claims of his conscience, that we have framed these
rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and
through the moral law to a Supreme Being, if the highest and the fullest authority is to be
given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma
Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular
Constitution and to avoid the name of the Supreme Being in it, cried out, "You may keep out
the Name, but you will not keep out the Thing from that Constitution". And, Sir, I believe that
these fundamental rights and their implications are really tantamount to a confession
that beyond human agencies and human legislatures there is a Power which has to be submitted
to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions--necessary perhaps in
present conditions--that in Government institutions instruction in different religions may not
be given, in order that the calm atmosphere of our institutions may not be disturbed by
controversies. But I hope and pray that those provisos, prudent though they are, may not
exclude the teaching of ethical principles based upon truths acceptable to all, upon the
existence of a Supreme Being and the rights of the individual conscience formed under His
guidance. I am sure that religious controversies could be avoided on the basis of those
universally accepted truths. It is certain that our national culture and civilization are based
upon and permeated by this belief and this conviction; otherwise there would be no meaning in
these fundamental rights. A speaker who preceded me asked: "Why is it that provision
has been made to change this Constitution? Why should not these sacred rights be placed
beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of
our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are inextricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "Minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "Minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here—I am sure I am also voicing the feelings of many others—that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do Minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last
implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is concerned, we have gone a great way in giving up those political safeguards and we are prepared to go further and give up the reservations which have been made in certain provinces. And if we do so, it is because we know that in the spirit in which these fundamental rights have been guaranteed, there is for us an assurance of safety and a confidence which does not need to be propped up or further affirmed by political safeguards and privileges.

There are, I know, Sir, certain other safeguards still maintained in this Constitution, such as economic safeguards for backward communities and so forth. I believe that a transitory measure of this kind is necessary; it is wise and prudent to reassure many sections of our people in this way. But, Sir, I submit that the full and logical implications of what we are doing now is that a time should come when even the economic and other assistance to be given should not be based upon the claims of classes as a whole, but should be based upon the claims of the individual. I am sure, Sir, a time will come when all those who claim and need special assistance, will get it, without reservations and safeguards on the basis of communities; when our legislatures and the leaders of the country will be able to think out individual tests, in which the communal or social background may certainly be taken into account, but which will give that assistance or that concession to all individuals, without limiting it to particular castes or classes. It is only on this ground and on this understanding that class differences, in so far as they are dangerous politically and lead to political separatism, will be eliminated. If, on the other hand, cultural, religious and other rights of this nature are safeguarded, I do not see why the variety and the diversity of this country should not be a source of strength and glory rather than a source of political weakness such as they threatened to be in recent years. We earnestly trust that the spirit in which these rights will be enucleated, interpreted and enforced in future years by our Judges, the spirit in which the major ity community will give effect to them, will allay all fears and encourage the minor ities in the path which they have deliberately chosen now, of giving up political safeguards. Thus alone in the near future—I do not wait for a distant future—in the near future, will the political homogeneity of these three hundred and thirty million people be an accomplished fact, and the members of all communities standing shoulder to shoulder in their civie equality, but maintaining their right to their own faith, their convictions and their ideals, and drawing their individual strength from those beliefs and from those convictions will work together for the prosperity and greatness of our motherland. (Applause).

Shri M. Ananthasayanam Ayyangar: Mr. Vice-President, Sir, the Supreme Court according to me is the Supreme guardian of the citizen's rights in any democracy. I would even go further
and say that it is the soul of democracy. The executive which comes into being for the time being is apt to abuse its powers, and therefore the Supreme Court must be there, strong and untrammelled by the day to day passions which may bring a set of people into power and throw them out also in a very short time. In less than three or four years during which a parliament is in being, many governments may come and go, and if the fundamental rights of the individual are left to the tender mercies of the government of the day, they cannot be called fundamental rights at all. On the other hand, the judges appointed to the Supreme Court can be depended upon to be the guardians of the rights and privileges of the citizens, the majority and the minority alike. So far as the fundamental rights are concerned, my humble view is that there is no difference between the rights and privileges of individual citizens, whether they belong to the majority community or to the minority community. Both must be allowed to exercise freedom of religion, freedom of conscience, must be allowed to exercise their language and use the script which naturally belongs to them. These and other rights must be carefully watched and for this purpose the Supreme Court has been vested with the supreme ultimate jurisdiction.

So far as the rights of the minorities are concerned, some other provision has also been made in this Constitution in Article 299, under which a special officer or officers are to be appointed to watch their interests and to report to the President of the Union, as also to the Governor, on how far the minority rights that have been enumerated in this and the other parts of the Constitution are being observed, and it is the duty of the President or the Governor to lay this report before the legislature. But this in itself will not do unless the Supreme Court is watchful and is allowed to pull up any executive government if it goes astray.

Sir, I agree with my predecessors who have spoken that this is the most important article in the whole constitution as it is the guardian of the people’s rights. So far as I know, in recent years some provincial legislatures have passed laws abrogating the writ of habeas corpus. Such latitude with people’s rights ought not to be allowed in any event.

Then as regards clause (4), my friend suggested that this clause ought to be removed. I do not agree with him, though I agree that the wording here is a little broad and is likely to be abused. I am sure that amount of latitude ought to be given to the government of the day. If any emergency is proclaimed, I am sure that the rights guaranteed by this article will be suspended only for the period of the emergency but not for another six months after the emergency is over, though it is open to the President to allow the same state of affairs to continue for a period of six months after the emergency is over. It is equally open to the President to say that this clause will be abrogated only during the period of the emergency and not for a further period of six months after the expiry of the emergency.
Shri H. V. Kamath: On a point of clarification, Sir, may I invite my friend's attention to clause (4) of this article as well as article 280 and request him to read them together. Article 280 says that:

"the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

Is not clause (4) liable to be misconstrued, when it is read with article 280? Does article 280 cover all the fundamental rights? Does it mean, Sir, that even such rights as rights of anti-untouchability, religious and cultural rights will also be suspended?

The Honourable Dr. B. R. Ambedkar: I will deal with this.

Shri M. Ananthasayanam Ayyangar: Article 280 does not mean that the President will have to suspend these rights. He is not bound to suspend them or suspend all of them. It is not obligatory on the President to suspend the rights enumerated in this part. Therefore article 280 need not create any apprehension. Moreover, the person who is clothed with this power is the President of the Union, who ranks along with the Supreme Court judges. The President is not in charge of the administration. It is his ministers who are in charge of the administration, he only intervenes when necessary. Under three circumstances I am sure that the rights that have been enumerated in this part are safe in the hands of the Supreme Court and also in the hands of the President. Therefore, so far as the amendments that have been tabled by my friend Mr. Naziruddin Ahmad are concerned, I do not agree with him. Nor is it necessary to include under clause (1) other courts also. Provision has been made in sub-clause (3) for clothing other courts with powers similar to the powers that have been conferred upon the Supreme Court. Clause (4) guarantees not only the rights that have been guaranteed in clause (1) but also those guaranteed in clause (3). My friend, Mr. Naziruddin Ahmad, wants to incorporate what is contained in clause (4) in clause (1). The working as it stands seems to be enough, and his amendment is not necessary. It is also not definite. It is rather clumsy. Under these circumstances, I am opposing the amendments moved by Mr. Naziruddin Ahmad and also the amendment relating to the deletion of clause (4). The article as it stands may be accepted.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I wish to speak a few words on this article. As was observed by Mr. Ananthasayanam Ayyangar, I would say that this is the most important article of the whole Constitution and we have to take care to see that the rights conferred by this article are not watered down or in any way modified by other articles or even by the other clauses of this every article. Now, Sir, recent experience after we gained independence has taught us that we have to be much more careful in safeguarding the individual liberties and the rights of the citizens now than when we were ruled by foreigners. I must say that the recent behaviour of certain provincial governments has taught
us that it is very necessary to take careful measures to see that they are not allowed to behave in the manner they have behaved. I am referring to the way in which the sacred rights and liberties of the person were being dealt with by certain provincial governments under the cloak of the powers that they are said to possess. Very often, Sir, it has become the fashion with these Provincial Governments to say: "Well, some state of emergency has arisen and therefore, in the public interest, we shall utilize the powers conferred by the Public Safety Act and we shall have to curtail the liberties of so many people and put them in jail". And this is done without those people knowing on what grounds they are arrested, what is the sin that they have committed against the State or against the peace of the country, in order to deserve the curtailment of their liberty in this irresponsible fashion; and they are kept in that state of mind for weeks and months, without even being told what the ground is on which they are arrested and detained, even though the Government is bound to furnish them with the reasons for their arrest and detention, under the provisions of the Act under which the Government proposed to arrest them.

Now, Sir, if we look at the irresponsible way in which things were done very recently, it is very necessary that we must have very strong safeguards against the misuse and abuse of the powers which may be conferred on these Governments. I would say, Sir, that one principle which we have to bear in mind and we should always keep in view in framing this Constitution is that ministries may come and ministries may go, but the judicial administration must go on unaffected by the vicissitudes in the lives of these ministries and the changes in the Government. It is more to preserve their own power, I mean, the power of the particular party or the clique in power that these measures are resorted to than for any public purpose. Such a state of affairs should never be allowed to be tolerated. I shall refer to one instance, Sir.

In Madras the legislature was in session and all of a sudden, one evening, a notification was issued that the legislature was prorogued. For what reason it was done, nobody knew, and the next morning an ordinance was issued. To what effect? Apart from so many other things, there was the Public Safety Act and under that Act many people were arrested and detained in jail, without even being told what they are arrested for and why they are detained. Well, they were forced to resort to such remedies as were available under the existing law and applications were pending in the High Court for issue of writs of Habeas Corpus and the High Court issued in deserving cases writs of Habeas Corpus. The moment a person was released by the order of the High Court, that very moment he was re-arrested and put in jail again. And not satisfied with all these apparently, the Government felt annoyed by the independent way in which the High Court was exercising the legal powers conferred on it under Section 491 of the Criminal Procedure Code. What happened was that one evening the Legislature was prorogued and the next morning an ordinance was issued, even taking away the power of the High Court to issue writs under Section 491 of the Criminal Procedure Code. Now, Sir, is there any bona
Can any reasonable man say that this could be done with any bona fides? This is the most scandalous way in which the powers conferred on the Government were being exercised. Under the cover of the powers conferred on them, they have acted in the most irresponsible way. Therefore, it is that I say, Sir, that the powers of courts should not be made to depend upon the will and pleasure of the Government and they should under no circumstances be allowed to interfere with the powers that vest in courts of law. If the very guarantee of personal liberty on which democratic form of Government is based and the powers vested in courts of law to enforce such rights independently are allowed to be interfered with, no one is sage. Of course, if is not a question of majority community; it is not a question of minority community but the powers that be at the time clap in jail such of the individuals or groups of people, whom they do not like and whom they do not want to be at liberty, perhaps for the fear that they may undermine the power which they are enjoying. It is one thing to make safeguards on occasions when there is general disturbance of the peace of the country, but it is quite another thing to give full powers to the Governments to do anything they like under the guise of these 'emergency powers' and empower them to take away powers vested in Courts of Law to protect the personal liberty of citizens.

Now, Sir, I would only like to point out this, that this is certainly one of the very important rights which has been conferred under this Constitution, but I am afraid, Sir, that clause (4) takes away with one hand what is given by the other, and therefore, I would heartily support the amendment that has been moved for the deletion of this clause. There is no necessity for that clause at all. Of course, as regards the powers to be exercised in case of emergency, there is provision under section 280 and even that would require modification and we shall have to deal with it when we reach that article, but by the provisions of this clause whatever powers are given by the previous clauses are interfered with and I would strongly support the amendment for the deletion of this clause. There is no necessity for it and as has been already pointed out by one of the honourable Members this will lead to a conflict with article 280 and there will be complications arising out of it. With these few words, I support the amendment for the deletion of this clause.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, now we have come to this last part of this Chapter and this article 25 gives the right to every citizen in the country to see that all the liberties guaranteed in this chapter are made available to him. He can go to the Supreme Court and demand that these laws been enforced. Sir, this is the crowning section of the whole chapter. Without it, all the articles which we have passed will have no meaning. As my honourable Friend, Mr. Ayyangar, has said, this is the most important section in the Constitution. This is, in fact, what makes all the fundamental rights become real. Everybody can have his remedies if any wrong is done to him, under this article.
I think, Sir, the article as it has been worded is very proper, and the demand for the deletion of clause (4) is not a proper one, at the present stage of our national development; though as a matter of principle, it may be said to be correct. In America and England there are no provisions under which the fundamental rights can be suspended. In fact, in England we have no such rights; they are unwritten rights. Still, in the present stage of our development, when the State is in fact being built up, I think this provision for the suspension of the rights in an emergency, as provided in the Constitution, is necessary. There will be an occasion for us to examine those articles under which these articles can be suspended and we will see whether those provisions are reasonable. But to say that even in an emergency, in a rebellion or on other such occasions, there should be no power to the State to suspend this Part of the Constitution, will, I think, be going too far, especially at this time of our national development. I think very soon when our State becomes stable, we shall be able to drop clause (4).

Clause (3) empowers the Parliament to make laws to empower the local courts to decide this question. I think this is also taking away to some extent the rights conferred here. Sir, the Supreme Court is the final authority. I have in fact a very high respect for the Supreme Court. I want that the Supreme Court should be a sort of a body almost independent of the Parliament. It should not be interfered with by the Parliament as in America. I therefore, think that this clause (3) which says that the Parliament will have power to make laws empowering any other court to decide this thing should not have been here. If Parliament does not want that the full import of the rights should be granted, they may empower any court to deal with this subject. I hope that in the first ten or fifteen years during which we experiment with this Constitution, we shall realise whether any Parliament is so determined as to make these rights null and void.

Sir, clause (2) gives the famous rights which are given all over the world, writs of habeas corpus and others. I think everybody will agree that this is very important and very good. Therefore, I think the article as it is, can be accepted, though, I think in later years if clause (3) is against the fundamental principles, it may be dropped. When our State becomes stable, clause (4) may also be dropped. That I think would be the proper form of this article after some time, when our democracy has become stable.

Sir, when we consider this article as the operative part of this chapter, we may review what we have done. In fact, this is a Chapter on Fundamental Rights. We have guaranteed against discrimination of all sorts; we have guaranteed that untouchability shall be abolished, which will be the most historic act done by the Assembly so far; we have granted the Charter of Liberty in article 13. I hope we will also pass article 15 wherein personal liberty and equality before law shall be guaranteed. Then, we have provided safeguards to minorities, both religious and cultural. The right to property has yet to be finally adopted. I think all these rights are the most important rights, the most valued rights of any citizen. I also want to say to
my friends who yesterday thought that they were not sufficient to guarantee the rights of minorities, that the ultimate right of the minority is the good will of the majority. I personally feel that the majority has gone to the farthest extent in this matter. I may also point out onething. The Fundamental Rights Committee was appointed before the partition took place. In fact, these rights were written in this form before the partition had taken place. The minorities rights were laid down on the basis that there will be no partition. Yet, we have not changed them. I am not letting out a secret when I say that our great leader Sardar Patel told us, "kindly do not interfere with these rights, religious and cultural, because they form part of an agreement arrived at before the partition." If anybody says that these rights are not enough, I think it is the height of ungratefulness. I think we have guaranteed rights which our people will, probably, tell us in the future that we bartered away these rights. We have now declared that no religious education shall be given in the schools. Thirty crores of our people are Hindus; yet they shall not have the right to be taught even the universal religious book, the Gita, in the schools. Why have we done that? Because, at that time, before the partition, it was thought that in view of the fact that there are various religions, let it not be done. Now, when only three crores out of thirty-three are the minority, still, the majority is denying itself the opportunity of teaching the children the religious precepts of its community. Yet, we have not changed these rights, because our leader has told us not to interfere with them. I think the way in which the majority has tried to accommodate the minority will be taken note of and it shall not be right for anybody to come forward and loudly accuse the majority that it has not provided sufficient safeguards. I think the rear guarantee of the minority is the good will of the majority. I hope that with these fundamental rights, we will be able to produce in this country a State which shall be a State based and inspired by the ideals or the great leader, the father of the Nation, so that we can have in our country a really secular State; a State based on the ideals of Mahatma Gandhi.

With these words, Sir, I support this article.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, Sir, I am unable to understand the line of argument advanced by those friends who want clause (4) to be deleted, and who do not want to vest in the President or the Republic the power to suspend these fundamental rights under article 280 in case of emergencies. Sir, it has been said by more than one speaker that this article is the greatest guarantee for individual liberty in our country and that the Supreme Court is being set up as the biggest champion of the liberties of our people. But, has it been considered by these friends that just as individuals and groups have their rights, the society as a whole has certain rights vis-a-vis individuals and groups which are bent upon destroying that society, subverting the social order and dissecting the social organisation through violent means? Is it not a fact, Sir, that in the recent decades of this century there have been such attempts made by organized groups and minor ities in different countries to subvert the social
order and destroy the social life of the majority of the people themselves? What is the guarantee then for the continuance of the social order and social rights of the majority of the peoples in the different countries if an organized violent effort is made by a tiny minority? No effort has been made in this Constitution and in this Chapter to safeguard such a society. It may be said that there is a safeguard for the State; but is it not a fact that in Germany and Italy, a group of people organized for violence were able to get at the State and then subvert the whole of the society and destroy the fundamental rights of the majority of the people themselves? Is it not also a fact that in Soviet Russia even today an organized minority is in the saddle and is in charge of the State and is able to deny the fundamental rights not only to the whole of the majority of the people there, but also the fundamental rights of these individuals, as are being detailed here? Therefore, Sir, it is as well for us all to keep in mind this extreme need that society as a whole should safeguard itself against the possibility of organized minorities based upon violence, intent upon the use of violence, trying to use that violence. My Friend Mr. Pocker has tried to create a sort of bogey out of what had happened in Madras. Similar things could easily have happened in other provinces also. Can we deny, Sir, or can anyone else deny the fact that there were people at that time in Madras Presidency who made it their business to use all possible violent means in order to subvert our own society in the South, in order to go to the aid of a gang of people who had made themselves the enemies of the society as a whole in India and of the State, the Indian State as well as the Provincial States? Sir, what is it that the Madras Government could have done except what it had actually done—just catch hold of those people, restrain their liberties for a temporary period in order to prevent them from going to the rescue or from abetting the violent means and methods adopted by the Razakar movement in a particular part of our country? It cannot be denied by these friends that many of these friends whose liberty had to be restrained for a time had been, directly or indirectly, in league with those people who had their contacts with the Razakar movement; and under those circumstances how could it be possible for any society to safeguard itself except by telling these friends that they should hold themselves in check and if they could not do so voluntarily it would be the charge of the Society, of the State, to restrain the liberties of these people for a time?

Secondly, Sir, let us not forget that there is a world-wide conflict today between two great ideologies. There is totalitarianism on the one side, and on the other side, there is democracy. In this conflict we have to decide what we are going to do. These Fundamental rights can come to be exercised only by that society and those individuals who have a due respect for law, who have a due respect for fundamental rights of other people along with themselves and who therefore are prepared to behave themselves with a due sense of responsibility and restraint. Wherever such conditions do not obtain and wherever there are groups and parties who organize and make it their business to destroy the
State and try to capture the State, certainly it would not be possible for any State or Society to respect these fundamental rights. That is the first pre-requisite for the exercise of these fundamental rights. Sir, it is a well-known fact that these concepts of fundamental rights have emerged out of the terrible sufferings that people have had to go through during the last two centuries in different countries all over the world. These are all sacred rights, rights that are sanctified by the very experiences of people in different countries. It is all true but why are these rights being conceded and how are they being claimed? Because the personality of the individual is found to be inviolable. The individual is found to be just as violable as society. An individual's right to liberty has got to be safeguarded at all costs, in every possible manner by the society as well as the State. If the life of that society itself is endangered, then.

Maulana Hasrat Mohani (United Provinces: Muslim): What about the right to strike?

Mr. Vice-President: Maulana Saheb, please do not interrupt.

Prof. N. G. Ranga: Mahatma Gandhi himself has already answered it in regard to strikes. It is possible for anyone to be allowed to go on strike or groups of people to go on strike provided they keep themselves non-violent. The moment they over-step the bounds of non-violence and begin to exercise violence against others who do not believe in that line of action re less-strikes, whether you call them strikes or lock-outs, they have got to be banned and the people who indulge in these lock-outs have got to be dealt with in the only way by which society can possibly do so in order to safeguard itself. Sir, let us remember that individuals can exist not in vacuum but in a society. Therefore, the first condition precedent for any individual for the exercise of fundamental rights is the existence of society the fundamentals of which, the soundness of which is its own organization. Therefore, those individuals who do not believe in social life, who are anti-social, who are intend upon disrupting and destroying society necessarily cannot be expected to claim and enjoy these fundamental rights. This is a very fair condition that every individual has got to satisfy.

Another thing is, it is not the Supreme Court which is going to ensure the exercise of this fundamental right to individuals or groups as much as an individual's and group's own capacity to stand up to its own fundamental rights and make the necessary sacrifice. It can do so in one of two ways. One is that of the Western World, that is, resorting to violence. The other is that of Mahatma Gandhi--resorting to Satyagraha. Now, a Satyagrahi cannot at one and the same time be both non-violent and violent in his expression, in his activities, in his incitement of others, in the various other methods that he adopts in order to subvert the society. A Satyagrahi has necessarily to be a peculiar individual, an individual distinguished from other individuals by the degree to which he can restrain himself and also ask his own followers to restrain themselves and pursue a non-violent line of action both in word, thought and action. Now such a Satyagrahi can always safeguard his own fundamental rights. In view of the fact that everyone cannot be a Satyagrahi and ordinary people also have got to be safeguarded,
these fundamental rights are being enshrined in this particular chapter. Therefore those who wish to enjoy this fundamental right, to safeguard their enjoyment, have got to discharge particularly their duty towards society as a whole. There may be groups and there are groups in this country, there may be individuals and there are plenty of them in this country, who do not believe in their duties towards society, but who only wish to exploit to the uttermost possible extent these fundamental rights. We know, Sir, of certain pamphleteers; we know of certain organizations; also we know of certain other communal champions who wish to exploit these liberties. What is it that Society has got to do? If they are only of negligible importance, then it is open to the ordinary rule of law to restrain them. But if on the other hand they become sufficiently powerful and vociferous, they have got to be dealt with by the State as such and if they attain a province-wide or a nation-wide importance, it will be the duty of the President of the Republic to invoke article 280 and declare an emergency and suspend the operation of these fundamental rights and deal with these gentlemen as they deserve to be.

Shri H. V. Kamath: Does my honourable Friend, Prof. Ranga, propose to deal with even vociferous minorities?

Prof. N. G. Ranga: Yes, but only those people who are vociferous in abusing others, without any sense of responsibility, without any restraint and without any sense of morality; and we know that we have had plenty of such people who were the cause of lot of disturbances, and...

Mr. Vice-President: The answer you have already given is sufficient.

Prof. N. G. Ranga: Thank you, Sir.

Then, Sir, it is true the major ity also can go mad, and therefore the people have to be protected from their tyranny. The majority can go mad in an organized and in an unorganized fashion. If they go mad in an unorganized fashion, without any leadership from the State, or society or anybody, then it is the duty of the State to come into the arena and deal with those people as best as it might, even at the peril of its own existence. A state which is not prepared to restrain its own unorganized or disorganized major ities, who believe in inflicting private punishment upon various people, whether they are organised or not, such a state does not deserve to exist. But on the other hand, If the major ity is organized and it begins to function through the State itself, then who is to guarantee and uphold these fundamental rights? It may be said that the Supreme Court would be expected to do so. It is also quite possible that when an organized major ity is functioning through the State and begins to misbehave in this fashion, the Supreme Court might be set at naught as it happened in Nazi Germany and Fascist Italy. Then what is the guarantee for these individuals or groups? There is a book by Prof. Laski called "Liberty in the modern State" in which...

Shri Krishna Chandra Sharma (United Provinces: General): But what is the point? What is the relevancy of all that you say now to the point under discussion?
Prof. N. G. Ranga: There he makes it perfectly clear that.

Mr. Vice-President: Mr. Sharma wants to know to what extent what you say is relevant to the article under discussion.

Shri H. V. Kamath: Sir, it is for you to decide.

Mr. Vice-President: But I want to hear Prof. Ranga. I think there is some connection however slight.

Prof. N. G. Ranga: The Supreme Court expected to issue writs, mandamus, and various other things. If there were an organised party which refuses to respect these writs issued by the Supreme Court, what is the guarantee then for these fundamental rights? That is the relevancy. My answer is, it is the duty of every group to offer Satyagraha, provided that Satyagraha is carried out, and is offered in the Gandhian fashion, in a non-violent manner, and in a self-sacrificing fashion; these are the conditions under which Satyagraha can be offered. That is the instrument that Mahatma Gandhi has fashioned for the country and.

Shri H. V. Kamath: Sir, is the right to offer Satyagraha a fundamental right?

Prof. N. G. Ranga: Sir, I can only say that it is basic to all your fundamental rights. But Satyagraha need not be enshrined in any constitution. It can be enshrined only in the capacity of the people to offer sacrifice, and to offer themselves also as sacrifice. This conception of fundamental rights has come into existence in the world only because there were so many people in the history of the world who were prepared to offer themselves to martyrdom in order to establish these rights, in order to get this conception accepted by the whole of the civilized world and by the whole of the democratic world as fundamental rights.

Lastly, Sir, I wish to sound a note of warning. Let us remember that we can exercise these rights only within the orbit or within the ambit of democracy, and whenever there is serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State as well as that of the President of our Republic to set aside these fundamental rights in order to safeguard our people. Our friends, of course, who claim to belong to some sort of minority are nervous about it. But let me warn them in this way. It may be that their religion countenances totalitarianism, may be their cult countenances totalitarianism, but there can be no place for totalitarianism in this country, and if every any group or individual were to try to establish totalitarianism in this country, especially to establish a totalitarian State, then it will be the sacred duty of the Supreme Court as well as that of the President of this Country to see that this Constitution is maintained at all costs, and these fundamental rights are not allowed to be exercised by those people or groups in such a way as to jeopardise our society.

Mr. Vice-President: Shri Rohini Kumar Chaudhari. You will please be brief.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. Vice-President, Sir, this is the first time that I have brought these books to my table, and the House need not be apprehensive because I
have brought them here, that I will be unnecessarily long or irrelevant. I would only like to tell you, sir, once again that I am rather short of hearing, so far as bell-rings are concerned, though I can hear all right where whispering accusations are made.

Mr. Vice-President: I wish I had known this before, I would have thought twice before calling you to the mike. Shri Rohini Kumar Chaudhri: Sir, I welcome this article because the enunciation of these fundamental rights would be meaningless if this article were not here to enable us to get our justice from the Supreme Court. I can quite understand the coyness of my friend Mr. Naziruddin Ahmad while he was moving his amendment. After all the man who is always fond of finding out small faults of drafting has been napping, and it has been found, and he has himself admitted it, that the whole of his amendment is not explicit. But I would submit that what he intended to convey has been conveyed by the article itself. Every person will have the right to move the Supreme Court whenever he finds that a fundamental right has been infringed. Supposing we want to say that the Queensway is open to traffic, one need not say that every person shall have the right to go through Queensway. Similarly, the article as it stands here is quite explicit and does not require the amendment tabled by Mr. Naziruddin Ahmad.

I also welcome the provision which has been made here that in some cases the Supreme Court may delegate its power to some other courts. That will be a blessing to distant places like Assam and Coorg, because people from such places will find it extremely difficult to come and seek relief in the Supreme Court which is bound to be located somewhere in the United Provinces or Delhi. But at the same time I would like to mention here that such power of delegation should be exercised very sparingly because after all the personnel of the Supreme Court would no doubt be more qualified than the personnel of a High Court. Therefore to shut out the possibility or the chance of any particular province from coming to the Supreme Court and of making the High Court to exercise the Supreme Court jurisdiction would be somewhat anomalous.

I now come to the fourth clause of article 25. I wish I had spoken before my honourable Friend Mr. Ananthasayanam Ayyangar had spoken because he would have been able to explain some of the difficulties which I feel about this clause. Furthermore, I as well as most members of the House look upon our honourable Friend Mr. Ananthasayanam Ayyangar as something akin to Guru Dronacharya of old who, notwithstanding his personal feelings and opinions, give a proper interpretation of the provision as taken by the framers of this draft. Subject to correction I consider that clause (4) should have been omitted or there should be a substantial modification of this clause. The Fundamental rights are in the very nature of them rights which should never be taken away from the people. According to this clause these Rights can be taken away in a state of emergency. Article 280 says that in a state of emergency the
President can keep the whole of article 25 suspended. Let us see what will be the result of this suspension—what will be the evil effect and what may be the possible good effect of this suspension. The evil effect of this suspension would be that in a state of emergency you can ignore article 11 which deals with untouchability. That is to say we conceive a set of circumstances which would entitle the State or any person to infringe against article 11 and go without any punishment. Any state, or any temple or any authority can infringe article 11 in a state of emergency. Does this House support such a view? Will the House under any circumstances agree to a suspension of the Constitution in so far as article 25 is concerned, and allow people who infringe against it to go with impunity?

Let us take again article 17 where traffic in human beings has been prohibited. Does the House agree that a suspension of the Constitution should take effect so that the people can indulge in traffic in human beings with impunity? I say that such a state of things may actually take place. Remember the last war when actually traffic in human beings was carried on for the exigencies of the war. What is after all the Women's Volunteer Service? What was W.A.C.? Everybody knows for what purpose the Women's Volunteer and Auxiliary Corps were organized and what functions they carried on. Traffic in human beings was actually carried on there, and it was carried on during the war in different cities where women were actually engaged for dancing and other purposes in order to keep up the morale of the troops. Do you, by agreeing to a suspension of article 25, countenance the possibility of traffic in human beings of this kind in a state of emergency which is spoken of during the war? I therefore wish that this last clause—clause (4)—of this article should either be deleted or amended in such a manner that it is not possible to suspend the entire article at any time but it can be suspended under certain most unavoidable circumstances. But, as a matter of fact, I cannot envisage any circumstance which would make it necessary for you to suspend this article in any respect. During a state of emergency what you may want to suspend is article 13 where freedom of speech, freedom of association and all these things have been mentioned. It may be necessary during a period of emergency or when war is actually going on, to restrict the freedom of speech and the freedom of movement and other rights which are mentioned in that article. But that article also contains in every phase of it provisos which empower the State to restrict those rights. So far as that article provisions which are most essential during a state of emergency, is concerned you have already got limitations and restrictions mentioned in the article itself. For that purpose the suspension of article 25 is not necessary. Therefore in my humble opinion, and subject to corrections and explanations which might be given by my honourable Friend Dr. Ambedkar or by any other member in this House, I would submit that it would be better from every point of view to do away with this clause (4) altogether or to amend it in a suitable manner.
Pandit Lakshmi Kanta Maitra (West Bengal: General): Do you suggest that article 280 should also be deleted?

Shri Rohini Kumar Chaudhari: I was referring to article 280 in my speech.

Mr. Vice-President:

You are not called upon to answer that.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words ‘in case of rebellion or invasion’.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal, peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gave them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir I will go into details My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or
hindrance--will also disappear. I cannot understand from where my friend Mr. Tajamul Husaingot this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath: What about article 280?

The Honourable Dr. B. R. Ambedkar: All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin: Even if war is only threatened?

The Honourable Dr. B. R. Ambedkar: Certainly. An emergency does not merely arise when war has taken place--the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned, No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by NO. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matters should be left quite open for the Supreme Court to evolve remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."
The Supreme Court shall have power to issue directions or orders is the nature of the writs of......"
These are quite general and wide terms.

Shri H. V. Kamath: On a point of explanation, Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus:
"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus,....."

The Honourable Dr. B. R. Ambedkar: Yes, the words"directions and orders" are there.

Shri H. V. Kamath: And "writs".

The Honourable Dr. B. R. Ambedkar: Yes.

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. (These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, If I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so.) I, therefore, say that Mr. Kamath need have to ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. (Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called"writs in action". A writ of mandamus, a writ of prohibition, a writ of certiorari, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of mandamus, prohibition or certiorari or anything of the kind. But here, so far as this
article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. (In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a habeas corpus proceedings is whether the arrest is lawful and will not enter into the question--at least that is the practice of the Court--of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued in connection with questions of fact and law. They would certainly be investigated by the Courts.)

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important--an article without which this Constitution would be a nullity--I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance. There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. (These writs to which reference is made in this article are in a sense not new. Habeas corpus exists in our Criminal Procedure Code. The writ of Mandamus finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Consultation. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to habeas corpus can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of habeas corpus and the right of mandamus can be taken away without any difficulty whatsoever by a legislature which
happens to have a major ity and that major ity happens to be a single-minded major ity. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. (We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a major ity.)

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the Fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that. (I prefer the British method of dealing with rights, The British method is a peculiar method, a very real and a very sound method.) British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution.) Sir, with these words I commend this article to the House.

Shri H. V. Kamath: On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part".... or any similar set of words which the legal luminaries may choose?

The Honourable Dr. B. R. Ambedkar: "Shall not be suspended" covers both. It is unnecessary to specify it.

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

The question is:
"That for clause (1) of article 25, the following clause be substituted, namely:

`(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 25, for the words 'Supreme Court' the words "Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath: In view of the remarks made by Dr. Ambedkar of this matter, I do not wish to press it.

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

Mr. Vice-President: Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is:

"That in clause (2) of article 25, for the words `in the nature of the writs of' the words `or writs, including writs in the nature of' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Madhava Rau and Mr. Saadulla.

The question is:

"That for existing clause (3) of article 25, the following clause be substituted:

`(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article."

The amendment was adopted.

Mr. Vice-President: Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate: I do not wish to press it.

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

Mr. Vice-President: Amendment No. 44 of List 1.

The question is:

"That in amendment No. 794 of the List of Amendments, in the proposed clause (3) of article 25, the words `Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted.'
The amendment was negatived.

Mr. Vice-President: Amendment No. 801. The question is:
`That clause (4) of article 25 be deleted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 802 standing in the name of Mr. Karimuddin. The question is:
`That in clause (4) of article 25, for the words `asotherwise provided for by this Constitution' the words `incase of rebellion or invasion and when State of Emergency isproclaimed under Part XI of this Constitution' be substituted."
The amendment was negatived.

Mr. Vice-President: Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:
"That in clause (4) of article 25, for the word `guaranteed' the word `conferred be substituted."
The amendment was negatived.

Mr. Vice-President: I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:
That article 25, as amended, stand part of the Constitution.
The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President: We next come to article 25-A. Amendment No. 108 by Mr. Lari. (The amendment was not moved.)

Article 26

Mr. Vice-President: We then come to article 26. The motion before the House is:
That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed. (Amendment No. 810 was not moved.)

Amendments Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move:
"That in article 26 for the words `guaranteed in' the words `conferred by' be substituted."
This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President: There is an amendment to this amendment. No 48 of List 1. (The amendment was not moved)

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.
Shri T. T. Krishnamachari: How can the article be put to the before the amendment is put to the vote?

Mr. Vice-President: The question is:

"That in article 26 for the words `guaranteed in' the words `conferred by' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was adopted to the Constitution.

Article 27

(Amendments Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President: Amendments Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

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

"That for clause (a) of article 27 the following be substituted:

`(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25 and article 26 may be provided for by legislation by Parliament, and"

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

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

The Honourable Dr. B. R. Ambedkar: I have moved it as amended.

Mr. Vice-President: I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 829 may be moved.

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

"That for the words `to provide for such matters and for prescribing punishment for such acts' the words `for prescribing punishment for the acts referred to in clause(b) of this article' be substituted."

Mr. Vice-President: Amendment No. 48 of List I standing in the name of Mr. Naziruddin Ahmad. Does he wish to move it?

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

"That in amendments Nos. 820 and 822 of the List of amendments, in article 27 and in the proviso to article 27, the words `in this article', wherever they occur, and the words `of this Constitution' in the Explanation be deleted."

Mr. Vice-President: It is very much like a verbal amendment.
Mr. Naziruddin Ahmad: Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President: I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad: No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President: Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

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

"That for the proviso and explanation to article 27, the following be substituted:

`Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

`Explanation.--In this article the expression `law in force' has the same meaning as in article 307 of this Constitution.'"

(Amendments Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President: The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President: I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath: I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article, which is 'to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment
The Honourable Dr. B. R. Ambedkar: I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is the wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there maybe uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath: I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. (Laughter)

The Honourable Dr. B. R. Ambedkar: It is quite possible.

Mr. Vice-President: Mr. Kamath, it may be the otherway.

Shri H. V. Kamath: Sir, he has answered a differentpoint from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to some one else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President: Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath: I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament alone should have the right. You say here Parliament shall have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as maybe, after the commencement of this Constitution, make laws to provide for etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do
you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar: The reason why, for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President: I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:
"That for clause (a) of article 27 the following clause be substituted:
'(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,'"

The amendment was adopted.

Mr. Vice-President: Amendment No. 820.

The question is:
"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 822.

The question is:
"That for the proviso and explanation to article 27, the following be substituted:
'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

'Explanation.--In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.'"

The amendment was adopted.

Mr. Vice-President: The question before the House is:
"That article 27, as amended, stand part of the Constitution."
The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President: The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.
Thursday, the 4th August 1949

Sir, shall I take my turn to speak after Prof. Saksena has moved his amendment?

Mr. President: You may speak now. Prof. Saksena has only one amendment. You may finish your speech first.

Shri H. V. Kamath: All right Sir, thank you very much. While considering this article, the House has to view it from more than one angle. The fundamental question, the question which goes to the root of the matter, is the suspension of all the Fundamental Rights guaranteed under Part III of this constitution. What are Fundamental Rights as envisaged in this Part III? They are, as far as I have understood them rights of the subject or individual as against another individual, and also the rights of the individual as against the State. And we wholly justified in suspending the exercise of these fundamental rights during the period when the Proclamation of Emergency is in operation? I have studied the major constitutions of the world though not as carefully as Dr. Ambedkar might have done, but to my regret I have not come across any such wide and sweeping provision in any of the other constitutions. Turning to the U.K.-there is no need to harp on it overmuch, as it is an unwritten constitution-the other day Dr. Ambedkar or Mr. Krishnamachari referred to DORA (Defence of the Realm Act) which was passed by the British Parliament in 1919 or 1920. It is true that under that Act some of the rights of personal liberty and so on were suspended, but there was a very wholesome provision made in that Act against the abuse of power conferred on the executive. The Emergency Powers Bill of 1920 was condemned in England as the, first coercion Bill since the days of Castlereagh. But even that black Bill-as it was then called contained many safeguard which toned down the harshness and tyranny that might have resulted from the operation of that Act. I shall read some of these safeguards

"Where a proclamation of emergency has been made by His Majesty the occasion thereof shall forthwith be communicated to Parliament and if Parliament is then separated by such adjournment or prorogation as do not expire within five days a proclamation shall be issued for the meeting of Parliament within, five days; and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.

Any regulations so made shall be laid before Parliament as soon as may be, after they are made and shall not continue in force after the expiration of seven days from the time when
they are so laid unless a resolution is passed by both Houses providing for the continuance thereof."

That is so far as England is concerned. In the U.S.A., from which we are product to have borrowed much—there is, provision for the suspension of only one fundamental Right though it is of the highest importance, namely, right to the writ of habeas corpus. 'no U.S.A. constitution provides that this riot shall not be suspended unless in cases of rebellion or invasion, when the public safety may require it. But there are adequate safeguards in that regard, namely, the suspension can be authorised only by Congress, i.e., by the Senate and the House of Representatives combined. But it is for the Supreme Court to say whether conditions existed which would justify the suspension of that right. In the well known Milligan case the Supreme Court stated that martial law cannot arise from a threatened invasion; the necessity must be actual and present and the invasion real. The point I sought to make out yesterday was that there should not merely be an imminent danger of external aggression or internal rebellion. The U.S.A. Constitution provides that. Further, the Supreme Court observed that what is true of invasion is true of rebellion also. It said that in order to meet the constitutional requirements the privilege of the writ of habeas corpus shall not be suspended unless in cases of rebellion or invasion the safety of the State requires it actually—and not simply a constructive necessity, made by a declaration of the legislature—and the court will be the judge. I am sorry to say that though Dr. Ambedkar and others of his way of thinking proudly claim that they have borrowed so much from the U.K. and the U.S.A. some of the safeguards obtaining there have not been incorporated in our Constitution. Even now if it is not too late I would appeal to Dr. Ambedkar and his team of wise men to look this matter closely and see whether some safeguards could not be provided against the abuse of the power vested in the executive by virtue of this article 280.

Then, Sir, coming to details, the article refers to fundamental rights guaranteed by article 13. The House will see in Part III that the fundamental rights are of various kinds; they are not of a uniform character. They are different in nature and in conception and they comprise various matters which are not interconnected with each other. Article 11 for instance...

Mr. President: Does the honourable Member propose to go through the whole part, section by section, and sub-clause by sub-clause?

Shri H. V. Kamath: No, no: in so far only as they are relevant to any argument.

Mr. President: I think the Members are familiar with the fundamental rights and any general remarks the honourable Member may wish to make he may do so without going into details of each such fundamental right.

Shri H V. Kamath: I shall abide by your ruling. I am referring to such articles as are relevant to my amendments. The amendment moved today is amendment No. 1, the new one where I
have said that the enforcement "of the rights" should be substituted by "such of the rights conferred by Part III of the Constitution as may be specified in that order."

The point of my amendment is that there are certain rights guaranteed by article 13 which cannot be abrogated in any eventuality, not even in case of the gravest emergency. There are some rights given by article 13 which cannot be abridged, abrogated or annulled, e.g., article 11 abolishing untouchability. It is a very vital right. Do you mean to say that when there is an emergency we can permit the observance of these taboos and will not take any action those who enforce untouchability in any form on anyone else? Then there are the cultural rights and educational rights, but as I have just remarked, I do not wish to transgress your ruling and go into details. I shall only refer to untouchability, educational and cultural rights. If the House will study them closely and Dr. Ambedkar will give thought to the matter, he will find that there are certain rights which cannot be suspended in any case, however grave the state of emergency may be. Therefore, I have sought to amend this article in this fashion—that the order must specify those rights which are sought to be annulled or abridged or curtailed or suspended.

The other two amendments are merely verbal and I do not wish to speak on them. I leave them to the wisdom of the Drafting Committee to which mine is no match at all.

Amendment No. 3030 of the printed List of Amendments is a vital amendment, which is to the effect that the President's order declaring that the fundamental rights or any of them shall remain suspended—that order shall be subject to the approval of Parliament. We have already provided for that in articles 275 and 278. In 278 it is laid down that any proclamation made shall be laid before Parliament for its approval. In article 275, clause (2) (b) and (c), it is specifically laid down that the proclamation shall be laid before Parliament for its approval. Does this mean that once this proclamation is approved by Parliament the President is free to do by order as he likes? If that be so, it is a pernicious article. The suspension of fundamental rights is not an ordinary matter. It is a very grave matter. I will go so far as to say that it is even graver than the gravest emergency with which the State may be confronted. Do we in that eventuality empower the President to declare by order that these fundamental rights, conferred by article 13 shall be suspended? I hope that will not be done. I hope that is not the intention of this House. In whatever form this article may have been brought before the House today. I hope that the House will not adopt this in a hurry: on the contrary, that it will give it mature consideration. I trust that the House will consider this matter in greater detail and will amend it suitably so as to provide more safeguards. I only wish through my amendment to see that any order made by the President in this regard—namely with regard to the suspension of, fundamental rights shall, similarly to an emergency Proclamation, be laid before Parliament and if Parliament approves, well and good: if Parliament rejects it, then that order should not have any force.
As I have stated, though we hope and pray that the President may be a wise man, there is no guarantee in the Constitution that a philosopher whom my honourable Friend Mr. Brajeshwar Prasad wants to be in the highest office of the State will be elected. Human failings and human imperfections there will be. If the President decrees that all the fundamental rights are suspended, there is under the proposed article no provision for Parliament considering the matter. My Friend, Prof. Saksena, has tabled a little more radical amendment. I for my part, will be satisfied that, if the President passes an order before Parliament is convened, that order is laid soon before Parliament for it to debate on and approve or reject it. We are pleading, Sir, in season and out of season, that we are passing through a crisis. I am sure that the Italian Constituent Assembly, when it met two years ago soon after World War II was over, was faced with no less grave a crisis. There was danger of upheaval within the State and Communist were rising against the State. Italy was a border State between the Russian bloc and the Western bloc and it was wedged in between the two, and it, as thus subjected to various stresses and strains. Even then, the Italian Constituent Assembly which adopted the Constitution in 1947 did not go so far as we are going today. What did they do? They were faced with a very grave crisis, the Communist near-insurrection within the State: and as we all read in the papers the other day, there were free fights within the Chamber of Deputies in the Italian Assembly when the Atlantic Pact was ratified. The Constituent Assembly adopted, however, an article, with a view to meeting the grave crisis confronting the State, but they provided adequate safeguards, and the relevant article in their Constitution reads thus: "When in extraordinary cases of necessity and urgency, the Government oil its own responsibility adopts provisional measures having the force of law, it must on the same day" (in the U.K. the Act provides that Parliament must be summoned in five days) "present it for conversion into law by the Chamber which, if dissolved, should be convoked for the purpose and assemble within five days. The decrees lose effect as on the date of issue if not converted into law within 60 days of their publication. The Chambers may, notwithstanding, regulate by law political relationships arising from decrees not converted into law."

Again the power is left to the Chamber.

I have placed before the House the constitutions of U.K., U.S.A. and Italy. I would like to place other constitutions also before the House but I do not propose to do so. I do not find in any constitution a similar provision of such sweeping character, as the provision in this chapter.

There is one more point and it is this. We have already provided in article 278 that even otherwise than on the receipt of a report from the Governor a proclamation can be issued by the President. I suppose under article 275 if India as a whole or even any part thereof is threatened by invasion, external aggression or internal disturbances, the President is
empowered to proclaim a state of emergency. If the President issues a Proclamation of
Emergency without receiving
a report from the Governor and takes action subsequent thereto, annulling the fundamental
rights, there is one grave danger. The Governor or the ruler of a State or other authorities
within the State will feel that they have been bypassed or ignored and a very serious conflict
may arise. The authorities within the State—the ruler, Governor, his ministers or other
administrative apparatus in the State—God forbid they should,—may refuse to co-operate with
the Central Government or President and refuse to execute or conform to the decrees issued
by him as a sequel to or in pursuance of the Proclamation of Emergency. This is an
eventuality or situation which, I am sure none of us desires to bring about. Therefore, bearing
all these considerations in mind, and taking serious notice of these possibilities and dangers, I
feel that article 280, moved as amendment 3028 of the List of Amendments, (which has been
couched in rather unfortunate language) is to my mind fraught with grave consequences not
merely to the liberties of the individual but also to the powers of the constituent units. I once
again urge, in all humility and with all the emphasis at my command, that this House should
deliberate very coolly upon this article and provide safeguards against the abuse of power by
the executive which is very likely,—nay, I am certain will: result-from the operation of the
article if it is passed as brought before the House today.

Prof Shibban Lai Saksena: Sir, I beg to move:
“That in amendment No. 3028 of the List of Amendments, in the proposed article 280 for the
words 'the President may by order declare' the words 'The Parliament may by law provide'
and for the words 'the order', occurring at the end, the words 'that law' be substituted.”

My amendment if accepted will read as follows

"Where a Proclamation of Emergency is in operation. the Parliament may by law provide that
the right to move any court for the enforcement of the rights conferred by Part III of this
Constitution and all proceedings pending in any court for the enforcement of any right so
conferred shall remain suspended for the period during which the proclamation is in operation
or for such shorter period as may be specified in that law."

I would have very much wished that this article was completely deleted. It is even more far-
reaching than the preceding article to which I voiced my opposition. That article has not
taken away the liberties guaranteed under article 13, but this is of much greater import. In fact
it nullifies the subject's right of constitutional liberties, which have been provided in the
Constitution. I would invite the attention of the House to article 25 which says

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the
rights conferred by this Part is guaranteed."

The Supreme Court can always be approached whenever any of these rights is infringed. The
second clause is even more important. It says:
"The Supreme Court shall have power to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

Clause (3) says
"Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article."

Clause (4) says
"The rights guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution."

Here we are invading the powers of the Supreme Court in regard to the liberties of the subject, not only the liberties guaranteed under article 13 but all the rights plus the right of the subject to obtain a writ of habeas corpus. When I read this article I was transported back to the glorious revolution of 1942, when India waged her war of independence and we were thrown into dungeons on charges which were fantastic 'such as waging war against the King, etc. Even then the British Government did not suspend the power of the High Courts to issue writs of habeas corpus which is guaranteed by Section 491 of Criminal Procedure Code. I remember numerous detenus sent applications under the habeas corpus section and they had to go to a High Court and were heard there. But in this free India we are providing for the suspension of this most fundamental article and section 491 of the Criminal Procedure Code will not have any effect if the article is adopted Supposing a war lasts for ten years; is nobody to have the right to approach the Supreme Court with an application for a writ of habeas corpus during that whole period ? This gives the bureaucracy the right to arrest any person without any cause whatsoever. One cannot even go to the Supreme Court for redress. I do not think that in any emergency this right of the Supreme Court to do justice should be taken away. After all, the Supreme Court which will be created under this Constitution will be presided over by a Chief Justice who will be nominated by the President on the advice of the executive and the other judges also will be eminent men appointed more or less in the same way. Cannot such gentlemen be trusted in an emergency ? I cannot conceive how we can trust the executive which can ride rough--shod over the liberty of the citizens. I can understand the provision of safeguards for an emergency, but not the complete suppression of the liberty of the citizen. I do not know of any parallel for this anywhere in the constitutions of the world. I, therefore, suggest strongly that this article should be removed from the Constitution; but if that be not possible, I would suggest that my amendment which gives power to the Parliament to make any law which it considers necessary for an emergency may be accepted. The President may order the issue of a proclamation and the executive will be supported by Parliament. I do not
see what harm is there in giving the Parliament the right to pass laws for emergencies. Why should the President alone have the power which in effect means power for the executive behind him? The Parliament must have the right to say what sort of action should be, taken in an emergency. I do not think that this article is at all necessary. But if it is considered necessary, my amendment must be accepted and Parliament should be empowered to safeguard our freedom even in emergencies. Let, it not be said that we distrusted our sovereign Parliament and gave power to one single individual. My Friend Mr. Kamath quoted many articles to show how foolish it is to suspend the entire Chapter XIII. I am surprised to see that the Drafting Committee considered this necessary. There are some articles in this Chapter that have nothing to do with an emergency. Why should they be suspended? If this article comes into operation, discrimination can also be practised. And that would go against the spirit of the Fundamental Rights we have conferred on the citizens, such as non-discrimination between citizen and citizen, untouchability and other things. I do not think that this article has been drafted with proper care and with a proper understanding of the situation. I do not know what defence Dr. Ambedkar can have for this provision. In replying to my amendment in the previous article, he said that power had been given to all the States legislatures also to make laws in violation of article 13. That is something which can be understood. I wanted that Parliament should have this power and be said that the States also should have this power. But here the President only is given this power to issue orders and the question of States does not arise. I only want that Parliament by law should do this. Why do you want the President to be an autocrat? If my simple amendment is not accepted and the fundamental rights of the people safeguarded, people will not have much respect for this Constituent Assembly; for the Constitution made by it, because this article cuts at the root of our freedom and should not be in the Constitution. It should at least be amended as I have suggested.

Mr. President: Pandit Kunzru has given notice of an amendment to article 280. That is No. 211 in the printed Supplementary List.

Mr. Tajamul Hussain (Bihar: Muslim): What about my amendment, Sir?

Mr. President: What is it?

Mr. Tajamul Hussain: It is for deletion.

Mr. President: That is only negative. You can vote against the motion.

Shri H. V. Kamath: Yesterday, Sir, a motion for the deletion of an article was allowed by you.

Mr. President: Because it was moved by the Drafting Committee itself.

Shri H. V. Kamath: I suppose the rules must be the same for all.

Mr. President: The Drafting Committee has the right to ask for a deletion. In the case of Members, such a motion will not come in as an amendment. Do you wish to move your amendment, Dr. Kunzru?
"That in amendment No. 3028 of the List of Amendments, for the proposed article 280 the following be substituted:-

'280. Suspension of the enforcement of certain fundamental rights during Emergencies. Where a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move any court for the enforcement of any of the rights conferred by articles 13, 14, 15, 16 and 24 of this Constitution and all proceedings pending in any court for the enforcement of any such rights shall remain suspended for the period during which the Proclamation is in operation—or for such period as may be specified in the order.'"

The object of this amendment is a very simple one. The amendment that Dr. Ambedkar has moved covers all the fundamental rights. What I want is to limit the operation of article 280 to certain rights only. It is not necessary that, when a Proclamation of Emergency has been issued by the President, all the fundamental rights should be suspended. Take for instance, the right of a man, to whatever caste he belongs, to stay in a hotel or go to a restaurant or draw water from a public well. Is this right too to be suspended while a Proclamation of Emergency is in force? All that is desired is that, so far as the right to free speech or the right to form associations or the right to assemble peaceably are concerned, it should not be enforceable through the courts of the land while a Proclamation of Emergency is in force. I am not entirely of the same opinion as Dr. Ambedkar in this matter, I share the opinion of his critics; but I each* understand his desire that in times of serious trouble, the State should not be tampered by any formalities in the formidable task of restoring law and order. It is however not necessary for the purpose of quelling internal disturbance or meeting external aggression that we should deprive the people of all their fundamental rights. All that is necessary is that notwithstanding the rights conferred by this Constitution on the people, such of them is, if allowed to be exercised in an unrestricted manner, will create difficulties in the way of re-establishing peace, may not be legally enforced. I think this limited purpose will be gained if the amendment that I have moved is accepted. It does not seem to me to be at an unnecessary or desirable that the scope of the article should be wider than this. However serious the situation may be, the State will be armed with ample powers to bring it fully under control if my amendment is accepted. The entire suspension of the fundamental rights is neither necessary in any case nor desirable. Indeed, it would be deplorable. I hope, therefore, that my amendment which gives the executive all the powers that it need possess in troubled times, will be acceptable to the House.

Shri Nahabir Tyagi (United Provinces : General) : Sir, in view of the fact that the House has already passed article 279 as desired by the Drafting Committee, I think, the passing of 280 is rather too serious. The House has already PC.Emitted the future governments to override
important fundamental rights in the case of an emergency. Now, to go further and to allow the
State to go beyond the powers of the Supreme
Court is, in my opinion, too much. I agree with my Friends, Mr. Shibban Lal and Mr.
Kamath, in their protests against this power being given to the future governments. An
emergency has to be declared when there is danger to the peace or tranquility of the country
or to the existence of the government. But let us also understand that a Government is always
poised as against the people it governs. So, while giving a Constitution to our country, we
must not lose sight of the fact that the rights and privileges of the people being poised against
the authority of the State, it is for us to see that the stress is not lop-sided. While assigning
political rights, we should strike a balance between the governed and the governors. No
doubt, in a democratic State, the government is necessarily formed in accordance with the
will of the people, but even then, once a State is organised, the role of the people becomes
passive. It is the people who are acted upon by the State. Now, for instance take our own case.
It is the Members of the Constituent Assembly today who compose the State. In fact, all the
State authority of India is in the hands of the Constituent Assembly (Legislative). We are
wielding power. On whom are we wielding it? We are wielding it on the people whom we
claim to represent. Have our electors any hand in the administration? Have they any say?
No. Let us not be under the impression that we would last for ever. It is always the case that
when one occupies an office of responsibility, one thinks that that office to be effective should
be armed with more and more powers, because one is too self-confident and therefore one
honestly feels that one will not misuse the powers given to one's office, but the one must not
also forget that that office is not for the one to occupy for ever. Another may occupy it
tomorrow and misuse the power. So, while giving more powers to the State, we as the
representatives of the people and also as the judges of the rights of the people, must bear in
mind the fact that the state might also change bands. And that the future governments might
not be so considerate towards the rights of the people, and that they might also misuse these
powers. The only guarantee that the people have against the high-handedness of their State is
the Court. And so if in our enthusiasm we empower the State to go beyond the judiciary and
override it, there will remain nothing but the law of the jungle. There will be nothing to
control either the government or the people. Sir, my experience is only from India, while
many of my honourable Friends, who have read books on foreign countries, and seen their
politics too, have a different picture of democracy in their minds. I value their experience and
knowledge, but to me it seems that their opinions are mostly borrowed. I would appeal to
them to study the march of democracy in India. Are they satisfied with the manner in which
we are running our democracy? Sir, my opinion is based on what I have seen with my own
eyes. The present Government here and the governments in various provinces can claim to be
known as the peoples' governments. Such people's governments are spread over the whole of
India today; and also in such territories as used to be. Princes’ States, the government is no doubt of the people but even then the fact remains that in practice the Government stands in opposition to its people. I do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the election were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. We have not got the right to recall the Government. People after once voting for the Government have no right of recall or to censure it unless there is a fresh election. So whatever rights we give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all. Their only privilege is that they have a free access to the Judiciary. People, who feel that their privileges or their rights, fundamental or otherwise are violated, can have resort to a court of law, and that is the only guarantee, that is the only safety under which the people may remain contented. If the people were to be told that the State is supreme in India, and that the Supreme Court is liable to be over-ridden, they will lose confidence of their security and existence. With an Independent judiciary, it is not only the people who draw a sense of security, against the tyranny of the State, but even an individual feels confident about himself, whenever his rights and privileges come in clash with the vagaries of society. If the society is hard on an individual, even that single individual must have the guarantee, must have the security to stand alone and to live alone, and he must have the guarantee that no wrong will come on him and that be will not be dealt with unfairly. That guarantee is there, only because he is confident the Court is Supreme. Even if the whole State pounces on him he has one guarantee, as a citizen of the land, to approach the Supreme Court for protection and relief. Therefore, Sir, I submit that this article will have an alarming reaction. It will shake an individual's faith that law will be justly exercised. It is through this faith that individuals cling to society. Devoid of this sense of security the society will diffuse and disperse like particles of sand. I submit, Sir, that the principle involved in the article under discussion is very pernicious. I for one cannot vote for it. Even if the whole House agrees to arm the Government with such powers even in the case of an emergency, I for one wish to bring it on record that I am opposed to this, now and ever. (Hear, hear). I think the rights of an individual to move the judiciary should not be taken away in any circumstances. And if we were to agree to the draft that has come before us then, -Sir, I do not know, my logic may be wrong, it is for the lawyers to say, -but I feel that no fundamental rights can remain protected and there would be no security of life or property or even of political rights and liberty. And having in view
the poor training of political parties in their practise of democracy, I am inclined to profess that we should not be surprised if individuals are ordered to be hanged for flimsy reasons of their not seeing eye to eye with the powers that be. All this will be done in the name of emergency. May be that Shri Alladi Krishnaswami Ayyar might find a way for the condemned to smuggle him into the court, but I do not see there shall remain a chance, because all fundamental rights or rights of habeas corpus shall stand suspended altogether. After seeing the people's government run for the past two years I am afraid it will take a long time, yet, for our representatives to know how to run the administration in the interest of the people. It is, indeed, wrong to say that even our government, however popular it may be, is really the people's government. Neither people have a voice in it nor are we able to interpret their wishes into action. We were elected long ago to fight with the British, and now by indirect election we have come here; people have not given us their sanction to make a Constitution for them. It is the British who gave us that sanction, and with that borrowed sanction of the foreigners we are constituting for the people. And this Constitution is going to be inflicted on the people without their expressed consent or legal sanction. Therefore to legislate or to constitute in a manner whereby the people's rights are disregarded, will be rather unfair and bad in law and in constitution. I therefore submit, Sir, that the Drafting Committee might please review their opinions and see if they could still bring some change to the effect that the supremacy of the judiciary is not interfered within the manner in which it is proposed in this article. Sir, people's government will still take time to come and it is not by vote that we can make' the people's government really so. It is by our aptitude and method of administration and behaviour that the Government may become really people's government. It is not that the ministers belong to the people, but the government belongs to the people. It is the policy of the Government that should belong to the people, that that Government will be the people's government. I submit, Sir, the people have not yet received any power. And so long as the people are not rich enough in their rights to enforce their policies on the Government, the Government howsoever popular it be, can never be the people's government, And I am afraid if things go on at this pace, the tendency of the government, being towards arrogance, it will soon become tyrannous for people, and time would come when people will make their own government, because after all it is a democracy. People's voice cannot be subdued for long and people will exercise their free voice at last. But the day they choose to exercise their rights and act freely, they will at once have their own government and when. their own government comes and they begin to act there must crop up a party in opposition. But as I have seen we are not yet trained in democracy. Any opposition here even in this House is not seen, is not considered or treated with that much of generosity as in foreign countries opposite parties are treated. I submit that in India the generosity, the intellectual
honesty and the strength of conviction has ,, still to come, and so long as we are not trained to treat our opponents with respect and honour and so long as party bitterness exists in the politics of the country, I am afraid many rich and precious lives, the lives of many a learned and the patriots will be in danger if this pernicious article is allowed to creep into this Constitution; because as soon as there is war, the parties in power will try to exterminate their opponents. We must also remember the present century is a century of emergencies; there will be emergency at home, and emergency abroad all over the world; and these emergencies will be intermittent; they may repeat themselves very often; the future governments of most of the countries are going to be governments ruling under the emergency declarations. If times are really so 'disturby', if times are so unstable, then our country will have emergency proclamations for most of the time; with too much of power and with little fear of re-election, the government must tend to become tyrannous and beastly. The opposite party will have no safety. For God's sake, therefore, let not the individuals, let not your opponents be deprived of their basic right of approaching the Supreme Court for the protection of their life, honour and liberty. I therefore submit, Sir, that this article may not be accepted and the Drafting Committee might be pleased to reconsider, and in the interests of democracy, in the interests of our future freedom, they will please revise it and amend it in such a manner that the future Governments might not be able to misuse it in a manner. With these words, I oppose this article.

Prof. K. T. Shah (Bihar: General): Mr. President, coming to this grand finale and the crowning glory of this chapter of reaction and retrogression, I fear one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter. On the one hand, there is a desire, it seems to me, to arm the executive, arm the Centre, arm the Government against the legislature against the units, and even against the people on the score of possible threat to internal peace, a possible danger of war or external aggression, or even any local disturbance. Looking at all the provisions of this Chapter particularly, and scrutinising the powers that have been given in almost every article, it seems to me, Sir, that the name only of Liberty or Democracy will remain under this Constitution. Every one of these articles,—and ultimately this particular article,—suspension of the fundamental rights and the right of approach to the Supreme Court for the enforcement of those rights, merely on the ground that there is an emergency declared by the Head of the State, is, to my mind, a denial of any right of freedom or civil liberty of any kind that has been conferred in a previous chapter.

It seems to me, incidentally, that this article is inconsistent in spirit, if not in letter, with the articles previously passed, which require that while all other powers and functions may be arrogated to himself by the President, or may be, delegated to some other authority named by
him, the powers and authority of the High Courts will not be 'interfered with. In this article, though directly the powers of the High Courts or of the Supreme Court or any court are not interfered with, inasmuch as the right of the individual to move the Supreme Court as guaranteed in article 25 will remain in suspension, if this article is accepted, it would follow that even the powers of the High Court, the Supreme Court or any court would be suspended. For, the courts cannot go to the individual aggrieved by such acts of the Executive, and say, "bring your troubles to us and we shall redress them". The Courts must wait till any individual aggrieved comes to them, or raises the question of the Fundamental Rights under this Constitution. If that is not permitted, as this article seeks to do, then, I am afraid, the right of position of the court itself is put under suspension.

That, surely, should not have been the intention, and that should not be the purpose of a provision like this in the Constitution. The moment you introduce a provision like this in our Constitution, the moment you provide that the right to move the Supreme Court which has been guaranteed by a previous article shall be suspended by an order of the President, by an order of the Executive; that moment you declare that your entire Constitution is of no effect.

Dr. Ambedkar takes credit, and I think he is fully entitled to it, that he has changed six into half a dozen; that is to say, instead of saying that the suspension shall remain operative during the period of the Proclamation 'And some time after', he now provides that the suspension shall remain in operation during, the period of Proclamation, or for a shorter period. To that extent, I repeat his amendment deserves congratulation. But the essence remains; that is to say, the suspension of the right to move the Courts of justice for an aggrieved citizen the only right guaranteed by the Constitution, who is denied his Fundamental Rights as conferred by the Constitution itself, remains untouched, even if the period of its duration may be shortened in the manner that Dr. Am has done.

So long, therefore, as this provision remains in the manner in which it has now been put forward, so long as it is the power of the Executive only to make such an order, and suspend the fundamental rights in effect, so long, I think, this provision would be and must be objectionable.

As an amendment here has suggested, if you really feel that some extraordinary measures are necessary, when an emergency is so grave that you cannot wait for the ordinary individual's rights to be enforceable, and the legal technicality of procedure to take effect, by all means act; but in such acting take the Legislature into your confidence, and make the Legislature enact the necessary law. Why should you assume that the Legislature should be so unresponsive, so callous, so indifferent and unaware of the real situation of the country, that it will not agree to such legislation as may be necessary for preserving peace and tranquillity inside the country, and guarding the country against any danger of external aggression? After all, you have the example of Britain during the, last two World wars
that she has fought in this century. Then under the so-called Reference of the Realm Acts, again and again, certain rights what we call Fundamental Rights had to be suspended or denied; and nobody protested against any such legislation being passed. Why do you assume that the Parliament will be so unaware of the situation, or unwilling to pass the necessary legislation, that you must arm the Executive, the President on his own authority so to say, to pass such an Act by Executive Order, and go to the extent of stopping or suspending even the one guaranteed Fundamental Right of justice in the courts of law?

I think this is an excess of power being given to the President, I think it is an excess, shall I say, of reaction against which the Draftsmen cannot be warned too strongly, cannot be warned too often. I would, therefore, suggest that if at all such a clause is necessary—for my part, I do not think it is necessary—it should be included as part of the powers of the Legislature. If at all you think that it is not possible to rely upon Parliament or upon the people’s good sense, let the Executive take action face the consequences without an express provision in the Constitution to that effect. But it would be better if you make at least the legislature to pass a law giving these powers by a special provision in such an Act.

The difference between an executive order of the kind contemplated in this amendment and an Act of Parliament is quite obvious. Whereas in an executive order the President alone will act, or perhaps one or two of his Ministers will advise him and he will act on that advice without any further discussion, in an Act of Parliament, it would be unavoidable that the fullest searchlight will be thrown upon every provision and every word of the provisions. Not only the necessity for such special provisions would be laid bare, but also the limitations and restrictions that may be deemed necessary by Parliament to impose, before executive action of this kind can be allowed to take effect, and the conditions under which it takes effect. I, therefore suggest that instead of concentrating all effective power and authority and influence in the hands of the Executive, It would be better if at least the Central Parliament—I am not suggesting the local Legislature—of the country as a whole should have the right to discuss these matters, and pass the necessary legislation. If you have confidence if you really believe if,’ the collective wisdom of the representatives of the people greater than your own wisdom as the Executive, then, I think there is no alternative but to accept the amendment which suggests that this power should be given by an Act of Parliament and not by Executive Order the President.

The Honourable Dr. B. R. Ambedkar : May I say a word? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to
provide the Drafting Committee opportunity to consider the matter. We might take up the, other articles.

Mr. President: This article may be held over.

Then we shall go to article 247.

Article 247

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

"That for the heading to the articles commencing with article 247, the following heading be substituted

'General'

Mr. President: I do not suppose any discussion of that is required,

The question is

"That for the heading to the articles commencing with article 247, the following heading be substituted :--

'General'

The motion was adopted.

Mr. President: Amendment No. 2832.

Mr. Naziruddin. Ahmaad: Sir, I beg to move:

"That in article 247, the words 'unless the context otherwise requires.' be deleted."

I submit that these words are not only unnecessary but somewhat misleading. In article 247 there are certain important clauses. Clause (a) defines "Finance Commission." I submit that Finance Commission is a precise expression. It has only one meaning and it has been used throughout the Constitution in that specific clear meaning. In clause (b) 'State' has been clearly defined that it does not include a State for the time being specified in Part II of the First Schedule. 'State' has been clearly defined in the appropriate places and a State as specified in Part (I has also been specifically defined without the possibility of any misunderstanding. So State here is clearly understood. In clause (c) it is said that 'references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule." I submit part II of the First Schedule and Part IV are clear and therefore these explanations in clauses (a), (b) and (c) are absolutely precise and incapable of being misunderstood even with reference to any context. Therefore the words unless the context otherwise requires' are absolutely unnecessary. I shall ask the honourable Member to point out any place where the context can possibly 'otherwise require'. In the Penal Code the definitions are very precise and therefore the misleading condition 'unless the context otherwise requires' is entirely absurd. The addition of these words will make the reader or Constitutionalist think several times before giving these words
the meaning which is here definitely given. Therefore in order to remove any uncertainty or
doubt in the minds of a reader, these words should be omitted. That is the purpose of my
amendment.

(Amendments Nos. 2833 to 2836 were not moved.)

Mr. President: Does anyone wish to speak?

The honourable Dr. B. R. Ambedkar: All that I need say is that those words are included by
way of abundant caution'. It may be they may be unnecessary, but it may be they may be
found necessary. We want to retain those words.

Mr. President: The question is

"That in article 247, the words 'unless the context otherwise requires,' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 247 stand part of the Constitution."

The motion was adopted. Article 247 was added to the Constitution.

Article 248

Mr. President: Then we take up article 248,

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

"That for article 248, the following articles be substituted 248. Taxes not to be imposed save
by authority of Law. No tax shall be levied or collected except by authority of law.

'248A. Consolidated Fund (1)Subject to the provisions of this Chapter with respect to the
assignment of the whole or part of the net proceeds of certain taxes and duties to States, all
revenues or public moneys raised or received by the Government of India shall form one
Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public
moneys raised or received by the Government of a State shall form one Consolidated Fund to
be entitled "the Consolidated Fund of the State".

(2)No moneys out of the Consolidated Fund of India or of a State shall be appropriated except
in accordance with, law and for the purposes and in the manner provided in this
Constitution."

These amendments are only consequential to what we have already accepted previously.

Mr. President: Amendment No. 196?

Shri T. T. Krishnamachari (Madras: General): Pandit Kunzru who gave notice of amendment
No. 196 is not in the Chamber at present. There is another amendment, No. 198, which the
Drafting Committee feel may be accepted and in order that it may be accepted, this
amendment No. 196 has to be moved and accepted. If I am permitted to move it. I will do so.

Mr. President: Yes,

Shri T. T. Krishnamachari : Mr. President, Sir, I move amendment No. 196 in the printed
Supplementary List, standing in the name of Pandit Hirday Nath Kunzru: "That in amendment No. 195 above, in clause (1) of the proposed new article 248-A alter the words 'Subject to the provisions of' the words, figures and letter 'article 248-B of this Constitution and to the provisions of' be inserted."

I have already explained, Sir, that there is another amendment standing in the name of Pandit Kunzru which the Drafting Committee felt it would be wise to accept, and that is also a matter about which I will explain subsequently. And therefore in order to enable that amendment to be accepted, this amendment is necessary.

Mr. President: Amendment No. 197 standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena: Mr. President, Sir, I beg to move:

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A the words 'Subject to the provisions of this Chapter with respect to the assignment of whole or part of the net proceeds of certain taxes and duties to States.' be deleted."

Sir, at an early stage I gave my wholehearted approval to the new scheme of financial provisions, where Consolidated Funds and other such things have been introduced. But in this amendment of mine, I have only suggested that in the article 248-A as proposed by Dr. Ambedkar, the words, "subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States’ may be removed. What will be the effect? At present, what is contemplated is that several taxes should be allotted directly to the States, even though they may be collected under the laws framed by the Government of India. But what I want is that every tax or duty or whatever money is realised from the people of the country under laws framed by the Government of India they should first come to the treasury of the Government of India and thereafter any assignment should be made and money transferred. It should not be lawful for any State to appropriate to itself any revenue collected on the authority of the laws passed by the Government of India. Money should not go to the States treasury without first coming to the Central Government. I want that all the money should be pooled together and then from there it should be distributed. That gives the Centre some idea of the total collection, and also, bow it has been distributed. Otherwise they will probably not know how much money has come under a particular tax. My amendment is a simple one, though it involves a change in procedure. But I think all will agree that all finance should first come to the Central pool and then get distributed. I hope this simple amendment will be accepted by the House.

Mr. President: Does any one wish to say anything about the amendments or the original article moved by Dr. Ambedkar?

(No Member rose.)

Then I will put the amendment first to vote. The first amendment is the one standing in the name of Pandit Kunzru.
The question is:
That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, alter the words 'Subject to the provisions of' the words figures and letter 'article 248-B of this Constitution and to the provisions of be inserted.'
The amendment was adopted.
Mr. President: The question is:
"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, the words Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, be deleted."
The amendment was negatived. Mr. President: Then I put the amendment moved by Dr. Ambedkar. The question is:"That for article 248, the following articles be substituted: - "248. Taxes not to be imposed save by authority of law. No tax shall be levied or collected except by authority of law.
248-A. Fund. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one consolidated Fund to be entitled "the Consolidated Fund of India," and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."
(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."
I put this article, as amended by amendment No. 196, to vote. The motion was adopted.
Articles 248 and 248-A, as amended, were added to the Constitution.
Article 248-B
Mr. President: Then we come to article 248-B, amendment No. 198, in the name of Pandit Kunzru
Pandit Hidayat Nath Kunzru: Sir, I move:
"That after the proposed new article 248-A the following new article 248-B be added
'248-B. Contingency Fund. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "The Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by Parliament pending authorisation of such expenditure by Parliament by law under article 95 or article 96 of the Constitution."
(2) The legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled the Contingency Fund of the State into which shall be paid from time to time such sums as may be determined by such law and the said Fund shall be placed at the disposal of the Governor to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by the legislature of the State pending authorisation of such expenditure by the legislature of a State under article 180 or article 181 of this Constitution."

Article 248-A requires that all moneys received for the Government of India shall be paid into a fund called the Consolidated Fund of India, and that no amount shall be taken out of this Consolidated Fund without express parliamentary authority. Now it has been found from time to time that the expenditure voted by Parliament for a department is not enough; it has to be exceeded for some reason or other. If the expenditure is incurred without parliamentary authorisation it will be illegal, But if the executive awaits the sanction of the legislature before incurring the expenditure the department concerned may be put to great inconvenience. Besides, the expenditure may be urgently required and the inability of Government to make provision for it may be detrimental to the public interest. It is therefore necessary that some means should be found of enabling Government to meet unforeseen expenditure not authorised by Parliament. I have proposed that for this purpose a Contingency Fund to be called the "Contingency Fund of India" should be established. Parliament may fix the size of the Contingency Fund, but when money has been put into this Fund, the executive can legally draw upon it to meet such expenditure is has not been authorised by Parliament but is necessary. Of course this Contingency Fund will not absolve the executive of the duty of bringing all excess expenditure to the notice of the House for its sanction. But in any case it will be A limited fund and if it is exhausted the executive will have to come to the legislature for sanction to replenish it. In either case, therefore, there will be full parliamentary control over expenditure, a control that does not exist at the present time. We know that in the year 1948-49 expenditure amounting to several crores was incurred without any authority from the legislature. We came to know of the large amount that had been spent in addition to that voted by the legislature long after die expenditure had been incurred. The expenditure was of such a magnitude as to attract the attention of the House and compel some members to draw the pointed attention of the executive and the legislature to this matter. In order that such irregularities may not occur in future, it is necessary to establish a fund of the kind that I have proposed. Such a fund exists in Great Britain and we shall be wise in following that example in order to provide for unforeseen expenditure. The object of article 248-A and 248-B taken together is that not a pie should be spent without the sanction of Parliament. I hope my proposal will be acceptable to the House.
Prof. Shibban Lal Saksena: Sir, I move

"That in the proposed new article 248-B for the words 'such law' and the words advanced by him' wherever they occur, the word law and the words 'used by him for advancing money' be substituted respectively."

The words 'such sums as may be determined by such law' do not make any meaning and we should say 'by law. I further suggest that for the words to be advanced by him' it is better to say 'to be used by him for advancing money'.

Then Sir, in clause (2) it is said:

"The Legislature of a State may by law establish a Contingency Fund in the nature an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be determined by such law (it should be 'law' and not 'such law) and the said Fund shall be placed at the disposal of the Governor to be advanced by him (I say, these words are not generally used in Constitutions. I would suggest 'by the Governor, to be used by him for advancing money') for the purposes of meeting unforeseen expenditure which has not been authorised by the Legislature of the State pending authorisation of such expenditure by the Legislature of a State under article 180 or article 181 of Constitution." The amendments though verbal are, I think, important in a clause dealing with the finances of the country. So far as the, points made by the amendment are concerned, I agree with them. I think a Contingency Fund is necessary and without it our provisions in regard to finances of the country will not be complete. Therefore, this article should be passed and amended by my amendment. I hope the Drafting Committee will look into it and try to see that it is corrected.

Shri T. T. Krishnamachari: The Drafting Committee is accepting it.

Mr. President: There is an amendment by Prof. Saksena. Shri T. T. Krishnamachari: We are accepting the clause as put forward by Pandit Kunzru.

Mr. President: I shall then put Prof. Saksena's amendment first.

Mr. President: The question is:

"That in amendment No. 198 above, in the proposed new article 248-B, for the words such law' and the words advanced by him'. wherever they occur, the word 'law' and the words 'used by him for advancing money' be substituted respectively."

The amendment was negatived.

Mr. president: The question is:

"That proposed article 248-B stand part of the Constitution." The motion was adopted. New article 248-B was added to the Constitution.

Article 249

Mr. President: We now come to article 249.

But before that, there is an amendment No. 200-regarding the heading, by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sit, I move:
"That above article 249, the following sub-heading be inserted: -
'Distribution of Revenues between the Union and the States'."

Mr. President: Does any one wish to say anything about it?

Shri Brajeshwar Prasad: About what?

Mr. President: About amendment No. 200 viz.,

"That the above article 249, the following sub-heading be inserted: -
'Distribution of Revenues between the Union and the States'."

Shri Brajeshwar Prasad: I would like to speak on article 249.

Mr. President: We are not taking up the article-only the heading. I take it that it is accepted.

The question is:

"That above article 249, the following sub-heading be inserted: -
'Distribution of Revenues between the Union and the States'."

The motion was adopted.

Mr. President: Now we take up article 249. There are some

amendments of which notice has been given. They may be found at page 296 of the second

volume of amendments.

(Amendments Nos. 2837 to 2840 were not moved.)

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

"That in clause (2) of article 249, the words 'in that year' be deleted."

May I also move Nos. 69 and 70?

Mr. President: Yes.

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

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are

imposed under any law made by Parliament' be inserted."

Sir, I also move:

That in clause (2) of article 249, for the words 'Revenues of India' the words 'Consolidated

Fund of India' be substituted." (Amendment No. 68 was not moved.)

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

Pandit Hriday Nath Kunzru: Is the discussion on this article to proceed now?

Mr. President: Yes, in five Minutes more we shall have at least one speech today.

Shri Brajeshwar Prasad: Sir, I am opposed to the general principles of article 249. I am not in

favour of the existing or the proposed system of distribution of revenues between the Union

and the States. I am in favour of two propositions, which I want to lay down before the

House. The first proposition is, that all duties and taxes should be levied, collected and

appropriated by the Government of India. The provinces should have no power of levying
taxes, or collecting it, or of appropriating it. There should be no financial autonomy in this

sphere because of a very valid political reason, which I shall mention afterwards.
The second principle which I want to lay down is that there should be an independent authority at the Centre to allocate funds between the different units in accordance with the needs of each province. That independent authority, Sir, may either be the President or the Parliament or a Finance Commission. I am not in favour of the existing system because, Sir, it is opposed to the basic concept of nationalism. The meaning of nationalism, Sir, is that every inch of the territory is as much mine as it is yours.

The second meaning of nationalism is that the total wealth of the country belongs to each and every citizen in an equal measure. The present system of distribution of revenue leads to inequality between man and man, between one province and another. Therefore, I am opposed to the present system of distribution of revenue. I am in favour of scrapping the whole thing.

Having due regard to the facts of our political life, I would suggest that the President should allocate funds. I want to see that day when the question of allocation of funds would not arise as there would be no Provinces left. Financial autonomy is dangerous, because it will pave the way for the establishment of independent States. This is the last straw on the camel's back. Already ample, powers have been vested in the provinces and this is the only method by which we can keep the provinces under the subordination, direction and control of the Government of India. If a big province like Bombay or Madras (I am sorry to say this) is vested with financial autonomy, what will be the result? Tomorrow under the stress of some political movement these two provinces might declare their independence. Therefore I want that provincial ministers should come over here before the Government of India and place their case for allocation of funds, so that they may remain under the control of the Government of India.

Mr. President: A suggestion has been made that we might not sit on Monday next on account of Sarvan Purnima. We cannot afford to lose one day. I therefore suggest that we sit on that day from 3 P.m. to 7 P.m. that afternoon.

The Assembly then adjourned till Nine of the Clock on Friday the 5th August 1949.
Saturday, the 20th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

Shri Biswanath Das (Orissa: General): Mr. Vice-President, Sir, I stand to oppose article 277 as unnecessary in this Constitution. Sir, the emergency powers incorporated in this Constitution are more or less adapted on the lines of Section 93 of the Government of India Act, 1935, with certain modifications necessary from their point of view for the purpose. An analysis of the clauses reveals that it is classified under three heads, firstly, provisions relating to war emergencies, secondly, provisions relating to domestic violence and thirdly, provisions relating to any such violence and acts of violence which the President considers imminent and dangerous. A Government functioning under any constitution has always the right to take all necessary powers to deal with the situation has always the right to take all necessary powers to deal with the situation in cases of external aggression or war emergencies. To that extent, any restriction of the powers and privileges of the ordinary citizens may be allowed under the Constitution. I do not believe that any honourable Member of this House seriously object to that aspect of the question. It would be ridiculous to call it democracy if a party or a provincial Government goes on in its own way to take a course action which is contradictory and conflicting with the best interests of the Union or its safety. Under these circumstances, any power reserved for the Centre in war time and war emergencies is welcome.

Sir, we come to the question of domestic violence and any acts of violence which according to the President are considered imminent and dangerous. These are different questions and have to be considered from a different point of view. As I have stated on many occasions, I repeat that we are contemplating party Government in a system of democracy. Party Government necessarily means different parties. In a federation with a Centre and Units there is no denying the fact that different political parties may be in charge, of the administration in the different units or even in the Centre. Under these circumstances, there is a possibility of misuse of these powers. Speaking personally, I have experience of this misuse. Recollecting my past experience of Madras and the Justice Party, I have seen how the District Boards and Municipalities were mercilessly superseded without rhyme or reason because the Government had the power kept to itself to supersede these municipalities. What has been done in Madras by a certain party with regard to district boards and municipalities may be repeated by the Centre. Therefore, I plead with the Honourable Members of this House that no more power
need be left with the Centre or with the Governors who are practically the agents of the Centre to deal with any ad situation.

Any power that you reserve to yourself for war emergency is quite welcome. We do not oppose it. I concede the fact that the provisions contained in articles 275 to 277 and the rest are not as drastic as they are in the small Section 93 of the Government of India- Act. I do realise that the framers of the Constitution (513)have not arrogated to the Governor all the executive and legislative powers that he have under Section 93. I also further concede the fact that you do not wipe off the High Court if and when it suits you. All that is conceded. Why should you have article as 277 which is not even contemplated under Section 93 ? Section 93 does not suspend the allocation of grants from the Centre. Speaking from past experience, let me state that even in the war years (during the second world war), the provinces were getting their financial allocation from the Centre, even in the provinces where we had government under Section 93. I also feel that a responsible Government functioning at the Centre cannot afford to suspend the grants that are given to the provinces to be utilised for nation building activities unless it wants to bury itself. There is also the possibility of a totalitarian party coming into power at the Centre. Under these circumstances, I do not see any reason why more powers should be reserved in the Centre under the Constitution for taking necessary action in such cases. Sir, this is giving autonomy with vengeance to the provinces. Therefore, I plead with the honourable Members of this House as also with the Drafting Committee that a reconsideration of this article is called for.

Again, I have to state that the reports, both of the Central Committee and the Provincial Committee, have not recommended such powers as are proposed to be given to the provinces under article 277. I do not see any reason why the Drafting Committee should have taken this course without any authority from this House or anything of the like contained or contemplated in the reports of the Provincial or Central Constitution Committees. With the proclamation of emergency under article 275, autonomy in the provinces is being suppressed and the powers practically vested in the provincial executive lapses more or less: into the Centre in the sense that the province has to be governed under the directions of the President. That being the position, why should you take a further step in refusing even the grants, suspending or reducing the grants which are allocated to the provinces not by the President, nor by the legislature, but by a non-political body that you yourself have constituted ? Assuming for a minute that the grants are suspended, activities, connected with it for nation-building or administrative activities are suspended to that extent. What do you do with the money? Allocations have been made on a regular defined basis; each province gets its share while this money lies idle with- out being used for its legitimate purpose. Why should you create this discrimination among the provinces ? If power is taken under sub-clauses (b) and
(c) as I have already stated for domestic violence or such acts of violence as the President considers imminent and dangerous in the province or provinces, why should you punish the people of the province as different from the Government which may be responsible for mishandling or for encouraging these unlawful and violent activities? It may be enough if the provincial executive is suspended; it may be enough if the provincial legislature is also suspended. But, why should the people be punished for an act for which they are not in the least responsible? Under these circumstances, I find neither mason nor justice in the article has been placed before the House for approval. I have no option but to oppose it.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I rise to support this article with all the emphasis that I command. My Friend Mr. Bishwnath Das raised the question of democracy. He is shedding tears at the prospect of democracy being liquidated when there is a great emergency in this country. I am definitely of opinion that the issue involved is not democracy but the security of the country and I feel that this article is a necessary corollary of article 275. There must be a political reservoir of power somewhere at the Centre to deal and to meet with a situation that may arise in the country when there is a grave emergency in this country. The whole idea is unsupportable that any Government at the Centre will starve the provinces and medical facilities, Educational facilities or other nation-building departments will come to an end. Mr. Biswanath Das is under the impression that provincial autonomy or democracy will survive in this country if there is a totalitarian party at the Centre. If a totalitarian Government at the Centre emerges, there will be no provincial autonomy left. I am of opinion that we have already given too much powers to the provinces and at a time when there is an emergency the whole Constitution must be changed into a unitary constitution. It is only when there is a unitary State in this country that there can be progress. The main issue is not democracy but security of the country and the economic well-being of the people of India. We want progress of the country. Therefore, I support this article.

Shri Kuladhar Chaliha (Assam: General): Sir, I consider this a very drastic provision. It will have the effect of completely dislocating a province. In fact I think Assam will be the first casualty. If you have the power to suspend the Constitution, then how will the provinces function? Under the pretext of this provision probably you will take all the finances to the Centre and we will have nothing left to the provinces. What will happen under this provision? On a certain date the Communists of Burma right come into the Eastern frontier. Then under that pretext an emergency will be declared and you will take all the powers. If the entire State is on revolt against the Centre, then of course this emergency may be declared; but unless there is definition of what is an emergency and under what circumstances these provisions could be applied, it will be causing something which is not expected. I submit that this provision is put in a manner which does not show, all the consequences; if this is applied, it
will lead to the greatest hardship, Mr. Brajeshwar Prasad is of course a very straight and balanced man and always thinks of the stability of the country and thinks that the Constitution may be jeopardised if powers are left to provinces, and he further thinks all the good qualities are in the Centre and they are all devoid of good-the qualities in the provinces. He is anxious to concentrate all power in the President. If we go on like this the provinces will be left with nothing. You are only introducing dyarchy like the old dyarchy and everything will be in the Centre and provinces will be mere nonentities: If you want to have this provision, then you have to define what is an emergency and under what circumstances they can be applied; otherwise this word 'emergency' is so vague that even if a small Nag tribe attacks Assam you will declare emergency, or if there is Communist disturbance at Dibrugarh you may declare an emergency. I therefore request Dr Ambedkar to define the word 'emergency' and under what circumstance this, suspension or taking the taxes can be taken by the Centre. Provinces are of course going to be mere puppets in the hands of the Centre and I trust the gentlemen in charge of the drafting of the Constitution will think over the matter and try to define what an emergency is and under what circumstances this can be applied.

Mr. Vice-President (Shri V.. T. Krishnamachari): I think Shrimati Durga Bai has moved for closure. I am sure the House will agree to that.

Honourable Members: No. No.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, Article 277 empowers the President to effect alterations which are necessary in the existing arrangements with regard to the distribution of revenues between the units and the Centre. This power is conceded to the President only for the period of emergency and in my opinion this is a necessary, sequel to article 275 which has already been agreed to by this House. This House has already agreed that during a period of emergency the President ought to be clothed with overriding 'powers to safeguard 'the interest and peace of the country. What are those special powers worth, may I ask, if the President is denied the authority of pleading with the units to readjust the allocation of finances between the unit and the Centre? A grave emergency arises when there is a war or a threat even to the Constitution of this country and no sacrifice is too great to successfully overcome this period of emergency. An honourable Member vehemently opposed this article 177. She has conceded that the President could ask the units to stop expenditure on development schemes of the units, but in the same breath she said that the Centre should not have power to readjust the allocation of finances or make the necessary adjustments with regard to existing finances between the units and the Centre. It should not be forgotten that first of all the President means the President acting on the advice of his Cabinet; secondly we have given this power to President only for the period of emergency. This power will not exceed in any
case the financial year and lastly, it is subject again to the intervention of the Parliament at any stage even during this period if anything went wrong.

So I do not understand why some of the honourable Members should take objection to the giving of these powers, under the circumstances that have already been explained by Dr. Ambedkar, and also by other Members who have supported this article. Under these circumstances, it is extraordinarily unjust to suppose that this article provides for financial autocracy of the Centre. Certainly it should not be considered so because we have given these powers for a period which we call an emergency period, and also we have limited its period only to the financial year in any case, and also we have given the power to Parliament to intervene at any time if anything went wrong. Therefore, Sir, I support the article 277 as amended by Dr. Ambedkar.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. Vice-President, Sir, I also rise to support article 277 as it is framed and amended by Dr. Ambedkar's amendment. With all respect to Pandit Kunzru, I oppose his amendment. In fact, I think Mr. Chaliha has not read article 275. An emergency comes into operation only in case of war, or internal disorder or external aggression. In such circumstances, extraordinary powers have to be given to the Centre. The suspicion, I believe, is born out of the feeling that the Centre is something different from the Provinces. In fact, the period of emergency lasts only for two months, and it continues only if Parliament approves of the emergency powers within one month of the date of the meeting of Parliament; if it is not approved, then the state of emergency lapses. And also, the period for which the financial powers are given under Section 277 cannot be longer than one year because the budget is framed from year to year. During the period of emergency, the security and safety of the entire country must be the sole responsibility of the Centre and extraordinary powers have to be given to the Centre. Otherwise, during the period of grave emergency, if Quarrels for adjustment of financial contributions are allowed to be going on between the Provinces and the Centre, the safety of India will be jeopardised; and if India survives every province survives and every citizen survives, not otherwise. The safety of the country must be the predominant factor and these powers as are given under article 277 are absolutely essential, and therefore, I support this article.

The Honourable Shri Satyanarayan Sinha (Bihar: General): The question may now be put.

Mr. Vice-President: I have promised Mr. Sarwate that I would allow him to speak. I will put the question later.

Mr. Naziruddin Ahmad (West Bengal: Muslim): There are also several other speakers; you may give them a little time each, say two minutes at least.

Shri V. S. Sarwate (Madhya Bharat): Mr. Vice-President, I thank you for giving me this opportunity to express my feelings. However, I shall not be long. I think that Sections 276, 277 and 227 are to be read together. When an emergency arises, the Government at the Centre
would have to function in two departments, the Executive and the Legislative. By article 227, powers have been given to the Centre to legislate on matters which come within the purview of the State legislature. By article 276 (b) power has been given to the Central Government to take upon itself executive functions in respect of such matters. Now, when the Central Government takes upon itself central duties which otherwise would have been done or executed by the Provinces or States, then it is but natural and necessary that it should be provided with the necessary funds. Therefore, it follows that article 277 is a repercussion in the financial sphere, of the powers which have been given by articles 227 and 276 to which the House has already agreed. For instance, if the Centre takes over to itself the functions of the police, in case of emergency in a State, it will require certain more financial expenditure. That has been provided by article 277. If this provision is not made, then it would be something like providing a car and not providing the petrol for running the car. Therefore, I say that these three articles are closely knit together and you away the financial provisions from the rest. With these remarks I support this proposition.

The Honourable Shri Satyanarayan Sinha: Sir, the question may be put now.

Shri H. V. Kamath (C. P. & Berar: General): Sir, Mr. B. Das has been trying to catch your dye since yesterday.

Mr. Naziruddin Ahmad: Sir, the request to put the question is very premature,

Mr. Vice-President: I do not know about that. I have asked Mr. B. Das to speak.

Shri B ' Das (Orissa: General): Sir, Part XI of the Draft Constitution provides the emergency provisions. If you look at pages 129 to 131, you find articles 275 and 276 where you have the original intentions of the Union Powers Committee and the Union Constitution Committee of which Pandit Jawaharlal Nehru was the Chairman. The Drafting Committee seem to have had some inspiration and it has not been explained how it got this inspiration about the financial provisions in article 277, and the subsequent article 278,-additional articles introduced by them. Sir, it is said that India is for world peace and is following in the footsteps of the Father of the Nation. But anyone who reads article 277 can see for himself, and if it is passed it would show that India is preparing to starve all the resources of the Provinces for aggressive Wars against other nations. What does article 277 require ? It Would give that power to the President-this new Frankenstein that has been created by the Draft Constitution, for the President of India is not a democratic President, he is to be something like the South American Presidents who will exercise all emergency powers-all financial powers and even starve the provinces. Articles 249 to 259 have been discussed- threadbare on behalf of those under-fed provinces of Assam, Orissa, Bihar and Bengal which are starved for no fault of theirs, and if article 277 is allowed to be passed on the floor of the House, woe betide these poor provinces.
Sir, if I compare the attitude of mind of the authors of the Drafting Committee and that of the predecessor government here,-the former British rulers, I find that the latter did not take away the resources of the provinces during the last great war. They went on, it is true, taxing, they went on extending their taxable capacity by putting extra income-tax, corporation-tax, excess profit-tax and so many other taxes. They brought in higher export duties and so on of course, that was taxing the people of the Provinces; but at no stage did the Centre encroach upon the resources of the Provinces. Today we are asked to hand over that power of confiscating the provincial revenues to the President. We are told that an elected Cabinet would be there and the Cabinet would advise the President. We have an elected Finance Minister in the present Government as Member of this House. Why is it that he has not justified his attitude as to why he advised or his Ministry advised the Dr" Committee to encroach or expropriate or usurp the resources of the provinces in time of emergency- ? Sir, this is a challenge to the democratic spirit of the 'future Parliament. Do members' of the Drafting Committee think that the Parliament will not be willing to hand over such absolute power to the dent or the Cabinet when an emergency arises ? It did in other countries. Why should the Indian Parliament be have differently ? I may say the future Parliamentarians will be as good, bad or indifferent as we all are at present.

I feel grateful that my honourable Friend Pandit Hirday Nath Kunzru has raised a debate on the important point of the President's power in regard to usurpation of provincial financial resources. It is like capital levy. it is like taking away by force what others possess. During the last Great War, the Nazis took away iron and metals from the householders not only in their own country but in conquered territories. Why should the Government of India, like the Nazis, expropriate the revenues assigned to the States in an emergency? I can not understand it at all. Is it charity which the Centre has been giving to provinces, that it would take away that part of the revenue in times of emergency? I find the provinces derive substantial shares of revenue from income-tax and central taxes:

- Orissa .. 24 per cent.
- Assam .. 22 per cent.
- Bihar .. 20 per cent.
- Bengal .. 19 per cent.
- U. P. .. 18 per cent.
Bombay .. 19 per cent.

and Madras which has the largest revenue of 55.94 crores has 15 per cent. from the sources of income-tax. Surely this is not a new allocation that we have done today. The present Government is not responsible for this assignment except for certain modifications by an Ordinance in 1974 whereby when Pakistan came into existence West Bengal which originally had 20 per cent. of income-tax now will have to be content with 15 per cent.

I think, Sir, that such an emergency power is not necessary. Such an usurpation will not be allowed in any democracy, not to speak of India. I listened most attentively to the speech of my honourable Friend Mr. Alladi Krishnaswami Iyer and I felt that his was a legal argument and there was no substance in it to justify the granting of such power to the President, or the Cabinet. Everybody knows that the Government of India are now angling to collect all the sales tax on behalf of the provinces and to distribute them. If article 277 will be in the brain of the Finance Minister and his Ministry, they will try to collect all resources, so that provinces will have little which they will collect, and in time of emergency the Centre will apply article 277 and thereby take away whatever provincial resources are collected by the Centre. Who says that the Cabinet of the time in time of emergency will be more democratic than it is today? The sympathy which the Finance Minister and the Finance Ministry have shown over the discussions on the Federal Finances on the floor of this sovereign House shows that provinces will get scant justice, not to speak of scant courtesy, in times of emergency. Suppose we have a Finance Minister who gets fluttered over every little incident, who becomes extra-ambitious. During the Second World War, the Government of India through their Executive Councillors became extra-ambitious and took away by means of Ordinances all our resources - lock, stock and barrel. Who can similarly doubt the power of the Central Government to pass Ordinances as ambitiously or as ignorantly as the British Government did? They imposed "control" prices and supplied all they required for themselves and the Allies and the result is that India is in the grip of inflation and prices are now 365 per cent. of the pre-war level, whereas in America they are somewhere about 200 per cent., and in England somewhere about 100 per cent. That is the effect of the "control" prices and controlled purchases.
Let me hope there will be no war, no emergency. I am for peace, in India and peace in the world. But supposing an emergency unfortunately arises, who suffers? The people. The people have to suffer and supply goods at controlled prices as they did between 1939 and 1947. What does inflation mean? It means that the provincial governments and the people can not make both ends meet, and if a new Finance Minister is extra-ambitious he may begin taking all the resources of the provinces by asking the President to exercise article 277. How much is that - something like 60 per cent. of the income tax; 40 per cent. of the excise duties and 40 per cent. of the jute duty in certain provinces, it comes to something like Rs. 60 crores now.

If this sovereign House had accepted the Sarkar Committee Report the provinces would have got about 60 per cent. of the proceeds of all sources of income-tax (which comes to somewhere about 150 crores of rupees) and about 60 per cent. of the share of excise duties which would have meant very large sums. If you will kindly permit me, I shall illustrate my point with reference to Orissa. The total revenue of Orissa is Rs.6.82 crores of which about 3 crores is derived from the Centre as extraordinary grants. That means Orissa's net revenue is only Rs. 3.82 crores. The standard of living of people in Orissa is very, very low.

Mr. Vice-President: Are all these details necessary? Will the honourable Member please conclude his speech?

Shri B. Das: I would very much like to. But I am only expressing the feelings of the lacerated hearts of provinces which have to be deprived of even the moiety which till now they were getting from the Centre as share of central taxes. I want to quote certain figures to illustrate the standards of our administrations.

Bombay spends five annas and one pie on Education; UP spends 6.5 annas; Bihar spends 3.11 annas; Assam spends 6.2 annas, while Orissa spends 4.1 annas. If you take the question of public health and medicine about which we talk always the figures are more discouraging. C. P. spends 2.1 annas per capita; Assam spends 3.1 annas. Orissa spends much less.

This is the condition of the provinces and today we are asked to be a party to article 277 whereby even the low standard of living in the provinces will
become lower still. I am very much perturbed; I am very much disturbed. I think democracy will not lead to autocracy which will create Frankensteins and South American Presidents who can do anything. I have studied this Constitution carefully. I find the President can any moment become an autocrat: he can dismiss his Cabinet and dissolve the Legislature. It is no use framing a Utopian Constitution which any President can upset; and who knows that the Gandites will rule India all along!

I feel very sad at heart - I fully support the observations of my honourable friend Pandit Kunzru and I have fully sympathy with the lady Members from Bengal, Shrimati Renuka Ray, who spoke so cogently on behalf of her province. Assam has spoken and Orissa has been speaking for the second time. I, therefore, feel that Dr. Ambedkar will see his way to withdraw article 277 or redraft it to suit the wishes of the aggrieved provinces.

Mr. Vice President: The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, I have given as close an attention as it is possible to give to the amendment moved by my honourable friend Pandit Kunzru, and I am sorry to say that I do not see eye to eye with him, because I feel that in large measure his amendment seems to be quite unnecessary.

Let us begin by having an idea as to what financial relations between the Centre and the provinces are normally going to be. I think it is clear from the articles which have already been passed that the provinces will be drawing upon the Centre, in the normal course of things.

(1) proceeds of income-tax under article 251;

(2) a share of the central excise duties under article 253; and

(3) certain grants and subventions under article 255.
I am not speaking of the jute duty because it stands on a separate footing and has been statutorily guaranteed.

Let us also have an idea as to what the article as proposed by me proposes to do. What the article proposes to do is this, that it should be open to the President when an emergency has been proclaimed to have the power to reallocate the proceeds of the income-tax, the excise duties and the grants which the Centre would be making under the provisions of article 255. The article as proposed by me, gives the President discretion to modify the allocations under these three heads. That is the position of the draft article as presented to the House by the Drafting Committee.

Now, what does my Friend Pandit Kunzru propose to do by his amendment? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to which I have made reference, that is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Centre out of the proceeds of the excise duty, and the grants made by the Centre under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Centre was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Centre.

Pandit Hirday Nath Kunzru (United Provinces: General): I never said any such thing.

The Honourable Dr. B. R. Ambedkar: Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not, by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Centre under article 255.

Pandit Hirday Nath Kunzru: The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statue passed by Parliament that power can not be taken away from Parliament but it does not belong to the President. But so far as income tax is concerned, the Government of India Act 1935, envisaged the transfer of
the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason; the inference drawn by my honourable Friend is completely unjustified.

**The Honourable Dr. B. R. Ambedkar:** I am entitled to draw the most natural inference from the amendment as tabled.

**Pandit Hriday Nath Kunzru:** The honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

**The Honourable Dr. B. R. Ambedkar:** I am sorry the honourable member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the honourable Member wants to alter the provisions of articles 253 and 255. It may be an afterthought but I can not deal with after thoughts; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

**Pandit Hriday Nath Kunzru:** The honourable Member is utterly unjustified.

**The Honourable Dr. B. R. Ambedkar:** That is the honourable Member's opinion. My reading is that something new is being put forward now.

**Pandit Hriday Nath Kunzru:** The honourable Member is misrepresenting me and knows that he is doing so.

**The Honourable Dr. B. R. Ambedkar:** The honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my honourable friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find ? If I again read his
amendment correctly, he is not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income tax. All that he is doing is that if the President was to make a modification of the allocation of the income tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in his amendment. In other words, the only difference between the draft clause as put by me and the amendment of my honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner which he suggests.

My reply to that is this; Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax? Where is the ground for believing that the President will not even adopt the suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man; he will know that to a very considerable extent the proceeds of the income-tax do form part of the revenues of the provinces; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Centre as it is necessary to keep the provinces going.

Therefore in my judgement there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.
As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the provinces, surely many representatives in Parliament who would be drawn from the provinces would be in a position to set matters right. I, therefore, think that the original arrangement should be maintained by virtue of the fact that it is the more elastic than what is suggested by my honourable friend Pandit Kunzru.

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

"That article 277 be renumbered as clause (1) of article 277 and to the said article as so renumbered the following clause be added:-

(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament."

The amendment was adopted.

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

"That with reference to amendment No. 3007 of the List of Amendments and Amendment No.13 of List I (Fourth Week) of Amendments to Amendments for article 277 the following article be substituted:-

277 (1) While a Proclamation of Emergency is in operation the Union may notwithstanding any thing contained in article 251 of this Constitution retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and
thereafter in each year of the said prescribed period a sum less than

amount, being the same

amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction:

Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor shall be give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article 'prescribed' means prescribed by the President by Order ":

The amendment was negatived.

Mr. Vice-President: The question is :

"That article 277 as amended, stand part of the Constitution".

The motion was adopted.

Article 277, as amended, was added to the Constitution.

New Article 279-A

Mr. Vice-President: Pandit Thakur Das Bhargava may move his amendment No. 73 to add a new article 279-A. There is an amendment of his also to article 280 in exactly the same terms as amendment No.73. I wish to know from him whether he will move this as a new article or propose it as an amendment to article 280.

Pandit Thakur Das Bhargava (East Punjab:General): Sir, I beg to move:
"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments after article 279, the following new article be added:-

'279-A, Any law made or any executive action taken under article 279 in derogation."

Mr. Naziruddin Ahmad: On a point of order, Mr. Vice-President. This should be moved as an amendment to article 280.

Mr. Vice-President: But he wants now to move it as a new article after article 279.

Mr. Naziruddin Ahmad: Then, article 280 also may be moved and the whole thing considered together.

Pandit Thakur Das Bhargava: I have no objection to that course being adopted.

Mr. Vice-President: I think Pandit Bhargava might move his amendment No.74 after article 280 is moved. Instead of moving amendment No.73, he may move amendment No.74 after Dr. Ambedkar moves article 280.

Article 280

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

"That for article 280, the following article be substituted:-

'280. (1) Where a proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III article 15 of the Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the
emergencies. The rights so mentioned shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extended to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament."

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may be emergency, it may be quite possible to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the Proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that parliament will be free to take such action as it likes.

Mr. Vice-President: Now Pandit Thakur Das Bhargava may move amendment No. 74.

Shri H.V. Kamath: There are other amendments in List I of Third Week.

Mr. Vice-President: I am coming to all that.

Shri H.V. Kamath: List I may be taken up first.
Pandit Thakur Das Bhargava: With your permission I propose to move amendment No.73 for new article 279-A as well as amendment No.74 to article 280.

Mr. Naziruddin Ahmad: This proposed new article is not on the agenda for today.

Mr. Vice President: Pandit Thakur Das Bhargava has to move amendment No.74. That is what was agreed to.

Pandit Thakur Das Bhargava: The point is that if new article 279-A is agreed to, I would have no objection to drop the amendment to article 280.

Mr. Vice-President: You agreed sometime ago that you would move the amendment for the new article 279-A as an amendment to article 280.

Pandit Thakur Das Bhargava: My submission is that I have given notice of two amendments, Nos.73 and 74. The substance of both is the same. But, while one seeks to substitute article 280, the other seeks to add article 279-A. At the same time, the objective of both the amendments, is quite separate. Therefore, you may allow me to move both and put both - in fact all the amendments to the House.

Mr. Vice President: Very well, you may speak.

Pandit Thakur Das Bhargava: Sir, I move:

"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added:—

279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall ensure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force ".

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments for the proposed article 280, the following be substituted:-
"280. Any law made or executive action taken under article 279 ensure for such period only as is considered necessary by the State as defined in part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force”.

"That in amendment No. 15 of List I(Fourth Week) of Amendments to Amendments in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets under article 275(1) of the Constitution be inserted”.

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end:-

 'for a period during which the Proclamation is in force or for such shorter period as may be specified'".

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments after clause (2) of the proposed article 280, the following new clause be added :-

(2A) Any such order may be revoked or varied by a subsequent order".

That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following new clause be added at the end:-

 'and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of
that period resolutions approving the order have been passed by both Houses of Parliament."

Sir, I would beg of the House to consider article 279 which we have already passed and the present article 280 together and in the light of what we have passed under article 279, consider the effect of article 280 along with article 279.

So far as article 279 goes, we have so far agreed as follows :-

"While the Proclamation of Emergency is in operation nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take".

When we have passed this article 279, it follows that as a matter of fact we have given very extensive powers to the executive, in so far as the restrictions which have been imposed by provisos to article 13 in regard to fundamental rights have been practically taken away. While the Proclamation of an emergency is in operation, the executive can change any law and make any law with regard to fundamental rights, of freedom of speech etc., and those restrictions which have been placed by the statute under Section 13 as such power will no longer avail, which means that during the period of emergency the Executive will be armed almost with autocratic powers.

Now, if you will kindly look at 280 it is half not so drastic as article 279. In regard to article 280 as it now emerges from the Drafting Committee the prick of the clause has been taken away. If you will kindly see the original section 280 then the House will come to the conclusion that this section as originally drafted was much more drastic than it is at present. The old article 280 as originally found in the Draft Constitution ran thus :-

"Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order ".

So that according to article 280 all the rights spoken of in article 25 would have remained suspended. Not only the right to move and the guarantee of the right to move the Supreme Court for implementing these rights was taken away, but the rights themselves were taken away. Now, there is a great difference between the guarantee of moving the Supreme Court being taken away and the rights guaranteed under III being taken away. If the rights were not taken away then the position is very safe and the Supreme Court and other citizens can not go against the declared law of the country but only the right to move the Supreme Court by appropriate proceedings is taken away.

The laws remain as they are, but if the right to change the law is taken away, as it has been taken away by article 279 a position is created in which the Executive becomes too autocratic. They can do whatever they like, they can pass any law if they can make the Parliament to enact it, so that article 279 is much more drastic in its effect than article 280. If you will kindly see article 279, it appears that during the period of emergency you authorise the executive to take any action untrammelled by the provisions of article 279 and similarly, you authorise the legislature to pass any law, a legislature as it is defined in article 7, without those safeguards and restrictions which the Constitution has in its wisdom taken the trouble to enact in respect of article 13, so that the result will be that if any action is taken or the law is passed during that period, the action and the law will be good and will inure for all time. Article 279 does not say that the action taken or the law passed will only be applicable for the period of emergency or within six months after that and article 279 is totally silent upon that. Therefore, any law enacted during this period will be a good law unless it is repealed or avoided. My amendment seeks to restrict this period and I want that any law passed during this period or any executive action taken during this period under the provisions of article 279 may only inure for the period of the emergency or such shorter period as the State enacting it or the executive taking the action thinks it necessary.

Therefore independently, of what we do in regard to article 280, it is absolutely necessary that you agree to the enactment of article 279-A. Otherwise, the effect will be that the powers taken under an emergency and action taken and law enacted during that period will inure for all time unless
it is repealed or avoided. If you accept the amendment, then automatically as soon as the emergency passes away and normal condition return, the effect of any such action or law would be taken away and the action and the law will be automatically repealed and avoided.

In regard to article 280 I would beg of the House to consider its full implication before it considers this article. The wording "emergency" has not been defined anywhere and one of my honourable friends suggested to Dr. Ambedkar to define the word "emergency" and I told Dr. Ambedkar that he will certainly perform a miracle if he succeeded in defining the word "emergency" as the word "emergency" is so fluid and is of such a nature, that you can not possibly define it. It depends upon a particular executive to say whether there an emergency has arisen and an ordinary emergency may soon unnerve the executive of any State. A small bubble may at any time develop into a glacier and even the biggest seeming mountain of truth may just dwindle into a mere scrap of sand. Nobody can foresee or can say beforehand how the actual trouble will develop. Therefore, a panicky cabinet will declare an emergency very soon, whereas a strong and sturdy Cabinet will not declare in any such situation that an emergency has arisen. It will depend upon the nerve and spine of the Cabinet as to how they deal with this question. Therefore, I think that we should not visualise that the present Cabinet shall remain for all time or there will not be cabinets in the future which will perhaps not take the view which our present Cabinet is expected to take. Let us therefore be cautious and see that we arm the executive with such powers as are necessary, so that the liberties of the people are not jeopardized by a panicky Cabinet. Therefore it is up to us to see that we enact provisions which do not arm the Executive with too much power.

After all is said and done, Parliament is the alternate authority. If we can take away some of the powers which are sought to be given by this article 280 and invest the Parliament with those powers, it would be doing the right thing. It is in that view that I have proposed the other amendments to this article.

The first amendment in this connection to which I would draw the attention of the House is No.75. So far as this amendment is concerned, I think it is only a clarification. I have pointed out that a Proclamation of
Emergency can only be issued under article 275(1). Under article 278 it is not contemplated that any proclamation of emergency can be issued. I only want to make it quite clear that it is only under this article that the power can be taken.

In regard to amendment No.76, I beg to submit that as I read the amendment of Dr. Ambedkar, I can understand that the proclamation or order may apply to the whole of India or it may apply to a part of India. In so far as the question of time is concerned, if you keep the article as it is and do not incorporate the amendment contained in No.76, in clause (2) it would mean that every order shall remain in force for the full time of its duration in the whole of India or part of India. If you add these words, it would be possible that in certain parts the order may be for a shorter period, and in the rest of India, it may be for the full period. Unless you add this, the object which Dr. Ambedkar has in view will not be fulfilled.

In regard to amendments 77 and 78, I do not want to take much of the time of the House because as a matter of fact, these two amendments have been taken from the original clause which we have already passed about the Proclamation of Emergency. If you kindly refer to article 275, you will see that these two are already there. I want these two safeguards which appear in article 275 in regard to Proclamation of Emergency may also appear in regard to this order also. After all, the first and foremost effect upon the citizens of a proclamation of emergency is that it takes away their fundamental rights. They are affected very vitally. When I understand that an emergency may be as elastic as the proverbial foot of the Chancellor, then my difficulty becomes all the greater. Unless and until Parliament confirms the particular order taking away the guarantee of enforcing the fundamental rights, we will not be safe in this country and no citizen would be safe with his liberty, unless this provision is enacted.

If you look at the present position in regard to articles 279 and 280 you will find, as a matter of fact, this provision of article 280 is not so necessary as it appears to be. One of my amendments is that instead of article 280, we may substitute article 279-A. I wish to take the House with me in coming to the conclusion that the enactment of article 280 is not so necessary as it appears at first sight. So far as the fundamental rights are concerned, article
13 is the principal article. If you take away article 13, very little remains in the Fundamental Rights over which a person should feel enthused or to feel concerned. Article 13 being practically taken away by article 279, what is there to worry any person about fundamental rights? In regard to the personal liberty of the subject and the protection of his rights, article 15 is there. The House will kindly excuse me if I dilate a bit on this provision.

Now, Sir, according to the fundamental rights as they exist today, this article 15 is the greatest blot on our Constitution. By article 15, whatever we had given in article 13 we have taken away. If the adjective law has been sought to be corrected by enacting article 13, and safeguards against the misuse of the powers given under article 13 were provided by the use of the word "reasonable " before the word "restrictions", they are all washed away by article 15, because in regard to procedure we have not put in any restriction whatsoever on the powers of the legislature. Under article 15, the legislature is at perfect liberty to pass any law it likes. It can take away all the safeguards that exist today. Under article 15 any legislature is competent to enact that no accused shall be defended by counsel. Any legislature, under article 15 as it exists today, is competent to enact that as a matter of fact, the present provisions relating to arrest, relating to remands and bail, production of defence, appeal etc. can all be abrogated. Under article 15, any special courts with special powers and procedure can be created and the liberty of the subject can be reduced to zero. This is the present position. Unless and until we see that article 15 is righted, there is nothing which you possess can be taken away by article 280. If you take full powers under article 13, what else is there for which one should feel sorry for the deprivation? If you kindly look at the fundamental rights, you will be astonished to see there is no other such fundamental right which could possibly be taken away by enacting this article 280. In the first place, if you look at those rights one by one, you will come to the conclusions that article 280 does not practically touch many of them. Taking article 8, I do not think that any person will dispute that article 280 touches any of the right in regard to the use of wells, roads, hotels, etc. Similarly in regard to article 10 which deals with employment and article 11 in regard to untouchability and article 12 in regard to titles. Article 13 has already been taken away. In regard to article 14, I understand something worse can be done if article 280 is enacted. A person who has committed a crime two months ago may be tried by a law enacted subsequently by virtue
of which he may be liable to a greater amount of punishment. Similarly, there can be two convictions for the same offence and the right to move the Supreme Court for immediate remedy will be taken away. In regard to article 15, I have already submitted. If the article 15 remains in its present form, I can predict that after all this Constitution is enacted and all the dust of controversy is over, and Dr. Ambedkar sits down in his bungalow, he will repent the day when he passed article 15 without any safeguards. I appeal to him and to the House that if they really mean well to the people of the country, they must see that article 15 is amended. If article 15 is not amended, this Constitution and these fundamental rights are not worth having. Therefore, I submit so far as article 15 is concerned, the law already provides that Parliament may make any law as regards procedure and thus there is no fundamental right in respect of procedure. So that, there is no other vital fundamental right which this article touches.

In regard to article 16, which deals with freedom of trade, the Parliament already possesses the power to enact laws. Article 17 deals with prohibition of traffic in human beings, and article 18 deals with the employment of children. I do not think any Government worth the name will try to conscript under article 17 one class only. The State is empowered by this article to conscript without discrimination. It is thus more an enabling than a disabling clause. No other fundamental right is affected if article 280 is not passed, in regard to articles 19, 20, 21, 22, 23 which deals with religious and cultural rights and article 24 deals with compensation.

So, that my humble submission is if my interpretation is correct, article 280 only takes away the power guaranteed to the people of moving the Supreme Court alone. The rights are not taken away; the laws are not taken away; the laws will remain as they are. Only I can not move the Supreme Court by appropriate proceedings. The laws will not be taken away except in regard to article 13. If the President takes power under this article 280, the laws will remain as they are; only the immediate remedy by appropriate proceedings is taken away. Therefore, my submission is, unless and until you change article 15, I do not care whether you enact article 280. If article 15 is amended or the safeguards are further provided by enacting other articles, as I think they must be and shall be provided in the Constitution, then article 280 would have a meaning. Then article 280 will be a necessary article because it
would mean that if emergency is there, the important rights which the amended article 15 will confer will be taken away, and we should see that the Executive is not armed with such powers as to take away all the cherished and vital rights of the citizens. As I have submitted, this emergency may be very serious or may not be serious at all. Suppose there is a war in Kashmir or in any outlying part of the country, I do not see what would thereby happen to Tranvancore and Mysore, and why the rights of the people there should be taken away. It would depend upon the particular emergency. A panicky cabinet may take away all the rights, without good reason.

Therefore my humble submission is that as ultimately our last resort is the Parliament, Parliament should be given all those powers and should have the last say in the matter and as soon as an Ordinance is passed, it should be subject to the veto of the Parliament and Parliament should within one month be able to say whether it accepts it or not. If there is a Resolution that the order is not accepted, it should be scrapped. Therefore, if you want to safeguard the rights of the people, you must see that article 280 is not passed in the way it is sought to be passed by the amendments of Dr. Ambedkar.

Shri B.N. Munavalli (Bombay States): Mr. Vice-President, I beg to move:

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter".

Sir, the article 280 is an article which arms the President with drastic powers. If we look to the other constitutions of other nations, we will find that no President is armed with such powers. Unless the French Constitution the President is simply Phantom of the King without Crown. The only power he assumes is that of veto and even that power is scarcely used. During the last fifty years there was no occasion to use such a power. So also under the Swiss Confederation, the President is no clothed with such powers; but curiously enough, the President under our Constitution, instead of becoming a Phantom of a King without a Crown is so to say a Phantom of King with a Crown and also with a Sceptre. Of course he is armed with these powers at the time of emergency but the fundamental rights which every citizen is to
Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move -

"That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure Part III the words and figures 'articles 13 and 16' be substituted".

Sir, this proposed new article 280 is also equally drastic. It is just in keeping with other equally drastic clauses which are allied to it. What is the effect of article 280 as it is proposed in its new shape? It may be recollected that this article was moved by Dr. Ambedkar on a former occasion in a milder form. There were serious objections in the House. Dr. Ambedkar desired that its consideration be postponed till he could attend to it and then he has brought in something which is much more drastic, more objectionable and therefore there was not only no consideration of the objections raised but the article has been presented again to the House in a more objectionable from. In its present form it strikes at pending cases also. What is the purport of article 280? It is that during the pendency of an emergency the President may by order suspend the right of any person to go to Supreme Court or other Courts which might be empowered in this behalf by Parliament to vindicate his rights under Part III of the Constitution. What are the rights contemplated in Part III of the Constitution? They are what are called "Fundamental Rights". It is suggested that those Fundamental Rights should remain, but no one would be able to approach the Court for redress if they are violated. Pandit Bhargava has drawn a distinction which does not really apply at all. He enjoy under this Constitution, will be deprived, by passing an order under this article by the President. He has no recourse even to law; but even then there is one sanguine point viz., the clause (3) which states that an order passed by President may be placed as soon as may be after it is made, before the Parliament. My amendment to this clause is that as soon as the Parliament meets for the first time after the President passes such an order, it should be placed before the House of Parliament instead of postponing the matter. My Friend Pandit Bhargava has moved certain amendments and they are quite regular and proper because the article as it stands will simply stun the citizens as they are deprived of all the fundamental rights and if his amendments are accepted, there will be some facilities. So, I support the amendments of Pandit Bhargava.
contends that the rights will not be taken away but only the resort to Court for their vindication will be prevented. The right will be there; its existence is not to be denied, but people would be merely prevented from going to Court. This is a wrong way of approach. There is no point in giving anyone any right unless he is also enabled, in case the right is violated, to go to Court. If you say 'we give you a property absolutely, but if I take it away you must not go to Court", that is as good as denying the right itself. I submit taking these two together it amounts to this that the rights are also suspended. What are the rights that are going to be suspended? They are described in the Constitution itself - Fundamental Rights. They are however such rights which should not be in the least affected by the fact that there is an emergency. You must give the President power to act in an emergency. That power is conceded by the House. What is now contended is that needless power, the power needlessly to interfere with fundamental rights should not be given. The powers now sought are absolutely unnecessary and an emergency cannot be solved by refusing to give the people rights which are fundamental. Now, what are the fundamental rights granted by the Constitution, the enforcement of which through Court is prohibited? I shall briefly point out these rights. They are laid down in articles 9 to 23-A.

Article 9(1) lays down that there shall be no discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Does this article mean that this fundamental right of protection against discrimination is to remain in abeyance when there is a Proclamation of Emergency? Can any honourable Member conceive of a situation where it will be possible to suppress the rights relating to this that there should be no discrimination on grounds of religion, sex, and so on ? Does it mean that during an emergency, the State may make discrimination on the ground of religion or race or caste, sex, or place of birth ? Under article 7 "State" includes the Government and Parliament of India and those of the Provinces and even the "local or other bodies ". I think the obvious implication of the suppression of these rights means that it would enable any Government or even a District Board or a Municipality or a Union Board to discriminate against any person on these grounds. I think nothing can be more absurd than this.
Then we come to clause (1-a) of article 9. There it is said that there should be no disability on grounds of religion, race, caste, sex, etc., in having access to shops, public restaurants, hotels and using wells, tanks, bathing ghats, roads and places of public resort. May I ask whether, during an emergency any section of the people should not be allowed to go to shops, or public restaurants, hotels, use wells, tanks and so forth? I submit these rights cannot remain suspended even during an emergency.

Then we come to article 10 which says there shall be equality of opportunity in the matter of employment or appointment. If you suspend these rights during an emergency, it would mean that during an emergency, there should be no equality of opportunity. May I ask what is the point of this suspension?

Then we come to article 11 which deals with a most important right. By article 11 untouchability is abolished. If there is any observance of untouchability, if there is any discrimination on the ground of untouchability, it is made penal. Do you mean to give the President down to the meanest village Union Board authority to re-impose untouchability? I think this will not solve an emergency but will accentuate it.

Then in article 12, the conferring of titles is prohibited, or rather it says that titles are not to be recognised by the State. Does the suspension of this mean that during an emergency titles will flow from our Governments or from foreign governments and will be recognised by the State? I fail to see how this will solve an emergency.

Then we come to article 13 which guarantees the freedom of speech, and to assemble peacefully and without arms, to form associations and move freely from one place to another and so forth. But these are also hedged in by conditions, that in making the speeches we should not commit libels, slander or defamation; that there should not be violation of decency or morality, that there should not be any attempt through this freedom of speech to effect the security of the State or any attempt to overthrow the State. This freedom of speech has been circumscribed by conditions in such a way that they would be harmless even in time of emergency. Then the same conditions apply to assembling. Anything done against public order such as unlawful assemblies and similar other things are safeguarded. I think, Sir, therefore, that this right
to assemble peaceably has been sufficiently safeguarded and conditions imposed so as to make them perfectly harmless. And then the right of forming associations and other things are also hedged in with similar conditions. These fundamental rights have been given to the people in such a way that they can not be used for any purpose detrimental to the safety of society or to public morals or public peace.

Then coming to article 14(1), it says that there should be no conviction except in due course of law. If you suspend this right, then it would mean that there should be conviction without any law, that you can catch hold of any person who speaks against the Government, or any newspaper writing any article against the Government and send him to jail without the authority of law. In article 14(2), we have also laid down that there should be no double prosecution and no double punishment for the same offence. If you suspend this right, it will authorise any one being punished twice for the same offence as also without the authority of any law. Also no accused under this article can be compelled to give evidence against himself.

Article 16 deals with trade and commerce, that trade and commerce should be free.

These Sir, in general, are some of the more important fundamental rights guaranteed in so many words by the Constitution. There are others but it is not necessary to recapitulate them. May I ask what earthly purpose could be served by suspending these rights? In most cases, the suspension of these rights as I have pointed out would lead to absurdities and in some cases to serious injustice, without in any way helping the State to come out of the emergency. In these circumstances, I submit that the suspension of these rights is not only unnecessary but would lead to hardship and injustice and in many cases to patent absurdities. But my amendment makes some exception in the case of articles 13 and 16. Article 13 deals with the right of freedom of speech, freedom of assembly and so on. These rights may, during an emergency, have to be curtailed in the interest of the State itself. Similarly freedom of trade guaranteed under article 16, may have to be restricted on public grounds. In an emergency consumer goods may be concentrated in the hands of a few who may use them for purposes of blackmailing. So, it may be necessary for the State, to interfere with this right during an emergency. I
have therefore by my amendment provided that the rights guaranteed under article 13 and 16 may be suspended during an emergency.

Article 280, as it would read along with my amendment is that during an emergency, the President may order that no persons shall have the right to move the Court, that the rights under articles 13 and 16 have been interfered with. I have conceded this right of suspension to this extent, though I fail to see to what extent these could be legitimately or usefully suspended even during an emergency. At any rate, I am prepared to give the right to the President to interfere with these rights.

Sir, as I have already submitted an emergency is not a ground for suspending these important and valuable rights. Fundamental rights will cease to be fundamental if they could be suppressed on these flimsy and unnecessary grounds. These are inalienable rights and should not be interfered with, without the State being in the least benefited by such interference. Even during the two great World Wars - the greatest emergencies that can happen to mankind - courts were never closed. In fact, Indian and English Courts kept their doors open. No one thought that their powers should be curtailed. These rights should be justiciable. Otherwise it is impossible to say that the rights exist. The very right of violated rights being challenged in court would act as a deterrent upon the State officials acting arbitrarily. The sacred name of the President has been used - I submit exploited - in these articles. As I have already submitted, the President will not act himself. He is not supposed to be acting on his individual discretion. He has always to act on the advice of his Ministry and it is conceivable that the Ministry may be moved to action by some Secretary or Under Secretary who may start the mischief innocently, and so valuable rights which are the essence of liberty, will be suspended in the sacred name of the President.

The feeble provision that orders must be placed before the next sitting of the Legislature seems to be a poor consolation in view of the fact that such order as it passed by the President can not be questioned or criticized or even discussed in the House. So, the mere fact that they are placed before the House without any opportunity of discussing them, I submit, is a poor consolation for those who value individual freedom more than anything else.
I think, Sir, that these powers should be curtailed as much as possible, though everybody will concede that some powers should be given to the President to be exercised which are really needed to meet an emergency. But the powers claimed for the President will suppress the liberties of the people. During the War, the English Courts were open and the Indian Courts were also open and one of the greatest Law Lords - Lord Atkin - when an argument was made that during the war, justice should be so modified and individual rights so curtailed as help the war effort-made a famous pronouncement. He said: "War or no war, justice must go on. His Majesty's can not be curtailed or in the least affected by the existence of a war". War is the greatest emergency conceivable, and yet law courts were open to give effect to individual rights. We have not defined emergency. Emergency may mean anything; or it may mean nothing. A trivial matter may be called an emergency and may be used wantonly to interfere with fundamental rights and liberties of the people with which the emergency may have nothing to do. The rights may be totally irrelevant for the emergency, but yet they will remain suspended and the Courts will be absolutely powerless to give them redress. I submit that these powers can not be given. They can be confined at least to rights guaranteed under articles 13 and 16 as I have submitted. I think the matter is too serious to be passed by a mere majority of votes without any adequate debate by the device of premature closure motions.

**Mr. Vice-President:** Are you proposing to move No. 17?

**Mr. Naziruddin Ahmad:** No Sir.

(Amendment No. 16 was not moved).

**Shri H. V. Kamath:** Mr. Vice-President, the draft of the proposed article 280 now before the House is a mere rehash of the old draft of the same article. The House will recollect that on the last occasion, further discussion of this article was held over and the wise men of the Drafting Committee asked for time to put the article into better shape. We hoped-at any rate those of us who had taken an interest in the subject- we hoped that this article would come back to the House in a more presentable form, in a better shape. Our hopes have been disappointed. There is an old saying in Sanskrit that a person tried to do something but got something worse out of his labours:
A person who set out to make an image of Vinayaka - Ganesha-ultimately got out of it a model of monkey. That is what has happened to the labours of the Drafting Committee. The Drafting Committee hoped—or at least we hoped—that the Committee would consider the various suggestions made in the House and embody them in the new draft. But that was not to be. The Constitution has been founded - at any rate, we the founding fathers here have tried to found the Constitution - on what I would call the "Grand Affirmation" of fundamental rights. We have tried to build on that the edifice of democracy, but I find surmounting that edifice or facade is the great negation of Part XI the notorious negation of Part XI; and article 280 is to my mind the key-stone of this arch of autocratic reaction.

The draft now before the House has been sought to be amended by my friends Pandit Thakur Das Bhargava, Mr. Munavalli and Mr. Naziruddin Ahmad. I have tabled several amendments to this proposed article which, by your leave, I shall now put before the House. My amendments visualise two separate schemes. One scheme is to vest this great fundamental power of suspension of fundamental rights completely in Parliament. That is one scheme. If that scheme be not acceptable to the House, I propose a second scheme whereby the action of the president shall be subject at every turn to the consideration and approval or rejection of Parliament. Amendment No.18 comprises these two sets and according to the order in which they appear in the list, I shall now move them before the House.

I move:

"(i) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'the President may by order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'mentioned in the order' the words 'specified in the Act' be substituted."
(iii) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'the rights so mentioned', the words 'any of such rights so mentioned' be substituted.

(iv) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No.15 above, in clauses (2) and (3) of the proposed article 280 the following clause be substituted:-

(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament."

These as I have already stated, vest the power of divesting or depriving the individual of the fundamental rights guaranteed to him by Part III of the Constitution in Parliament and not in the President.

The second set of amendments provided for the conferral of provisional power to suspend fundamental rights upon the President subject to its immediate ratification or rejection by Parliament. That set, Sir, is the alternative set which I have tabled, and which by your leave, I shall now move.

Sir I move:

"(i) That in amendment No.15 above in clause (1) of the proposed article 280 for the word 'mentioned' where it occurs for the first time, the word 'specified' be substituted;

(ii) That in amendment No. 15 above in clause (1) of the proposed article 280 for the words 'the rights so mentioned' the words 'any of such rights so mentioned' be substituted.

I am not moving (iii)

(iii) That in amendment No. 15 above, for clause (3) of the proposed article 280, the following be substituted:-
'And order made under clause (1) of this article, shall before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No.15 above in clause (3) of the proposed article 280, the following new clauses be added:

'(4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) And order made under clause (1) of this article may be renewed or varied by a subsequent order, subject to the provisions of clause (3) of this article.'

v) That in amendment No. 15 above at the end of the proposed article 280 the following new clause be added:

'Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of habeas corpus, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament.'

Now, the matter under discussion today is a very serious one in all conscience and I would appeal to the House not to dismiss it very airily, but to bestow on its mature judgement. As I have already said this article to my mind is the Great Negation; and I am sure that when tempests blow- God forbid that they blow- the weight of this Negation will be so heavy that I am afraid the whole edifice will collapse. It is for that reason that I have sought your leave, Sir, to move these amendments and I would again appeal to the House to consider them earnestly and seriously.

The argument has been very often trotted out that we must have a strong centre. I am all in favour of a strong Centre-especially so in a time of emergency when the security and the stability of the State are at stake. But what do you mean by the Centre? The Centre, I may remind the House, is not merely the Executive. The Centre is Parliament, that is the Legislature, plus
the Executive *plus* the Judiciary. We are apt to forget this when we speak of a strong Centre. We are inclined to think that by a strong Centre is meant a strong Executive. That is a wholly erroneous conception- a fallacy which should be discarded at the earliest possible moment. The Centre therefore is the Parliament (Legislature), the Executive and the Judiciary. make all the three strong - I agree- but not one at the expense of the other two, not the Executive at the expense of the Judiciary or the Legislature.
Saturday, the 20th August 1949

The other day the Prime Minister, I believe while addressing some public meeting, referred to the frequent conflict between the liberty of the individual and the security of the State. Yes, I agree that the State should be secure so that the individual may have life, liberty and happiness. But the liberty of the individual is not a thing to be trifled with at the mere behest or arbitrary fiat of the executive. It was the great American thinker Thoreau who said: "At a time when men and women are unjustly imprisoned, the place for the just man and woman is also in prison." If this article as moved by Dr. Ambedkar were passed today can we say with any degree of assurance, that the liberty of men and women in this country would be worth a moments purchase and would not be trampled under foot without a moment's notice? Sir, I do not want to alarm the House and sing a jeremiad, but I fear that such a situation is likely to arise if this article be passed today. As an autocratic negation of liberty this article takes the palm over all other constitutions of the world. Article 279 which we have already passed provides that as long as an emergency proclamation is in force the guarantees of individual freedom as set forth in article 13 will be automatically suspended throughout the Union; and now article 280 denies to the citizen the right of access to courts of law for making complaints about the violation of not only the rights of individual freedom but all other fundamental rights during the period of emergency. A general authorisation of this kind for restricting individual freedom has no parallel anywhere else.

The Drafting Committee took time to prepare a new Draft and they have tried to put up a rehash of the article. I find that the language of this article compares unfavourably with that of the Emergency Powers Act (DORA) passed in England in 1920 which the Drafting Committee have plagiarised in a dishonest fashion. Clause (3) of the proposed Draft reproduces the first part of one of the clauses of that Act, but the second and vital portion of that clause has been conveniently and dishonestly dispensed with. I do not know why this subterfuge has been resorted to. The relevant clause of that Emergency Powers Act reads thus:
If Parliament is then separated by such adjournment or prorogation as do not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day."

And the further safeguard is this

"Any regulations so made under the Act shall not continue to be in force after the expiration of seven days from the time when they are so laid unless a Resolution is passed by both Houses providing for the continuance thereof."

This vital portion of the Emergency Powers Act of England is absent from our Draft article.

Then I come to the Weimar Constitution whose provision came very near to this clause but which was still very mild as compared to this. In clause 48 of the Weimar Constitution occurs this provision:

'(2) If Public safety and order in the German Reich is materially disturbed or endangered the National President may take the necessary measures to restore public safety and order and, if necessary, to intervene by force of arms. To this end he may temporarily suspend, in whole or in part, the fundamental rights established in articles 114 (personal liberty) 115 (inviolability of dwelling), 117 (secrecy of postal, telegraphic and telephonic communications), 118 (freedom of speech and press), 123 (right of peaceable assembly), 124 (freedom of association), and 153 (guarantees of property rights)."

But even to this there were safeguards. The next clause was to the effect that the President must immediately inform the Reichstag of all measures adopted by authority of this article and that these measures shall be revoked at the demand of the Reichstag. This was the safeguard of the German Constitution.

Under the American Constitution the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion the public safety may require it. But even here the suspension can be authorised only by the Congress whose decision can be tested by the Supreme Court as to whether
the conditions under which such suspension would be justified did exist or not. That is so far as the American Constitution is concerned. So also in the Italian Constitution there are similar safeguards. But, unfortunately, we who Profess to build a Sovereign Democratic Republic in India have no use for such safeguards. We trust the executive implicitly. God grant that our trust be justified. But if our executive demands our trust, why should not the executive trust the judiciary, why should it not repose confidence in Parliament? Is our judiciary, bereft of all wisdom, integrity and conscience that the executive should snap their fingers at them? This is a most disgraceful state of affairs. I do not see how we can build up an egalitarian or democratic State on such a foundation.

It has been suggested that in a time of emergency the State has got to be preserved. By all means preserve the State; but not at the unjust sacrifice of the liberty of the individual. In some cases and on some occasions, the loss of liberty is worse than the loss of life. I for one would claim that liberty is even more precious than life, and the most serious emergency should not enable the State to unjustly deprive the individual of his liberty. That is a great principle and that should be the lodestar or the Pole-star of our Constitution. The right to a writ of habeas corpus is a sacred right in which is enshrined the liberty of the individual: it gives him the right of appeal to the Supreme Judiciary. This article before us today destroys this right of the individual.

We want ace and order so that the State will be safe during an emergency. But what sort of peace are you going to have at this rate? What to have at this rate? What sort of security or stability are you going to leave? The State will be preserved I But it may be that the peace that you thus visualise will be the peace of the grave, the void of the desert. If that is the peace the Drafting Committee's wise men have in mind, I would rather die than live in such a peaceful situation.

In our passion for making the Centre strong, we are misinterpreting it as the strength of the executive. If we want a strong executive, let us also have a strong legislature and a strong judiciary. I have pleaded that it is not the executive alone that makes the State. We have the Parliament and the Judiciary which, together with the executive, make the State. All my pleadings have fallen on deaf ears. I sometimes tell myself, "O Judgment,
thou art fled to brutish ceasts, And Men have lost their reason”. Have we come to that stage? I hope not. I hope, for the good of India, for the good of our fellow men and women who have just emerged from the darkness of slavery into the light of freedom, we shall do something for their happiness and not merely be content with strengthening the hands of a group of people, a tiny coterie or caucus in power. That is not the idea which the Father of the Nation had in mind. As the House, well knows he was all for decentralisation, and not for strengthening the Centre at all. lie was for a decentralised State and for giving power to self-sufficient units.

We are discussing the provisions for an emergency. I therefore grant that the Centre should have certain powers. All I plead is that there should be adequate safeguards, judicial safeguards and parliamentary safeguards. None of these safeguards is here in the Draft article. But this rehashed article has come before the House for consideration and for approval. I believe it will be approved in due course. I have closely followed the provision for emergency powers in the Emergency Powers Act, 1920 of the United Kingdom. It Provides that Parliament must be summoned within five days. Secondly, the decree will expire at the end of seven days unless earlier approved by Parliament. On the same lines I have sought in my amendment No. 4 to provide that any order made under clause (1) of the article shall, before the expiration of fifteen days-India is a vast country of distances compared to England. So for seven days I have put in fifteen days be placed before Parliament for approval. If you mean business and if you mean to secure to individuals their liberty, and not merely the safety of the State and the security of the men in power, fifteen days would be adequate time to summon Parliament. I have also provided further on the same lines as the Emergency Powers Act of England that this order suspending the fundamental rights shall expire at the end of one week unless it has been approved earlier by resolutions of Parliament. This is a wise safeguard which I hope the House will consider in all earnestness.

My last amendment- I am not going to speak on my remaining amendments- is No.6 of the Second Week. There I do not object to power being conferred on the President subject to Parliamentary regulation and control. Therefore the last amendment of mine is to the effect that the right to move the Supreme Court or the High Court for a writ of habeas corpus by
appropriate proceedings shall not be suspended except by an Act of Parliament.

During the last world war, the British Government here were indulging in the everest forms of repressing for the preservation of their Empire. Mr. Churchill went to the length of saying, "I have not become Prime Minister to preside over the liquidation of the British Empire," which shows that even Mr. Churchill feared at one time that the Empire was in danger and that it might be liquidated. Though they were thus engaged in a life and death struggle, the British Government did not suspend the right to move the courts for a writ of *habeas corpus*. The famous case of Talpade of Bombay is a case in point. This case came up to the Federal Court and the Chief Justice, Maurice Gwyer held Section 26 of the Defence of India Act *ultra vires*. This section was subsequently amended as a consequence thereof. It must be fairly fresh in the memory of my colleagues here. I therefore do not wish to dilate upon that matter. As I was saying, even the British Government did not then suspend this important right. But we who are drawing up a democratic Constitution are contemplating a provision for suspending even that right in an emergency.

After all, most of our leaders are telling us that we are today passing through a crisis. By crisis they mean a sort of emergency: we have had trouble in Hyderabad, Kashmir, West Bengal and other parts of India. But the Central Government has lived and is getting on very well without proclaiming a state of emergency. None of the fundamental rights or right to move for *habeas corpus* has been suspended. Even here, on August 15, 1947, when the old Government of India Act was adapted under the India Independence Act, the emergency powers vested in the Governor-General and in the Governors were omitted from the Act as adapted. They were not embodied in this adapted Act of the Government of India and the emergency powers were not conferred upon either the Governors or the Governor-General under the Act of the Government of India, as adapted. We have tided over two fateful years, very difficult years, very critical years, without any of the emergency provisions or powers being vested in the Governor or in the Governor-General. Sardar Patel told us some months ago that this country is getting more stabilized. In one breath you say the situation is getting better and more stable, and in the very next you try to insert a clause in the
Constitution which seeks to deprive the citizen of all fundamental rights in case of an emergency. Dr. Ambedkar might get up and reply: "Oh! It is just written in the Constitution; it will remain a dead letter. I hope we shall not be required to use it or to put it into operation." I hope we shall never use it. That is what he said on a previous occasion I agree Dr. Ambedkar might say that. I readily grant they are all honourable men, they are all wise men and true, but a Constitution is not meant for Dr. Ambedkar or Pandit Nehru or Sardar Patel; the Constitution is meant not only for this generation; but we are building it for other generations to come, and not for Dr. Ambedkar and the present Government. I hope this Constitution will last for many generations. At times, however, apprehensions arise in my mind; looking at the Constitution as it is being built, as it is being framed by us here, sometimes I apprehend that this Constitution may not last very long. God forbid that my fears should come to pass. But I occasionally fear that the Constitution— the whole of it, at any rate may not last many more years than one can count on the figures one of one's hands.' That is what I feel: I hope I am wrong and I hope I am painting too gloomy a picture; but, Sir, I wish to plead with the House that by all means if you want to save the State, do save it, but do not unjustly deprive the individual of his rights, of his liberties, his fundamental freedoms, which we have in the opening chapter of the Constitution guaranteed to him. Towards the fag end of the Constitution we are taking away with one hand what we have given with the other. Is this the sort of liberty we have fought for? Is that the sort of liberty that we aspired after? Is that the sort of democracy that we are building........

Mr. Vice President: Will the honourable Member kindly bring his remarks to a conclusion? He has been speaking for 45 minutes.

Shri H.V. Kamath: If you think I am repeating, I shall bow to your ruling, but if I am not....

Mr. Vice-President: I am sorry to say that the Member is repeating his arguments and I shall be very glad if he will kindly conclude his remarks.

Shri H.V. Kamath: I will take only two minutes more, Sir. I bow to the Vice-President's ruling and I shall conclude. I wanted to say much more but I shall reserve that for another occasion. I am afraid that the article, if it is adopted by the House as moved by Dr. Ambedkar, is fraught with grave
danger to the rights and liberties of the individual guaranteed to him under the Constitution. I fear that by this one single chapter- Chapter XI,- we are seeking to lay the foundation of a totalitarian State, a Police State, a State completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continual jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. I only pray to God that He may grant us wisdom, wisdom to avert any such catastrophe, grant us fortitude and courage. Let me conclude with the prayer of Mahatma Gandhi; "Sab Ko Sanmati De Bhagawan."

Prof. K.T. Shah (Bihar:General): Mr. Vice-President, Sir, I beg to move:

"That in part (vi) of amendment No.18 above, for the proposed new clause in the proposed article 280, the following be substituted:-

'Notwithstanding anything contained in this article, the right to move the Supreme Court, as guaranteed by article 25 of this Constitution, by appropriate proceedings, shall not be suspended, nor shall any proceedings in respect of such right pending at the date of the Proclamation of Emergency in any court be suspended:

Provided that in the event of any cause of action arising in respect of any violation of any of the Fundamental Rights declared or conferred by Part III of this Constitution, against any person of authority, Parliament may, by a special Indemnity Act passed in that behalf, indemnify any such person or authority against the consequence of any such act done bona fide during the period while the Proclamation of Emergency was in force."

Sir, I have as strong an objection as many of the speakers who have addressed this House on this subject to arming the President with such extraordinary powers extending even to the suspension of the one solitary right which by the express terms of the Constitution is guaranteed, namely, the right to move the Supreme Court for certain prerogative writs whereby any violation of the rights declared or conferred on citizens may be remedied. Here is one right more precious perhaps than any other because it makes other rights workable, real, concrete, and actually experienceable; so that if anybody feels aggrieved because of any of the fundamental rights mentioned
in Part III being denied, such a person shall be in a position to move the Court which may give him appropriate relief or remedy.

As the article is now proposed a President would be in a position to suspend even this right by an executive order. The amendment of Dr. Ambedkar suggests that having made the order he must place it before Parliament as soon after making it as possible. I confess, I do not see that this is any improvement over the original draft, because, even if you lay an order *ex post facto* before Parliament, you only invite either acrimonious criticism, which may be of no use or avail whatsoever, of an act already done or make the relations between the Executive and the legislature strained. If you had suggested that before the order is made, Parliament would be consulted, or if you had even suggested that the remarks of Parliament may be given effect to by modification of the order, I could have understood.

**Shrimati G. Durgabai:** On a point of order, may I know whether the honourable speaker is speaking on the original motion or is moving his amendment?

**Prof. K.T. Shah:** I have moved the amendment.

**Mr. Vice-President:** He has moved the amendment.

**Prof. K.T. Shah:** That being the case, in the article and the amendment proposed by my Friend Mr. Kamath, I am suggesting further by my amendment that this fundamental right, which is the only one right guaranteed in the Constitution, shall in no case be suspended, notwithstanding anything that may have been said in the preceding articles. Whatever the emergency, this particular right should not be suspended. As another honourable speaker has mentioned, even if a war is there, the justice of the people, justice of this country shall not be stopped or suspended.

I realise, however, that in an emergency the officers of Government, both civil or military, may not be in a position to wait before taking action. They have to learn, however, that if we are going to live under a free democratic Constitution, whoever does a wrongful act will have to bear the consequences of that act. Anything that he might have thought was required in the interests of the country would not avail him as an answer to an act wrongful in itself.
To guard, however, against any undue hardships being imposed upon officers, who act bona fide in the interests of the community and in pursuance of the orders issued for dealing with an emergency, if any fundamental right, let us say, the freedom of movement of association, or expression, is violated, any violation would not *ipso facto* be covered by the proclamation. But subsequently Parliament may pass an Act of Indemnity, enumerating the cases which might give rise to such prosecution, or such suits, or actions against individual officers, and extending the protection in its sovereign capacity as legislature to such persons, and providing a valid defence for any such charge.

This is a procedure very well known in the British Constitution which we have been copying almost *ad nauseam* in, and here is one case in the British Constitution, where I think we might as well take a lesson from it, and instead of giving a carte blanche as it were, to the President to do or allow any act to be done merely on the score of a Proclamation of Emergency, we would lay down, that though an officer may be acting primarily on his own risk under this order, on a proper case being made out, Parliament may consider the advisability of giving a general or special Indemnity.

What would happen would be, that public servants or officers of the State would be automatically restrained. Instead of using any force or extending their authority in any way they think proper or necessary, they would think twice before taking such steps as may not be permitted by an Act of Indemnity. Or Parliament may not pass an Indemnity Act at all. Here would be a very salutary restraining factor, which I think would be for the benefit both of sound administration and also continued freedom of the citizen.

If you accept this idea, as I hope the sponsors of the article will accept, a provision of this kind, worded as they like, suited to the occasion will amply meet the case. I think much of the difficulty that the previous speakers have referred to, much of the apprehensions that many of us feel as regards the unnecessary extension of the executive authority, would be avoided by this means.

Nowhere in this Constitution is any mention made, so far as I remember, of such a provision as I am advocating here, that is to say, an Indemnity Act. Time and again; those in authority, those responsible for the Draft
Constitution, have characterised criticism in this House as being destructive or serving no purpose either for themselves or for the House. Here I make a present of this a constructive proposal, with the very respectable authority of the British Parliament and British History behind it. It is a matter of test whether the sponsors have sufficient regard for the freedom of the citizen to accept even such a suggestion as this. I leave it to their good sense.

(Amendments Nos. 20, 21, 22 were not moved.)

Shri B.M. Gupte (Bombay: General): I beg to move:

"That in amendment No.78 of List II (Fourth Week) of Amendments to Amendments, in the words proposed to be added at the end of clause (3) of the proposed article 280 for the words 'one month', wherever they occur, the words 'two months' be substituted."

Sir, this is an amendment to an amendment moved by my Friend Mr. Thakur Das Bhargava. The only difference between my amendment and his is that I propose two months for the submission of the order to the Parliament while he has proposed only one month. Two months are preferable because that period is mentioned in the main article 275. No doubt, Dr. Ambedkar has respected to a certain extent the sentiments - expressed in this House when
the matter was debated last time. But, he has not gone far enough and has not mentioned any definite period within which an order under this article shall be submitted to Parliament. Under article 275, the main Proclamation of Emergency must be endorsed by Parliament within two months. I do not see why the same effective control should not be given to the sovereign legislature in this matter, which after all, would be the most important consequence of that Proclamation. The suspension of the remedy for the fundamental rights is a very fundamental matter and it should be incumbent on the executive to get it ratified within a short specified period, say two months. I do not see that there should be any difficulty about this. Most probably, the order would be issued shortly after the Proclamation is issued, i.e., most probably it may be issued in the intervening period between the issue of the Proclamation and the meeting of Parliament. Thus there would be no difficulty in the Proclamation and the order being simultaneously submitted to Parliament. Even granting that the order may have to be issued after Parliament has dispersed, what happen? Parliament will have to be convened only for this specific purpose. I say, there is no objection. The only argument against this course would be the question of cost. I submit that in matters of vital importance, cost is of no consequence at all. We have deliberately chosen democracy as the form of our Government and after that we should not grudge the cost that might be necessary to make that democracy really effective. Of course, I do not mean to say that there should be wasteful expenditure. Those who are responsible for the conduct of the Government hereafter must so arrange their business that no unnecessary expenditure is saddled on the public purse.

But at the same time in important matters, where important principles are involved, consideration of cost is of no avail at all. It cannot certainly be a decisive factor. The suspension of Fundamental Rights is not only a very important matter but a fundamental matter and I would therefore request Dr. Ambedkar to accept Pandit Bhargava's amendment, as amended by me.

Prof. Shibban Lal Saksena: (United Provinces: General): Mr. President, Sir, I beg to move:
"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments at the end of clause (3) of the proposed article 280, the following words be added:

'and if the House of the People by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately."

If this amendments is made, clause (3) of Dr. Ambedkar's amendment would read as follows:-

"Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament, and if the House of the people, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately"

During the discussion on this article on the last occasion I had proposed an amendment that for the words 'President may by order' the words 'Parliament may by law' be substituted. I had hoped that the Drafting Committee had been convinced of the mistake and they would make suitable amendments. I find an improvement has been made over the former Draft, and all the rights conferred by Part III of the Constitution shall not be abrogated automatically but only those rights which the President may declare as abrogated. I think if this article forms part of the Constitution, it will still be an arbitrary denial of the liberties that we are giving in the fundamental rights. I therefore think that either the amendment which I had moved the other day and which has now been moved by Mr. Kamath to this very article 280 should be accepted or at least this amendment of mine to clause (3) of Dr. Ambedkar's amendment should be accepted. This will at least have the effect that if the Parliament is not meeting and the President thinks that the emergency requires that he shall exercise such powers, this amendment will give him that right; but as soon as Parliament meets, he will bring forward that order and see that that is laid on the table of the House and the House of People shall be entitled to vary it, rescind it or alter it. This should not be objected to. What Dr. Ambedkar wants is that during an emergency, the powers of the President should not be fettered. I am not fettering them. In fact the very proclamation of emergency will come before the House of People within two months and will have to be renewed. So Parliament is the final authority. Then what is the harm if the
abrogation of fundamental rights also-if they are made in an emergency-is brought before the Parliament as soon as it meets and Parliament must have the right-particularly the House of people-to amend it, vary or rescind it. Otherwise the most fundamental rights-the most cherished rights that are given in the Chapter on fundamental rights-shall be taken away. I value the rights guaranteed in article 25 very much-the rights of *Habeas Corpus* and other rights. As I said last time, when we were in jails in 1942, even then during the war the foreign Government did not think it fit to deprive us of the right of *Habeas Corpus*. So if the power is given to the President to abrogate this right, it will be a slur on our Constitution and it should not be allowed to be included in it.

I therefore think that if Dr. Ambedkar is not prepared to accept Mr. Kamath's amendment, he should at least accept mine which will meet the point of view of his, that the President will be having the power in emergencies and even to suspend those rights but as soon as Parliament meets, then the order of the President will be liable to be rescinded by Parliament. This is the most modest amendment and if the Drafting Committee thinks over it, I hope they would accept it. Our learned Friend Pandit Kunzru had voiced his great opposition the other day about this article and he had said that this is a very dangerous article and the article should not have found a place in this book but if it is included, at least it must be so modified that the ultimate authority of Parliament is not questioned. If the Parliament has no right to vary or alter his order, then a fundamental right of the Parliament is infringed. You may say it is always open to the House to censure the executive but that is an extreme method and nobody would like to adopt it for simple variation of an order passed by the President. I therefore think that my amendment to this clause will entitle any Member who may like to move for a modification or alteration of the order of the President by a resolution. This is a very modest amendment and I hope Dr. Ambedkar will accept it.

**Mr. Vice-President:** There is amendment No.3031 by the Honourable G.S. Gupta.
(The amendment was not moved)

Shri H.V. Kamath: There is an amendment by Mr. Kunzru.

Mr. Vice-President: It has already been moved.

Shri R.K. Sidhva (C.P. & Berar: General): Mr. Vice-President, Sir, this is a clause which relates to emergency powers in the event of some grave emergency or a national peril existing in the country. Now, what is an emergency? My Friend Pandit Bhargava stated that an emergency can be interpreted in many ways. He is right. It is a very flexible word but it cannot be denied that an emergency is an emergency. Emergency means- according to Oxford Dictionary- a sudden juncture demanding immediate action. One cannot deny that a certain action has to be taken by a Government. May I know whether a democratic government, a government of the people, is going to take an action which will come into conflict with the wishes of the people? Are they going to take any action of such a nature which in the ordinary course it would be said that they want to suspend the Constitution because there is some small disturbance? That Government cannot exist for a day if it is going to be a democratic government. Therefore that apprehension does not stand for one moment.

I want to know, in the event of an emergency when there is a calamity and when the freedom of the country is threatened, I want to know from my friends who oppose this article whether they wasn't, like Nero fiddling when Rome was burning, if they want our ministers should be listening to radios or to some music when things may be taking place in a distant part of the
country which may disturb our very freedom? If that is the attitude of these friends who oppose this article, then I do not think they have really understood the meaning of this article. This article is to be applied only in the event of a national calamity and when our very freedom is threatened. My Friend Mr. Kamath said that our well-deserved freedom must be preserved and asked why these rights are being taken away, do you want the people to revert back to slavery? I say it is for the very purpose of safeguarding our freedom, our well-deserved freedom during an emergency that I want to give the Ministers sufficient powers to see that no danger comes to our freedom and that we do not revert back to slavery.

**Shri H.V. Kamath:** I do not object to that but only provide the necessary safeguards.

**Shri R.K. Sidhva:** My friends have quoted from foreign constitutions. In the Canadian and Australian constitutions there is no such provision. But there they have the convention that in the event of emergency, the Centre can take all the necessary powers from the provinces. It has by convention been accepted as an inherent power of the Centre to do so, in the event of an emergency. Every Government has such inherent power, this inherent right to take action in the interest of our freedom, for the purpose of maintaining our freedom. If we do not safeguard our freedom in this manner, then I may assure you that our freedom will be in danger. I will go further and say that with such things as are happening I want our government to be invested with all the powers so that we may see that our freedom is not lost. Do my friends want that our freedom and our security may pass into the hands of our opponents and our enemies?

**Pandit Thakur Das Bhargava:** Is Parliament your enemy?

**Shri R.K. Sidhva:** No, I entirely agree with my Friend pandit Bhargava. I do not consider him an enemy of the country. But there are people outside who are enemies of the country, in this country and also outside, mischief mongers who are out to create mischief. I want ot safeguard our freedom against them, and for that purpose I am prepared to sacrifice a little of my own freedom, for the purpose of keeping the country's freedom intact. I do not want anybody to disturb our freedom which we have won after a great struggle.
Sir, I may tell my Friend Mr. Kamath that even in America, in the United States Constitution, there is provision to this effect.

**Shri H.V. Kamath:** Have you read that constitution?

**Shri R.K. Sidhva:** I have read it, you can also read.

**Shri H.V. Kamath:** I have quoted from it.

**Shri R.K. Sidhva:** Yes, the American Constitution recognises the power in article 1, section 8, clause 18, on the same principle of emergency.

**Shri H.V. Kamath:** Is it the text or the commentary?

**Shri R.K. Sidhva:** I have given Mr. Kamath the section. he cannot now argue that.....

**Shri H.V. Kamath:** It is a misquotation.

**Mr. Vice-president:** I shall be glad if Members do not interrupt the honourable Member.

**Shri R.K. Sidhva:** Sir, I strongly support this article. But at the same time, I do feel that some of the objections raised by some of my friends have some justification, that the whole of Part III need not have been suspended. There are in Part III certain clauses which even in an emergency, could be allowed to remain intact. For instance, under fundamental rights article 11 relates to untouchability. May I know whether in the event of an emergency, you want untouchability to be re-imposed? Also there is the article about titles. Do you want titles to be bestowed in an emergency? There is clause regarding begar. Do you want that in an emergency begar should continue? Article 18 says that no child below the age of fifteen shall be employed in mines. If it is an emergency, do you wish that a child of fourteen should go into a mine and work? And then there is article 19 about rights relating to religion, education and so on.

I can understand the argument of my friends as far as these rights are concerned, and I can appreciate that argument, that the Drafting Committee should not have suggested that the whole of Part III should remain suspended.
during an emergency. Certainly there are many rights, as for instances the right about freedom of speech, of free association etc., which cannot exist during an emergency. That is against the very principle of an emergency. But I do feel that the Drafting Committee need not suggest the wholesale suspension of Part III, where untouchability, titles and such other things are also dealt with. Emergency does not mean that the Government will not function for the day to day work also, but for the purpose of our retaining our freedom such laws, rights and privileges that are given to the people which affect the very existence of the country could be suspended, and must be suspended. But the extraordinary powers of the law can be suspended. With these words, I strongly support the article. I know this would mean taking away some of individual persons' rights, but I do not mind it, because I want and I am anxious to see that the freedom of my country is maintained and I am sure the friends who have opposed this article are also equally anxious to preserve our freedom. It is only a slight difference in the outlook. Some of my Friends, like Mr. Kamath may say that some other government may come into power and on the ground of emergency upset the whole Constitution. But change of government is always possible in a democracy. A future Government may bring in much worse laws, we cannot say what kind of Government it may be. But in the earlier stages, when we have attained our freedom after great struggle and when we know that there is danger, we should be prepared to lose a little right- although I may say I cherish my rights as much as anybody else- for the purpose of retaining our freedom. With these words, Sir, I strongly support the article.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. Vice-President, in supporting the amendment moved to the article by the Honourable Dr. Ambedkar, I should like to say a few words. In the first place, the first part of article 280 as now put forward meets the point of view put forward by the Committee on a former occasion, namely, that the mere existence of a war is not to result in a suspension of all fundamental rights. What the article says is:

"where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the
It is not intended that the President will suspend all the rights such as were referred to by my honourable Friend Mr. Sidhva which are mentioned in the Chapter on Fundamental Rights. He is quite right in saying that there are rights that do not need a suspension during the period of the war. Such rights will not, and cannot, be suspended. But instead of singling out particular clauses, it is left to the President, who- I have no doubt- will act in a reasonable and proper manner, not in a spirit of vandalism against the Fundamental Rights guaranteed to the citizen in the Constitution.

The second part of the article says:

"An order made as aforesaid may extend to the whole or any part of the territory of India."

This is to remove any possible objection that the commotion, war or internal disturbance may not extend to the whole of India and may be confined only to a particular part, and therefore there is no need for suspending the Fundamental Rights in every part of the territory of India.

Lastly, it enjoins the President or the Cabinet to place the order before the Parliament as soon as may be after it is made. There is nothing to prevent Parliament from taking any action it likes. The President may suspend, but yet the Parliament may say that there is absolutely no necessity for the suspension of this right or that right. Time and again, it has been mentioned before the House that it is a Cabinet responsible to the Parliament that is taking action in the name of the President. Parliament has a right to take any action it likes with reference to the course adopted. Under those circumstances, there can possibly be no objection to the article.

In this connection, I will remind the House of a famous saying that "a war cannot be fought on principles of the Magna Carta". Freedom of speech, right of assembly and other rights have to be secured in times of peace but if only the State exists and if the security of the State is guaranteed. Otherwise, all these rights cannot exist. We are envisaging a situation threatened by war, in
a country with multitudinous people, with possibly divided loyalties, though technically they may be citizens of India. We trust that the time will come when the citizens of India will not look to far-off countries but we cannot proceed on the footing that in regard to all citizens of this country their loyalty is assured. Freedom of speech may be used for the purpose of endangering the State and resulting in crippling all the resources of the country. If only we realize that the country must exist, that the nation must exist, that the State must exist, if liberty and other things are to be guaranteed, there can be no possible objection to this article.

A reference has been made in the course of this Debate to the American Constitution. I do not know if Members of this House have read a recent book by Prof. Corwin one of the greatest authorities on constitutional law, on the President's power. During the Civil War, President Lincoln suspended the Writ of Habeas Corpus. In the American Constitution, power is given to suspend the habeas Corpus, but it is not mentioned whether the authority to suspend is the Congress or the President. But as a matter of fact the President did suspend the Writ of Habeas Corpus during the Civil War and the American people as a nation in their wisdom, never questioned the President's power.

I want to refer to another passage in regard to the President's powers. There is no country in which the President has more dictatorial powers than the United States. Prof. Corwin puts it in these terms on page 317 of his recent book:

"The war power of the United States has undergone a three-fold development. In the first place, its constitutional basis has been shifted from the doctrine of delegated powers to the doctrine of inherent powers, thus guaranteeing that the full actual power of the nation is constitutionally available. In the second place, the President's power as Commander-in-Chief has been transformed from a simple power of military command to a vast reservoir of indeterminate powers in time of emergency - an aggregate of powers - in the words of the Attorney-General Biddle. In the third place, the indefinite legislative powers which are claimable by Congress in war time in consequence of the development first mentioned may today be delegated by
Congress to the President to any extent, that is to say, may be merged to any extent with the indefinite powers of the Commander-in-Chief."

That is the position today in America the most democratic country. Here we have the doctrine of Parliamentary sovereignty. Therefore, the Ministry must be acting in close liaison with the Parliament. The moment they act against the wishes of the Parliament, there is an end of their power so far as the powers of the President of the United States are concerned, they are unbridled. He cannot be questioned. Therefore, why quarrel with the powers of a Cabinet- I use the word Cabinet advisedly because in spite of repeated reminders. Members of the House seem to forget that the expression "President" in every article of the Constitution must be understood as a Cabinet responsible to the people. There can be no better and more profitable reading than that of Lincoln's life.

Now, I should deal with the various objections that have been raised in the course of the debate. My honourable Friend Mr. Bhargava's point has been answered in the previous part of my remarks, namely, that Parliament has the final voice in the matter. Parliament may rescind any action of the President. It may remove the Cabinet if it so chooses, because the Cabinet is as responsible to the House of the People during the war as it is during peace.

Its life depends upon parliamentary majority. There being continuous liaison between the Cabinet and the Parliament, this bogey of Parliamentary sovereignty need not be put forward at every stage. There is no question of denying the right of Parliament. The only question is how is the Parliament to govern. In times of peace it may govern by every day interfering with the executive: at another time it may govern by entrusting the power to the President or the Cabinet in whom they have confidence. Therefore, it is times and circumstances that determine the manner of action of the Parliament whose authority and sovereignty nobody disputes.

Then an extraordinary suggestion has been made that we must pass an Act of Indemnity. What is the meaning of an Indemnity Act? In countries where parliamentary sovereignty obtains an Indemnity Act is generally passed after the war is over. In spite of all Acts and Ordinances, it may be that particular officers may have outstepped the limits of law. In order to guard against infringement of the law and people being molested by action for damages and
criminal prosecutions, Acts of Indemnity are generally passed. I would in this connection refer to Professor Dicey's Book on "The Law of the Constitution" in which he explains the scope and principle of an Act of Indemnity. An Act of Indemnity is not normally passed before the war is over. If Professor Shah means to say that even before the war is over, you can pass an Act of Indemnity, it would be worse than suspension of fundamental rights, because you give a carte blanche to the executive. Thereby you guarantee to absolve them of all acts of lawlessness perpetrated by them. That certainly is not what Professor Shah wants. Therefore, I submit that this proposition which has been placed before the House by Professor Shah cannot meet with their acceptance.

The third point was a legal one raised by Pandit Thakur Das Bhargava namely, with regard to to article 279: "while a Proclamation of Emergency is in operation nothing in this Act shall restrict the power of the State to make any law or to take any executive action." As it is, if a law is passed during the period of Proclamation, it will automatically lapse with the end of the emergency: that is the meaning of article 279. Those who are for limiting the power of the President cannot quarrel with the provision as it is because where the period is restricted to a particular duration, automatically the law will come to an end, unless there is a provision in the Constitution or in the particular Act giving it a fresh lease of life after the termination of the emergency. Therefore, if anything my honourable Friend Pandit Thakur Das's amendment will give fresh life instead of cutting short the life of the law passed under article 279.

Therefore, under these circumstances, I submit that as the security of the State is more important, as the liberty of the individual is based upon the security of the State and as a war cannot be carried on under the principles of the Magna Carta, or principles of individual freedom, particularly in a country with multitudinous types of people with possibly diverse loyalties, this provision is very necessary. It will be the life of this Constitution. Far from killing the democratic Constitution- as one of the speakers said- it will save democracy from danger and from annihilation.

With these remarks I support the amendment.
Shri Krishna Chandra Sharma (United Provinces: General): Mr. Vice-President, Sir, I have listened to my honourable Friend Mr. Alladi Krishnaswami Ayyar with the attention he deserves. But what I could not understand is this, that in article 13 certain rights are given. In that very article there is a provision that those rights may be restricted. There are certain other rights given in article 15; in that very article there is a provision that the law can be made for the restriction thereof. Then again there is article 279 under which the rights given in article 13 can be done away with under emergency declaration. Now my respectful submission is that when there are no rights there are no remedies, and there is no need of article 280, but when there are rights left there must be remedies for them. So, I see no reason in enacting article 280 by taking away the remedy even for the rights that have not been curtailed or taken away under the emergency legislation.

We have heard a lot about emergency. Sir, when two world wars were fought, the right to approach the High Courts of this country for certain fundamental rights was never taken away, even though we were ruled by a foreign power who were fighting for their own safety and the safety of civilization and of the world and we were fighting for our independence against that power. I do not apprehend such an emergency would even arise in this land; and there is no need to take away the rights which were not taken away even by the Britishers. After all, liberty is the sweetest thing in the world and you cannot take it away so easily. The end of all Government is the prosperity and well being of the people. We have had enough of the police state. If under any Government or any constitution a state of emergency arises so often, that Government and that constitution must be ended. If the State is strong and the people are prosperous there can arise no such emergency. You cannot rule by curtailing the rights of the people; you can maintain the constitution only if the people are prosperous and law-abiding. By resorting to police methods no State can continue. Therefore I submit that this proposed article 280 will serve no purpose whatever and it has no precedent in any constitution. Even if there are precedents you have to look to the time and the circumstances in which these constitutions were framed. By enacting this measure you will only give a handle to people who are out to create chaos and anarchy. Sir, you cannot suppress liberty and do away with the authority of the courts. I submit that this article would serve no useful purpose and it should not be passed.
An Honourable Member: The question may now be put.

Mr. Vice-President: The question is:-

"That the question be now put."

The motion was adopted.

The Honourable Dr. B.R. Ambedkar: Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matter and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but- I am also prepared to say- with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

Therefore my friends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact, I respect their sentiments very much. All the same I am sorry to say that I do not find possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so,
quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries - and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries - the position is this. As to the suspension of the right of what is called habeas corpus. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of habeas corpus the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President', they will find that that is the position.

**Pandit Hidayat Nath Kunzru:** Will you let me interrupt him, Sir? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book
The Honourable Dr. B.R. Ambedkar: Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

Pandit Hidayat Nath Kunzru: It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of habeas corpus vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

The Honourable Dr. B.R. Ambedkar: Yes. My submission is that in the United States while the Congress has the power, the President also, as the Executive Head of the State, has the ad interim power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I had made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an ad interim power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you and in the United States, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees is concerned, my submission is that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton manner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No.74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amending to article 280. What he wants is that any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the easing of the Proclamation. I think that is what he wants so far
as amendment No.74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which give power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that 'all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be in operative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.
Pandit Thakur Das Bhargava: In article 227 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

The Honourable Dr. B.R. Ambedkar: The State there means both because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

Pandit Thakur Das Bhargava: Whereas in 227 (1) the reference is only to Parliament.

The Honourable Dr. B.R. Ambedkar: That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No.78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

Pandit Thakur Das Bhargava: But it is very fundamental difference.

The Honourable Dr. B.R. Ambedkar: But it is very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before the Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.
Pandit Thakur Das Bhargava: Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation?

The Honourable Dr. B.R. Ambedkar: I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise? Where is the difficulty? I do not see anything with regard to the amendment.

An honourable Member: It is one o'clock now.

Mr. Vice-President: We are going to finish this article.

The Honourable Dr. B.R. Ambedkar: Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No.78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible." Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

Mr. Vice-President: I now place the amendments before the House.

Amendment No.3028- Volume II Printed List.

The Honourable Dr. B.R. Ambedkar: I withdraw that, Sir.
(The amendment was, by leave of the Assembly, withdrawn.)

Mr. Vice-President: Amendment No.3030.

Shri H.V. Kamath: I withdraw that amendment.

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

Mr. Vice President: I now place before the House amendment No.211 of Pandit Kunzru in the printed Consolidated List.
Pandit Hidayat Nath Kunzru: I withdraw that amendment.

The amendment was, by leave of the Assembly, withdrawn

Mr. Vice-President: I place before the House the amendment in List No.1.

The question is:

"That in amendment No.15 above, in clause (1) of the proposed new article 280 for the word and Roman figure 'Part III', the words and figures 'articles 13 and 16' be substituted."

The amendment was negatived.
Mr. Vice-President: The question is

“(i) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the President may be order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'mentioned in the order' the words 'specified in the Act' be substituted.

(iii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned', the words any of such rights so mentioned' be substituted.

(iv) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No.15 above, for clause (2) and (3) of the proposed article 280, the following clause be substituted:

'(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament.”

The amendment was negatived.
**Mr. Vice-president:** The question is:

"(i) That in amendment No.15 above, in clause (1) of the proposed article 280, for the word "mentioned" where it occurs for the first time, the word 'specified' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned' the words 'any of such rights so mentioned' be substituted.

(iii) That in amendment No.15 above, for clause (3) of the proposed article 280, the following be substituted:-

"An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No.15 above, after clause (3) of the proposed article 280, the following new clauses be added:-

(4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) An order made under clause (1) of this article may be renewed of varied by a subsequent order, subject to the provisions of clause (3) of his article."
(v) That in amendment No.15 above, at the end of the proposed article 280, the following new clause be added:-

"Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of habeas corpus, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament."

The amendment was negatived.

**Mr. Vice-President:** Amendment No.19 falls because it is based on amendment No.18.

Amendments Nos. 23, 24, 25 and 26 all fall because Amendment No.3028 has been withdrawn.

Then I proceed to List No.2

The question is:

"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added:-"
"279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall enure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force."

The amendment was negatived.

Mr. Vice President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, for the proposed article 280, the following be substituted:-

"280. Any law made or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force."

The amendment was negatived.
Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendment to Amendments in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets 'under article 275(1) of the Constitution' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end:-

'for a period during which the Proclamation is in force or for such shorter period as may be specified."

The amendment was negatived.
Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added:-

'(2A) Any such order may be revoked or varied by a subsequent order.”

The amendment was negatived.

Mr. Vice-President: The question is:
"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following be added at the end:-

‘and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

Provided that if any such order is issued at a time when the House of the people has been dissolved or if the dissolution of the House of the people takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament.”

The amendment was negatived.

Mr. Vice-President: The question is:
"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments in clause (3) of the proposed article 280 the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter."

The amendment was negatived.

Mr. Vice-President: Amendment No.86 does not arise.

The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, at the end of clause (3) of the proposed article 280, the following words be added:-

'and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately."

The amendment was negatived.

Mr. Vice-President: The question is:

"That for article 280, the following article be substituted:-"
280. (1) Where a Proclamation of Emergency is in operation, the President may by order suspend the right to a court for the enforcement of such of the guaranteed by article 25 of this Constitution as may be mentioned of the constitution during in the order and all proceedings in any court for the enforcement of the emergencies. rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

"(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament."

The amendment was negatived.

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

"That article 280, as amended, stand part of the Constitution.

The motion was adopted.

Article 280, as amended, was added to the Constitution.

**Shri H.V. Kamath:** The House will now adjourn to Monday 9 a.m.

The Assembly then adjourned till Nine of the Clock on Monday, the 22nd August 1949.
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"Nothing in clause (1) of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State or any operations or connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom."

The Parliament will take note of the progressive tendency of the particular times and may at once declare accordingly, it might not have been the ordinary function of Government before. Now it may become an ordinary function. There will be sufficient elasticity in clause (3) to enable the Government to exempt from taxation particular trades or industries which are started as public utility services or declare them as regular State industries. Nobody can question a law made, by Parliament because the Parliament has stated that a particular industry is an ordinary functions of the State whereas according to the nations of an individual economist A or B it is not so ordinary function of a Government Parliament will lay down the law of the land and it will be the sole arbiter of the question as to whether it is an ordinary function of Government or not.

Therefore having regard:

(a) to the plenary power of Parliament to exempt any particular industries, and particular business from the operation of the tax provision.

(b) having regard to the fact that it is not obligatory on Parliament to levy any tax.

(c) that the very conception of State industry may change with the further evolution of the State and changing times, and

(d) to the inter-connection between one State and another.

It will be very difficult to differentiate between particular States, between States which have been working certain industries and other States. But as a matter of administrative policy and as a matter of Parliamentary legislation it may exempt States like Mysore and Travancore which have been carrying on trade and business for a very long time and such industries today are as solid and stable footing so as to warrant an exemption, but on the other hand to lay down a general principle of law that even at the present day before the provinces arise on their feet every trade or business is exempt from taxation will lead to wild-goose schemes being started by various provinces. They may not take into account the general interests of the trade
and industry in the whole country. They may not have regard to the difference between one kind of industry and another. Under those circumstances the particular provision which has been inserted by Dr. Ambedkar is a very salutary one and is consistent with the most advanced principles of democratic and federal policy in all the countries. With these words I support Dr. Ambedkar’s amendment.

The Honourable Dr. John Matthai (United Provinces: General): Sir, I do not propose to go into the details of the various suggestions that have been made in the course of the debate this morning on this subject. But there are certain general observations that I would like to make and which I hope would allay the fears that have been expressed by honourable Members who have taken part in the discussion.

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Another consideration in that regard is article 13, sub-clause (f) of clause (1) which confers the right to acquire, hold and dispose of property. There is, of course, a proviso to that, proviso No. (5); “Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public, etc., etc.”. Bearing these two articles in mind, I have suggested this amendment to clause (2) of the proposed draft article 24. That is to say, I want to provide specifically that even in the case of industrial property including any interest in or in any company owning any commercial or industrial undertaking, the principles and the manner of payment of compensation shall not be justiciable. That would approximate to the principle of non-discrimination as between industrial property, and landed property with regard to which certain provinces have already taken action. I have provided for only the amount of compensation being made justiciable, because the Prime Minister stated in his speech today that the few have also to be protected, and therefore I feel that the only safeguard that they can have is as regards the amount of compensation. On no other ground can they go to the court and question the principles or the manner of payment of compensation.

Lastly, I would refer to the Government of India Act mentioned in clause (6) of the proposed draft article 24. Section 299 of the Government of India Act lays down in sub-section. (3) that Bills passed by the legislature of a State need not be submitted to the Governor-General for his assent. I fear that the power conferred on the President to give or withhold his assent might lead to serious complications in future and the only way to obviate any conflict between the States and the Union is to confer sovereign powers upon the legislature to acquire any property which is within the purview of the State.
Sir, I commend my various amendments to the House for its serious and mature consideration.

Mr. President: Mr. Brajeshwar Prasad, you have several amendments in your name; but it does not appear how they will fit in with the present discussion and the present amendments. Some of them are with reference to the present amendment which has been moved by the Prime Minister. Others refer to the previous amendments which have not been moved. Those which refer to the previous amendments, I rule out. There is thus one amendment No. 387 where you want to substitute "President" for the word "law". You have already spoken upon this subject at length and I take it as moved.

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word 'law', the words 'the President' be substituted."

Prof. K. T. Shah (Bihar: General) : Mr. President, I have also got several amendments. May I give you a list of the numbers?

Mr. President: I have got a list.

Prof. K. T. Shah: These amendments are taking the place of those which I have submitted to the original article and therefore, those are not to be moved.

My first amendment is number 388

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24 the following proviso be added:

'Provided that no rights of absolute property shall be allowed to or recognised in any individual, partnership firm, or joint stock company in any form of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes, or seas surrounding the coasts of the Union; and that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such enterprise.'"

The next one is amendment No. 394.

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,-

(i) for the words 'No property' the words 'Any property' be substituted; (ii) for the words 'shall be taken' the words 'may be taken' be substituted; (iii) for the words 'unless the law provides for compensation' the words 'subject to such compensation, if any' be substituted; (iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be be determined the words 'acquired as may be determined by the principles laid down in the law for calculating the compensation' be substituted;"
If you will permit me, Sir, I may read the amended clause which would be clear instead of in this disjointed manner. The amended clause will read thus:

"Any property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition subject to such compensation, if any, for the property taken possession of or acquired as may be determined by the principles laid down in the law for calculating the compensation."

Then, Sir,

"(v) the following be added at the end:

Provided that no compensation whatsoever shall be payable in respect of

(a) any public utility, social service, or civic amenity which has been owned, work managed or controlled, by any individual partnership firm, or joint stock, company for more than 20 years continuously immediately before the day this Constitution comes into force."

I have added the word "immediately". I have an amendment No.490 in this respect. That means, not at any time, but immediately before. Then, Sir,

"(b) any agricultural land forming part of the proprietary of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

(c) any urban land, forming part of the proprietary of any individual partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

(d) any agricultural land forming part of the proprietary of any landowner, howsoever described, which has remained in the ownership or possession of the same individual or his family for more than 25 years continuously immediately before the day this Constitution comes into operation;

(e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;

(f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation,

or

which has paid in the course of its operations and existence in the shape of dividend or interests, a sum equal to or exceeding twice up value of its shares, stock, bonds or debentures; or
whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The next is No. 410 which has already been moved by Mr. Kamath and I do not wish to take the time of the House over that. Next is No. 419. I move "That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,-

(i) for the words 'If any' the word 'Any' be substituted,

(ii) for the words 'has, after it has been 'the words 'may be be substituted;

(iii) the word, 'received the assent of the President,' be deleted; and

(iv) for the words 'assented to' the word 'passed' be substituted."

Sir, I move:

'That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the article 24, for the words 'not more than one year' the words 'at any time' be substituted.'

I also move:

'That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months and ending with 'Government of India Act, 1935', the following, be substituted:

'shall not be called in question in any court on the ground that it contravenes any provision of this article.,

Sir, I now speak to all the amendments, which, taken together, make a constructive proposition, and an alternative to the policy laid down in the amendment moved by the Honourable the Prime Minister. The Prime Minister 'has advanced the proposition that under this Constitution, there shall be, no expropriation without, compensation. I am afraid I am unable to share this view, if'it is to apply to all property indiscriminately and without modification. For not all property is such that the present holder or owner of it can claim, in justice, in ethics, any right to be compensated since the origin of property is not aways unquestionable.

A great French thinker asked the question 'What is property' and he answered it by saying 'it is theft'. I am afraid 'theft' perhaps is very often too mild a Word because much of the property has been acquired-if you go into the origins of this-by force, fraud and violence which under any system of ethics can hardly be justified. If you are going to seek to compensate those who have acquired property, no matter how long since, by such means as force or fraud or violence .or theft, I am afraid you would not be acting up to the ethical standards which are supposed to animate this Constitution.

Mention has been made by one of the previous speakers in the course of this debate, of slavery the right to own human beings, prevailing in the Southern States of the United States which was abolished at the cost of a civil war. That form of property had to be abolished, and
to the best of my recollection, without any compensation. True, compensation was given for the slave-holding owners in the British West Indies Colonies by the British Government when they decided without any violence to abolish slavery. But the ethical proposition does not become objectionable because in the case of the United States, and many other countries instances can be quoted—where nefarious forms of property have not been compensated for by those who expropriated the owners of such properties.

In this case I suggest that there is a certain divergence between the sense of economics and of ethics. Property is not an ethical institution, I venture to submit. It is an economic institution with close connection with ethics. I may say the economics has suffered because of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired by force or fraud or is used or abused or even unused.

At a later stage I shall come to that part of the argument which seeks to give compensation without any condition, or according to my amendment, which restrict compensation by certain conditions. But at this stage I am concerned to point out that there are public utilities, social services and civic amenities which under the existing system are under private enterprise. They are owned by individuals who derive considerable profit. By their nature they are monopoly or they have become monopoly; and whether operated by individuals, partnership firms or joint stock companies, they tend to rob, in my opinion, the community of that which belongs and ought to belong only to the community.

For such, therefore, I venture to submit there should be no compensation. The amendment I have suggested says that whatever may have been the case hitherto, hereafter, under this Constitution, no absolute right of property shall be allowed or recognised, whether in any individual, in partnership firm or in joint stock company, which concerns the working, controlling managing or operating of any public utility, social services or civic amenity; and that these shall be in future operated entirely for the public benefit by public enterprise in which there shall not be any private profit in the least.

I trust the actual wording of my Amendment in that regard will be carefully scrutinised by those who may not take the same view as myself. I have been very moderate in laying down the conditions. I repeat I refer only to the future, without regard therefore to what has happened in the past, in regard even to these utility services and amenities. I consider, even in regard to that future, the absolute right of ownership should not be recognised under the Constitution in any private concern whether individual or firm or company. But hereafter they must be operated by collective enterprise for the common benefit without any profit motive. I trust the essential modesty of this demand will be accepted and recognised and the Prime Minister would agree to accept this amendment.
Passing on to clause (2), I have suggested that there should be a positive clause. Instead of opening the clause in a negative manner, which somehow seems to suggest that the primary right and overriding right is that of the individual. I would lay down rather positively the right of the State or of the community to acquire any property if for any purpose it deems it necessary to do so. It has been limited by the words 'for public purposes'. In 'public purposes' I include, not merely the non-remunerative and common civic amenities e.g., when you want to clear the slum of a big city and acquire the ground held by tenements, you may keep up that ground for public purposes in the shape of parks or open spaces- I think that would be a very legitimate category of 'public purpose'. But there may be public purposes which are not only of that character-not only for building open spaces, parks or gardens; not only for building schools, hospitals or asylums, but even for building those lands on a more economic and more profitable scale- I mean profitable to the community and not to any single individual.

Acquisition of lands for public purposes, acquisition of any form of property, movable or immovable, for any public purpose, including the working of that enterprise for the benefit of the public, is, I think, an inherent right of the sovereign community which should not be subject to any exception of the type implied if not so much laid down in the wording of this clause (2). I have therefore suggested that any such property to be acquired can be acquired for public purposes without defining what is exactly meant by 'public purposes' subject to such compensation if any. I would like to sound a distinct note of warning in connection with the calculation of compensation-in fact on the very basis of compensation. Not all property is deserving of compensation nor should the Constitution recognise categorically without qualification or modification the right to compensation as appears to me to be the case in the clause under discussion and hence the amendment I have suggested to it. I would certainly leave the margin of doubt whether any compensation is ever due and must be paid in every case without question. Doubt having thus been expressed by the term "if any" I would also go further and say one thing more: viz., that property having been acquired, movable or immovable, the law' should lay down the general principles according to which the compensation will be calculated and the law should not try to lay down the exact detailed amount for each case.

I would now give you my reasons for objecting to the laying down of the amount in law, and preferring to lay down the principles according to which compensation should be calculated. The amount, if laid down by the Legislature, which presumably will be dominated by parties, is liable to be fixed more, perhaps for party reasons than because of the inherent or intrinsic justice of each claim, apart from the fact that the Legislature would be involved in endless series of individual recognitions. I think it would be ethically wrong for the legislature to go into the details of each valuation, let us say of each estate, each share or stock or debenture as
the case may be. Now, it would be the best course for the Legislature to lay down only broad principles according to which, in any case, where it is decided to give compensation, that compensation will be calculated, and the calculation should be made by tribunals which tribunals, as I have always been insisting, should be free from any influence or contact with any other organ of the Government, whether executive or legislative. You will be doing the right thing if you entrust the administration of the principles that you lay down in your sovereign legislature to the judiciary.

Having said this, I next lay down certain categories of property in which, according to my judgment, no compensation should be due or be payable, and that I contend, is inherent both in the economics and ethics of the case I am trying to advance. That is to say, any agricultural property which may form part of any proprietary, which is utterly unused for a number of years, neglected for a number of years, may be taken over without payment of any compensation. The land has remained utterly unutilised, or the zamindari has become unsocial, and therefore for that unsocial act, for that act of negligence, or for that incompetence or indifference the community is not bound to compensate the owner. I, therefore suggest that in the case of any property which is capable of being properly used, which is capable of adding to the growth and wealth of the community, but which on account of the indifference, incompetence, negligence or otherwise of the owner is not so utilised, the owner does not deserve to be compensated and the community would be wrong if it gives any compensation in respect of such items of property.

I say the same thing with regard to public utility and social services which may have been hitherto operated by private individuals, corporations or firms and which, according to general principles, should not have been left in their hands. But since they have been there, let us compensate them, provided that these have not been held for a period exceeding the one I have suggested or some such period. Again, the basic principle of my argument is the same. They have gained from this kind of monopoly, from this kind of public service, a profit and a surplus far in excess of what should be legitimate, to the exclusion of the public benefit, and therefore, they have no right to demand compensation for such services. If the period for which they have held it is in excess of the one I have mentioned, the presumption is that they have already had more than enough, they have compensated themselves more than enough. Therefore no compensation is, in law or ethics or economics, due to them and should be paid to them.

Similarly too with regard to urban lands which very often is held merely in the hope that by development of population, by the growth of population, the development of social services, and of public utilities the value of the land will be increased. People simply do not want to invest any more capital and just wait, until purely by the conjunction of and by the operation of social forces, the value of the land is increased. They simply allow the forces of nature to
play upon such lands, and therefore no compensation should be paid to them. I think they are social offenders and the community would be well within its rights to deal with them as social offenders for having taken potential sources of production and not utilised and developed by them. Therefore, they are not entitled to demand any compensation for this kind of unsocial or even anti-social behaviour.

I pass on now to other forms of natural wealth such as mines, forests and mining concessions which are also in the nature of monopolies. They are gifts of nature belonging to the community, but have been alienated from the community to private individuals-I will not use a harsher term. If these have fallen into hands of individuals because of our helplessness or by reason of the foreign rule, we see no reason why we should go on recognising this injustice, this robbery of the people's right. Therefore, I do not think that for these mines or mining concessions, forests or forest concessions, any compensation is due. If operated for the given number of years I have stated, the, holders have in all conscience received more than enough and therefore, they cannot demand any more compensation, whether they be coal-miners, or iron miners, or gold miners. Compensation for them would be utterly unjust and must not be allowed.

Apart from these forms of natural wealth, I pass on to the next, industrial and commercial undertakings which is their own way, are no less offensive than perhaps the primary sources of production like land, mines or forests. These too have got into private hands, because of the prevailing economy of those days, and it is now too late to complain. But the have been operating, and those of them which have been operating for a number of years, have been earning sizeable profits from this operation, these should not be entitled to demand compensation, as they have already received enough, in my opinion, and more, enough and to spare, for times to come.

The three categories I have laid down are, first, those who have been paid in the aggregate more than twice the amount of their share capital or debentures or stock or whatever it may be, so that in a period of so many years they have already reimbursed themselves, and consequently therefore it is necessary, it is but just and proper that the community should be called upon to take over their enterprise and conduct it in the way that it deserves to be conducted in a properly coordinated and planned economy for the nation: Those again, who have held it for the entire period, say for thirty years, whether with or without profit, have proved themselves either too incompetent or unprofitable and therefore they do not deserve, to continue holding the property. Therefore they should be expropriated. The others have already received sufficient and more than sufficient to reimburse themselves for any investments they may have made, and therefore they are not entitled to any further compensation. I do not wish to offer examples of mining concerns and concerns connected
with basic industries like iron and steel, banking and insurance which have in the last generation or more, particularly since the Swadeshi movement, tried and earned very fat dividends, very large, surpluses, which should be taken to have more than reimbursed them; and now in these cases, particularly those which are of basic necessity for the country's development, to pay compensation on anything like the artificial value which is given to them is, I submit, utterly unfair and ought not to be permitted. I have therefore suggested by this amendment that no compensation shall be payable to categories of property of this kind. Lastly, in the case of the industrial and commercial undertakings, in the case of those whose liabilities and assets do not tally, whose assets are much below their liabilities and therefore it being always a losing concern, for compensation to be given to such concerns would be putting a premium on wastefulness and extravagance and uneconomic working and therefore ought not to be allowed. Time and again, the State has taken over in the past enterprises which were in the previous two, three or four years so wasting their resources as to make themselves a white elephant. I am particularly speaking of some of the railways which had to be taken over by the State and which under the terms of the agreement worked in such a manner that the assets received were much below any real value of the liabilities that they will Out upon us. The any such case, therefore, I submit it is unfair, it is unwise, uneconomic, unethical, to offer any compensation merely because it is a losing concern or that the owners have, proved themselves utterly incompetent and undeserving of any compensation merely because of their own negligence they have failed to make both ends meet.

The other amendments which I have tabled are of a procedural character and as such I will not take too much time of the House on them. I do not think it is desirable that any room should be left for an avoidable conflict between, for example, the head of the State and the legislature. Therefore clause (3) which suggests that every Bill of this kind may be reserved for the assent of the President and make it an item of importance is in my opinion unwise and therefore ought to be avoided. I have therefore suggested that that clause be deleted.

Similarly, in the case of pending Bills or Bills which have been passed one year before or at any time before this Constitution comes into force, there should be no need, in my opinion, for any reservation, for the approval or the assent of the supreme executive authority in the land and create a kind of tension between the Central authority, the national authority and the local or State authority as the case may be. I trust these points that I have advanced so briefly would meet with the approval of the House and the amendments work be accepted.

Shri Jadubans Sahay (Bihar : General) : Mr. President, Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3), (4), (5) and (6) of the proposed article 24 be deleted."
My justification for moving this amendment must have been very clear to the Members by this time. The draft article as it stands before us is, I venture to submit, one of the most wonderful examples of chaos and confusion of ideas. Nowhere possibly you will find such a conglomeration of things, such a confusion of ideas, on such an important and vital issue as this concerning the property of the country. As an august body, we are going to lay down the foundation of property for future legislatures and for the posterity of this country, but I venture to submit that we have utterly failed in this task. It must be apparent to the members of this House that the more the two differing schools of thought have tried to compromise their viewpoints the more confused has this entire draft become. You know that the question of property has been engaging the attention not only of this country but of other countries as well. Agrarian and industrial reforms have set at naught centuries-old definition of property in many countries. It was expected of us that at least on a matter affecting the teeming millions, on a matter affecting the future economic structure of the country, we should come out with a clear-cut economic formulation of policy regarding property. But what we find is that the draft has not been able to inspire confidence in any class.

Take the industrialists and capitalists. They are not satisfied with it. Take the landed magnates. They are not satisfied with it. So far as the teeming millions are concerned, they would not be satisfied with it, had they the voice to lay before you their feelings regarding this Draft Constitution. They in whose name we have come here and for whose sake all of us possibly are making this Constitution—what are we giving to them? I will not enter into the controversy as to whether compensation as provided in this article can root out the growth of capitalism that is taking place in this country so rapidly and which is bound to affect the future political economic and other growths of the country.

Suffice it to say that the conception of property has been changing. The world has been changing. From the Divine Right of the sovereign we have come to the sovereignty of the people. But our mind—have not been changing so far as the concrete realities of the question of property are concerned. Are we going to hold out hopes for the future—that industry in this country will be nationalised or socialised in the interests of the masses of the people? No. This Constitution does not hold out any hope; rather it binds down the future generation, the future legislatures, to pay full compensation to any industry which they may want to nationalise.

This article has not created any enthusiasm in the mind of anyone. So far as Bills are concerned, what do we find? There is confusion reigning there because in one province we find that a Bill which is pending is given recognition here. Is it the duty of the constitution-makers to deal with Bills which are pending, which have not gone, to the Select Committee. So far as the amendment is
concerned, I am seeing that chaos and confusion reigns everywhere. What would be the, effect on other provinces? Leave the case of the U.P., Madras and Bihar. What policy are you going to lay down for the guidance of Assam, Bengal and also C.P., where zamindaries may be abolished in the future. Would they be asked to pay compensation or would they get protection under clauses (4) and (6)?

I would beg to yoy to consider that this article is the most important in the you whole Constitution and it is an acid test of the Members of this House. We have failed because like what we are on every other thing we have become victims of confusion. When problems face us we shirk them or we try to interpret them in two different ways. There are two schools of thought and one of them should have found place here—it is either compensation or no compensation. It is quite a different thing to say that we should not, in the present state of our country, in the present crisis in the country, proceed in a way that such a legislation might overawe our industrial magnates and make capital shy. I think the State legislatures and Parliament will certainly take note of the crisis we are facing. But it is quite a different thing that for all generations to come you are going to bind the hands of the future by such provisions. It is because of this possibly that we have not enunciated clear economic policy to the country.

My forebodings may not be correct, but I fear that upon this Constitution, possibly the whole labour we have put in in this House for the last two years, might be thrown away, because it is bound to be one of the most controversial things, for we are taking a line which is neither to the left, nor to the right nor in the centre. There is conflict and confusion in our minds. Therefore I have in view that only the first clause Should remain and all others should be deleted. Let it be left to the State legislatures or Parliament or to our leaders who run the government to give direction to the country, to say how laws should be formulate regarding property in any province. But for God's sake do not burden this Constitution with all such things which you do not find in any other constitution of the world.

Mr.President : Amendments Nos. 390, 391, 392 and 393 are ruled out. Amendment No. 396 is verbal and need not be moved. I call upon Mr. B. Das to move his amendment No. 397.

Shri B. Das : Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24. for the words 'unless the law provides for compensation' the words 'unless the law provides for or and equitable compensation' be substituted."

With your permission, Sir, I would also move amendment No. 427:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."
Sir, I support the motion moved by the Honourable Pandit Nehru. I think it my two amendments are accepted by the House. It will just clarify the situation so that we do not fall into the traps of which we just now heard from our honourable Friend Prof. K. T. Shah, who is going to be the leader of the Opposition in the Parliament a few days hence.

On the 9th August 1942 all our leaders were incarcerated for giving the nation the battle slogan "Quit India" and they came back sanctified, and determined to achieve our FREEDOM. In 1945-46 our leaders issued the Congress election manifesto to the nation in which, referring to the reform of the land system and acquisition of property, they declared:

"The reform of the land system which is urgently needed involves the, removal of intermediaries between the peasant and the State. The right of such intermediaries should therefore be acquired on payment of equitable compensation."

It has been recognised by a majority of Congress leaders outside and some of them inside that equitable compensation should be paid for properties acquired. Somehow there has been a big controversy both inside and outside the House that nationalisation and expropriation should prevail and not fair and equitable compensation. Unfortunately when Congressmen came into power in 1947 some of the younger section of the party began to talk of nationalisation and expropriation. Today some of them are Members of this House and even of the Congress Government and they are silent over the word 'expropriation' which has 'been enunciated so definitely by the democratic socialist leader, my old friend Prof. Shah.

We Congressmen have an onerous duty to the country. Are we to fall into the trap of the Socialists and take shelter under the law and pay no compensation in the name of the law or are we to stand by the Congress Parliamentary manifesto that equitable compensation should be paid? That is why I want the exact words of the manifesto to be introduced in the amendment of Pandit Jawaharlal Nehru.

As regards the second amendment where it has been said "any law that has been passed one year before the commencement of the Constitution," I find that others too have tabled amendments to the effect that it should be one and a half years. Why mince matters? We attained our freedom and independence - though that independence is today qualified by our kowtowing to the Commonwealth countries. Why not say "any law that has been passed after the 15th August, 1947"? This does not alter materially the amendment which Panditji-has moved but it fixes a date which is well known and it is no use talking of one year before the commencement of this Constitution.

Coming to the motion moved by Pandit Nehru, whether my amendments are accepted by the House or not, I have to accept it, because there has been no fairer proposition that has been tabled or moved by any other member of the House. In accepting that we must admit that we recede from our original ideals. We go back on the election manifesto that gave to the country
high hopes and high ideologies, for the last four years - the election manifesto of 1945-46. Perhaps as we exercised power, power-politics have upset the leaders of the nation and the leaders of the Congress Party feel that idealism is not the right thing and that there must be compromise in life.

But I am not one who will be cowed down by the Socialists. If the Socialists want to succeed the Congress in the country, let them plan out what they will do. Except making a few criticisms of Congress leaders in the press and on the platform the Socialists have not evolved or done any constructive work in the country whereby they show their fitness to succeed the great Congress Party in the country in the control of the administration of the nation, I was amused to read a little note in the "Statesman" this morning where the writer has mentioned that the Socialists have formed themselves into the Social Democratic Party in the Parliament to oppose the Congress Government. He says that besides irresponsible talks - irrelevant garrulity inside, the Assembly and little action outside, they have not so far produced any planned programme by which they can establish better Government in the country, or rather Government to usher in a peaceful era of constructive Socialism. If I am to understand the Socialist programme as my Friend Professor K. T. Shah enunciated a few minutes ago, they want expropriation of all properties. I interjected "Why does not my Friend Professor K. T. Shah want to expropriate all movable properties of the citizens of India?" That will give him and the Socialist Party a certain amount of property and wealth by which they can carry on their so called programme, as the Pakistan Government is carrying on by confiscating properties worth Rs. 4,000 crores of displaced Hindus and Sikhs who have migrated to India. That is not the right solution. Expropriation is not the right solution to produce better wealth. Expropriation will not work the industries that Professor K. T. Shah and perhaps the Socialists want to work in the country for greater production and larger prosperity and wellbeing of the people. No industry can survive if it is expropriated. If expropriation will make the Socialist labour workers to do better work to produce more, I think they are thinking on wrong lines. Unless there is adequate production on man-hour basis, whether industries are private-owned or State-owned, such industries must produce enough to maintain the national credit of India. If my Friend Professor K. T. Shah, who was the Secretary of the National Planning Committee, after writing those beautiful and studied volumes has come to the conclusion that national credit cannot be maintained unless you expropriate all property, be it landed property or be it public utility concerns or other concerns, if that is the sort of dreams that Socialism has, then I pity the Socialists and they will never be at the helm of the Government of India in the near future.

In supporting Pandit Jawaharlal Nehru's motion I accept the compromise. It does not satisfy my soul, but it satisfies the present exigencies and on that ground I support it.
Mr. President: Amendment 398 is to the same effect as 397. Also 399 the first part of it-is to the same effect. Therefore these need not be moved.

Shri Jaspat Roy Kapoor: May I submit that part (a) is something different from amendment 397 or 398?

Mr. President: You may move clauses (b) and (c) of your amendment.

Mr. Naziruddin Ahmad: (b) and (c) have also been covered already by amendment 389.

Mr. President: Yes, that has been moved by Mr. Jadubans Sahay. Therefore all these amendments need not be separately moved.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I move:

That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words "for compensation for-" the words "compensation not more than 5 per cent. of the market value of" be substituted.

When these words are substituted the clause will read thus:

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides compensation not more than 5 per cent. of the market value of the property taken possession of or acquired" etc.

We have made this article non-justiciable. When we do so there must be some principle. What is the maximum that we can pay as compensation? We are not going to pay justiciable compensation. Whatever we give is supposed to be just and equitable. All these days the State has given protection to the zamindars or capitalists to acquire the properties. Now we are requiring the properties for the State, for the good of the State, for the betterment of the common people in order to maintain the national economy of the country. So we must also take into consideration how these capitalists and zamindars have been responsible for the fall of national economy by not utilising the property in a proper manner, that is to say, by not producing the required amount of value out of the capital that has been in their possession. As a result of that they have been responsible for the fall of production. Let us for example take a zamindar who owns thousands of acres of land. At times because he may not find enough manual labour he may not cultivate the whole land and most of the land goes fallow. Or even if he does it he may not do it with all the intensity that is required and necessary, and he may not produce the quantity that can be produced from that land. So he has been responsible for the fall in the national wealth. He therefore deserves not compensation but something else. He must be taken to task for having deprived the nation of the national wealth.

Now we are glad that the country has realised that we should not allow properties to be owned by either individuals or corporations, but that all property should be, at the disposal of the country as a whole. We have been abolishing the zamindari system. It
has already been commenced in two provinces. Now, to whom does this land go? It should not go into the hands of petty zamindars. It must go to the State. We should not create innumerable petty zamindars in the place of a few. That is not abolition of zamindaries. Now if you give more compensation, it will mean purchasing the zamindaries and not abolishing them. When you acquire properties for State purposes, the State should have control over them. After all the person who is in possession is there only to make use of the land. He need not own it. A pattadar today is not the owner of the land he is using. Government is the owner because the Government has conquered it inch by inch and should therefore be the owner. The pattadar has only the right of using the land. He cannot say that the land belongs to him. Even the zamindars were there having the custody of the land on behalf of the people, that is all. They were collecting also rent from the people. Now you are taking away the right to collect rent and giving the land to the people who have been under the thumb of the zamindars cultivating it. You are not taking the land to the State. You are taking away the land from the zamindars and creating a number of chota zamindars, more numerous than the former. That way you cannot solve the land problem. The solution of the problem lies in nationalising or socialising the land. The people of the locality must be the owners of the lands; the tillers of the soil must be the owners. Then only you can say that you have acquired the land for State purposes. Until and unless this is done you can not say that you have solved your problem.

We decided in the beginning that our aim is to establish a co-operative commonwealth. Unless you socialise the land you cannot have that commonwealth. The lands acquired from the zamindars must be plotted out on a co-operative basis and given to well-trained cultivators with instructions that they grow more and more food. Now what I propose is that while you acquire land for this purpose it is just and proper that you pay 5 per cent. or less. With these few words I commend my motion for the acceptance of the House.

Mr. President: Amendment No. 401 of Mr. Naziruddin Ahmad is covered by the amendments already moved.

Mr. Naziruddin Ahmad: No, Sir.

Mr. President: All these expressions 'fair compensation', 'full compensation', etc., mean the same thing.

Mr. Naziruddin Ahmad: There is a shade of difference between them.

Mr. President: Well, shades of differences are matters for drafting. Amendment No. 402 is also covered.

Pandit Thakur Das Bhargava (East Punjab: General): This item (iii) of 402 is entirely different. This is not covered.

Mr. President: Only item (iii) in amendment 402 which seeks to introduce appropriate” before the word "principles" is new. You may move it.
Pandit Thakur Das Bhargava: I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, before the word 'principles' the word 'appropriate' be inserted."

Then, Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the word 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair', be inserted."

Mr. President: Your amendment No. 479 cannot be moved. It is covered by previous amendments.

You may move amendment No. 487.

Pandit Thakur Das Bhargava: Then I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' or alternatively, 'fair' be inserted."

Next I move, Sir,

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is' be substituted."

Mr. President: Your amendment No. 503 is covered by amendment No. 389. Amendment No. 512 also cannot be moved.

Pandit Thakur Das Bhargava: Then with your permission I move:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added:-

'(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.'"

In regard to the amendments, I beg to submit that the present principle of acquisition of property for public purposes is sought to be saved by clause (5) of the proposed article. The existing law is contained in Act 1 of 1894, according to which, before property is acquired or requisitioned, compensation is to be paid. The compensation which is laid down by the law to be paid is the market value of the property at the time of the acquisition plus 15 per cent. for disturbance. I understand that clause (5) of article 24 saves that law, so, that before any other provision is made by the legislature subsequently. this law will hold the field, and if any land is acquired, it will be acquired according to this law. Under the present law, an executive officer determines the compensation but his determination is not final. A person aggrieved
from this order can go to a civil court or a District Judge and there get the order revised, if he is not satisfied by the order of the executive officer or the revenue officer or whoever the officer determining the compensation may be. After that, it becomes a civil suit and the civil court will find out what the market value is and add 15 per cent. to it. This is the present law. According to amendment No. 369, if any law is passed by the legislature subsequently, then that law will be on the lines given in article 24.

Now, this article 24, as it is, seeks to delude any person who reads it that he has got a justiciable right. We have been told times without number not in this House but in other places, that this right is justiciable. Exception was taken on the core that it should not be justiciable so far as zamindars are concerned. The whole dispute centered round this question whether the right given by article 24 of the Draft Constitution was justiciable or not. From the very start I have been of the opinion that there is little of justiciability in article 24 of the Draft Constitution. because after the legislature has laid down the principles, those principles become unalterable. These principles cannot be questioned in any court of law. Nobody can agitate before a court that the principles which have been approved by the legislature fail to give adequate compensation. The word "compensation" itself means a good quid pro quo. In the word "compensation" itself the adequacy and fullness of the consideration is implicit, though doubts have also been thrown on this connotation of the word "compensation". I do not know whether this word compensation has got this meaning or not, but as I understand this article 24, I am absolutely clear in my mind that if clause (2) remains as it is on the Statute Book, then the legislature and not the courts shall become the final arbiters of the compensation.

It would follow that if the principles are given in a piece of legislation, those principles will ultimately decide-what the compensation has to be. of course, if practically no compensation is given, a man can go to a court of law; otherwise he cannot go to a court of law. Thus if the compensation paid is a fraud upon this section, then in that case the matter can be taken to courts. It means that if instead of 100 rupees one rupee is paid, then it will be complete destruction of the word "compensation". If out of one hundred rupees one rupee is paid, it will be a fraud; if ninety-eight rupees are given or five rupees are given, it would not be a fraud. I think Sir, that this clause (2) is at present a fraud on us because I understand that it is not justiciable. It is made to appear to be justiciable to convince the general public. My submission is that it can only be justiciable in one way and that is what I have submitted for your consideration in my amendment No. 402 that the word "appropriate" be added before the word "principles". If the House accepts this it will mean that the principles must be appropriate, must be fair, and the application of these appropriate principles must result in one thing viz., that full compensation, or fair compensation will be given. My submission, Sir, is that if the word "principles" remains here without any adjective,
I am sure the clause is not justiciable. Therefore if the House accepts my amendment, then we can make this right justiciable, as it is evidently the intention of the framers of the Constitution that it should be so. And so my submission is that the House will be well-advised to accept my amendment.

I have heard the arguments of my Socialist friends who are of the view that if the legislature fixes some compensation, or the principles, then the courts should not have any power, should not have the final say in the matter. I do not quarrel with them because it is only a point of view, but to those of us who believe that the courts in this country, as in all other countries, are the final arbiters of civil rights, to them it is very clear that this article 24 goes against the very principal of justiciability and the rights of property, even as recognised and guaranteed under article 13.

Now, Sir, the Honourable Prime Minister, when he moved this amendment, told us that the rights of the individual as opposed to the rights of the community should also be considered. I quite agree. in the Objectives of our Constitution, we have already laid down that we want to ensure justice, economic and social. I want that the dignity of the individual and the unity of the nation must be there. I think, Sir, that we should arrive at a happy blend between the rights of the individual and the rights of the community, and in this regard the Congress and the whole country is committed to the abolition of the zamindari. We shall not be in the, right if we go back and say that there will be no abolition of zamindari. I do not want that the whole thing should be resolved in this manner. Every person in this country should understand and accept the principles, the broad principles of legislation in this respect.

With regard to clause (4) I have seen the legislation of the U.P. and I am satisfied with the principles which govern this legislation. The whole idea of that legislation is that the peasants should become owners of the property, that every person must be made the owner of his land, so that he may take full interest in the land and develop it as much as he can. I accept the principle that if for the purposes of agrarian reform by virtue of which the peasants or the tenants are made proprietors and the zamindari is abolished, then in that case such compensation may be given as is equitable and in that case the State Legislature may be the final arbiter and the best judge of it. Therefore, I have put in an amendment No. 514 which seeks to have another clause, namely clause (7) wherein I say that if such an occasion arises when any State in future also wants to have a law, like this, it can have the benefit of the law under clause (4).

In regard to clause (6) I have given an amendment that it should be deleted. I am not satisfied with the Bihar law at all. I went through the Bihar law and when I read its provisions, I was simply startled. Its provision says that from a certain date when the public notification is there, all rights of property will be confiscated and those persons who were owning
properties today will become only occupancy tenants if they possess, Sir, lands. So far as this, law is concerned, the Bihar Government is not affected at all because if they want to have a law on this new basis, if they abolish zamindari and then create instead peasant proprietors with full rights of ownership, I am one with them. There is another amendment sought to be moved by Messrs. Munshi and Alladi Krishnaswami Ayyar and that amendment says that if such law goes to the President, the President shall have the power to require any specified amendments to be made in such law.

Moreover I cannot understand why Madras, U.P. and Bihar Governments should have such laws passed in this manner and other States should be denied the liberty of having the Zamindari dissolved. I think we ought to be fair and equitable. If the basis of the U.P. legislation is accepted by law, we should see that that principle is applied to all the other cases. These words "that there must be an agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors" are there in my amendment and these principles are sound. They have been sanctified by experience of ages, of course there are the people who have owned those properties for a long time and on account of their absence from their places the exercise of rights by those people cannot be so useful to the community as in the case of others. Unless this exception is made and this is made applicable to all the provinces, this will not be fair.

I have put in amendment No. 496 which seeks to substitute the word "is" for the words "having been". If my amendment is accepted it would mean that the Provincial Government will thereby be compelled to hold it for the assent of the President and then the President will give the assent because today, supposing a Provincial Government does not hold the Bill back for the assent of the President, then a difficulty would arise as it may not be allowed to go to the President at all.

In regard to all these, I have to submit that these fundamental rights we have been told are justiciable, times out of number. Now I see that attempts are being made to see that the rights which are guaranteed to the citizens of India are being taken away, one by one. Two or three days back, I had occasion to say that article 16 was sought to be taken away and it will be taken away and article 13 is also I see being burdened with such reservations and being subjected to such modifications that it is also being taken away. The accursed article 15 is neither fundamental nor justiciable.

If we really mean to have a Constitution of this nature for which we have been boasting all over the country, we should not enact a provision like article 24 because it is the very negation of the rule of courts in this country. In our country where we have got this freedom without going through any bloody revolution, it is necessary that we should see that discipline and democratic ideals are installed in our hearts and that the law of the land becomes the law by which every person is governed. Unless and until the courts are empowered, and the
courts are the final arbiter of the civil rights and of the liberties of the people, I feel that if the legislatures alone are given the power we are coming to a point where fiats of executive officers will deny us our rights and this would be very wrong. I feel in the activities of the Government a tendency that everywhere we seek to destroy the powers of the courts and substitute therefore the power of the legislature or the executive.

What is an executive officer? Supposing an executive officer has to decide my fate; he is the person who is interested in getting my property and giving me a very small compensation. That is not fair. He should not be a person who should represent the Government's interest in all the stages. The courts will also be appointed by the Government. Let those courts decide our civil rights so that people may have confidence; and moreover, Sir, in regard to ordinary properties excepting the Zamindari, etc., I am not fully satisfied as to how the principle of superiority of the rights of the community has precedence over the rights of the individual. After all where is the law that you should usurp the rights of the individual with a view to benefit the rest of the society excepting that individual? The salutary rule which we have accepted for the last sixty years and more is that the present market value is the proper basis for fixing the amount of compensation and this should not be departed from, unless for scheme of agrarian reforms involving millions of people and multiplicity of litigious suits. I understand that my socialist friends come, here. Some of them are very rich themselves and do not practise what they preach and are engaged in amassing as much property as they can lay their hands upon. I just want to submit for the consideration of the House the views of the common man. The common man does not recognize your doctrines of "Property is theft". He believes in the sanctity of property. Supposing any land or house is taken away for the purpose of a railway line or some undertaking of the Government, no doubt for a public purpose, will any one be satisfied if he is not given full compensation, and is there any valid reason why he should not be fully compensated? As a matter of fact no one will feel confident if you enact laws as you propose to enact that not the courts, but the executive officers should be the final arbiters of the civil rights of the people, and it is not politic to undermine the confidence of the people.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, Sir, I move:-

"That in amendment No. 369 of List If (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

Sir, I have also given notice of another amendment which is No. 434, I do not propose to move the first portion by which I sought to add 24A, but I would beg leave to move the last portion, Sir, which is styled here as 24B and if it is accepted it will have to be numbered as 24A.

Sir, I move :-
"That with reference to amendment No. 369 of List VII (Seventh Week) after the proposed article 24, the following new article be added:--

'24A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property."

Sir, this is undoubtedly a very important provision in the Constitution and it is not therefore surprising that we have been deliberating with regard to these provisions for a very long time. In spite of our efforts, it has not been possible to evolve a formula which is acceptable to everybody. Sir, the claims to property or our outlook towards property is next only to individual liberty the very essence of all political thought and constitutions. More and more as time advanced, the outlook towards private property has been undergoing very great changes. On the one hand there has been a system of excessive capitalism; on the other we have the instance of Russia where all private property was confiscated. India has come into its own as one of the greatest nations of the world and on this one thing as to how we regard private property is going to depend the state of politics if not the governance and fate of this country.

The formula that has been presented here in the shape of this article, in my opinion, is a half-hearted one. It neither protects private property, nor does it confiscate it. If it is necessary to respond to the cry of the people who are more and more being dominated by proletarian ideas that all land, all mines and all things belong to the people as such and there can be no preserved or separate right of any individual with respect to it. If we wanted to give effect to this or to respect the wishes of the people or act in consonance with this demand of the people,

which, in spite of all our efforts to keep communism away, is getting more and more popular with our people, if we do not want to go back on the of-proclaimed promises held out under different conditions and- circumstances, it would be necessary for us to go much further than we have been able to go in this particular formula. But, Sir, I wish to advise a cautious attitude. I believe, sooner or later, there will be no private property in India. We are fast approaching that ideal, that goal, or that catastrophe if you like to describe it in that way. But, for the present, I would have liked to keep the thing in a somewhat fluid, undefined and elastic condition by accepting the amendment that has been moved by my honourable Friend, Mr. Sahaya.

I think, Sir, as I have advocated on many occasions, that we should not try to commit or fetter the powers of Parliament in such a matter and at this stage any way. This is a matter which requires very careful and thorough consideration and I feel at the present moment it is impossible for us to spare for it the time that is needed. In my opinion we have hardly had time to collect all the relevant information and if I may say so, the worthiest amongst us has
not been able to decide upon a definite policy with regard to property as a whole in the whole of India. It is clear from the nature of the amendments that have been given notice of and put forward in this House that very few people including my friends the Socialists have a clear conception as to how exactly we are going to deal with these rights to private properties, whether we are going to preserve them or whether we are going to abrogate them so far as all private property is concerned. Of course it is noteworthy that even Socialists have not advocated expropriation.

That being so, it is not at all easy to determine, where the limit may be set or where the line should be drawn. Especially when we are making a constitution, we have no time to investigate the various circumstances of this whole sub-continent, where the conditions vary from district to district and vary still more immensely from province to province. Each one of us has different ideas and there are everywhere different tenures of land, Jagirs, Zamindaris, Izardaris, Malgujaris, etc., and it is not possible for us to deal with them all in one way or to evolve a formula which would be not only acceptable to everybody, but of which we shall be able to say for certain that it is going to achieve the salvation of India, and that no other solution would be better fitted to meet the circumstances of the case.

From that point of view, I would have much rather liked that all that we say and provide is the first clause which is of course the same as in the Government of India Act: "No person shall be deprived of his property save by authority of law." If we had done this, then all the various things that we have included in the article as it has been placed before the House by the Honourable the Prime Minister would have been unnecessary. The article has perforce to be an involved one; there have got to be 'save' and 'except'; there have got to be "notwithstanding" this and that; "nothing in this will apply to that" and "subject to what is stated" etc. I do not think we are in a position to judge of the future so quickly and in such definite terms as to lay down a certain formula which will be, without doubt, of benefit to the whole country. I would therefore urge that all that we should say is that Parliament may by law determine property rights from time to time.

There have been two interesting speeches delivered by my honourable Friends, Mr. Kamath and Professor Shah. They have described property by quoting certain definitions. Mr. Kamath said that some one had defined property as theft. My honourable Friend, Prof. Shah has gone further and quoted that it was described as "robbery, dacoity, deceit" and what riot. Shudder to think what will happen to the fine sherwani which Prof. Shah is wearing or the silken upper garment that Mr. Kamath puts on his shoulders if we were to accept any of these definitions and give effect to the purpose behind the definitions. But, we are unable to fly so high or accept the ethical and spiritual heights to which our spiritual friends, if I may be permitted to say so, have flown. We cannot in this important matter commit our future successors to any policy which will fetter their discretion,
and which will probably create innumerable difficulties in their way. We are also in the midst of a financial crisis; it is not a crisis of this country alone; it is a crisis which the whole world has to face.

Under these circumstances also, even if we do not like it, we have got to curry favour with capitalists and those who have got large properties and in view of the results that may accrue, we cannot wholly disregard them. On the other hand, there, is the demand by the people that they want to own, and to re-distribute the whole land. In the province of Berar, more than two-thirds of the land, I think, is owned by money-lenders. It is natural when the whole nation is thinking and becoming conscious, that they should not like any individual proprietors to monopolise such extensive properties. Therefore, the pressure is going to be more and more that there shall be a re-distribution of property especially landed property. If we wish to resist this demand, then we will have to make up our mind solidly and plainly say that private property rights which are existing at the present moment shall continue to exist. But we cannot have a half-hearted, half-way house like the one which has been presented here, which neither takes us nearer those whom we wish to please, nor shall we be consistent with what we have declared from time to time. Under these circumstances, Sir, I think it would be better to leave the more detailed description of the rights to property to the future Parliament.

Sir, the second amendment that I have moved refers especially to religious trusts. I know, Sir, that most people are aware of the way in which these religious trusts are managed and I think it is necessary that the question of compensation cannot arise in this case. The sooner we utilise these vast properties for the benefit of the nation, the better it would be. This is something that is extremely desirable, and I hope, Sir, that this addition that I have proposed to article 24 would also be accepted.
"That in amendment No. 369 of List VII (Seventh Week) after clause (2) of the proposed article 24, the following proviso be added:

'Provided that when any such law provides for the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or any intermediaries whose interests are to be acquired.'"

My amendment No. 417 is already covered.

I move:

"That in amendment No. 369 of List VI (Seventh Week) for clause (5) of the proposed article 24, the following be substituted:

'(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.'"

I also move No. 425.

"That in amendment 369 of List VII (Seventh Week) in clause (5) and in clause (6) of the proposed article 24, the words "Save as provided in the next succeeding clause" be deleted."

I also move

"That in amendment No. 369 of List VI (Seventh Week) in clause (6) of the proposed article 24, the words, figure and brackets 'clause (2) of this article' be deleted."

I do not move No. 439.

The proposed new article 24, to say the least in effect though not in appearance, a most revolutionary provision. It indicates a serious departure in the policy of the Government. The article is simple-looking, but as I have already indicated in effect it is extremely dangerous. The crux of the whole problem before the House, so far as this article is concerned and which affects the various, amendments, centres round one important principle viz., the principle of compensation. Should you or should you not pay compensation for lands and properties acquired for public purposes? Compensation, before this new article 24 was ushered into this House, had a definite meaning. Compensation meant that sufficient, fair, legal or equitable compensation must be given. Whatever be the description you must pay for what you take. That was the idea in India before article 24 was introduced and that is still the idea in all civilized countries. That was the idea in India before this article came into the scene. Sir, the payment of fair compensation seems to me to be so just, so fair and so reasonable that it would not have required any arguments to support the idea. There is the provision for payment of compensation in the new article. But in view of the context, and in view of certain
pronouncements and in view of certain subtle provisions lying concealed within its meshes, one should proceed rather cautiously and warily in dealing with this subjects.

The situation has become much more difficult on account of certain pronouncements in this House by our honoured Prime Minister. Sir, I have the highest respect and affection-my humble respect and affection for him-but the legal proposition which he has enunciated requires respectfully to be dissented from. He has in effect said that property belongs to the public, to the people. I do not quote him verbatim, but this seems to be the effect of what he said, that "property belongs to the people, and the people want it, and therefore they must take it; compensation or adequacy of compensation does not enter into the picture". But as I was submitting, the adequacy of compensation or its fairness and the like is the most vital thing. So, far as the entire civilized world is concerned, the law is that whenever you take property for public purposes, you pay fair and adequate compensation.

It is only in Russia that property is taken without compensation or only with mere nominal compensation. We are today going to imitate the example of Russia, a singular example in the civilized world in this respect. That is the example which we are going to follow. In fact, so far as this matter is concerned, there is no difference between the authors and the Supporters of this article, and the Communists today, except in the manner of their approach, except in the method of the execution of their policy. Sir, believe the Communists, the Socialists and the supporters of this article would kill and extinguish the middle classes and the upper classes altogether. These three groups of persons agree amongst themselves in their ideal, they differ only in their methods of approach and in the practical way of attaining it. Whilst the Communists would kill them by use of force, and violence, while the Socialists would kill them-as apparently Prof. K. T. Shah would do by arguments and speeches and theories, the sponsors of the present article would kill them by legal means.

There is essentially no difference in the ultimate effect or desire. The question now is this, We are in the middle of a road and the road bifurcates. Which way to proceed is the question, to proceed as the Communists have done or to proceed along the road that the entire civilized world has followed?

CONSTITUENT ASSEMBLY OF INDIA - VOLUME IX

Friday, the 9th September 1949

Sir, I shall briefly state before you the law of compensation in all civilised parts of the world. The whole subject has been dealt with very elaborately in the Encyclopaedia Britannica, subject-Compensation, Vol. VI, pages 177 to 179. I do not want to go through all of it, but only mention certain points. Compensation, according to that great authority is "reparation or
satisfaction made to the owner of the property which is taken away by the State for State purposes. The right of individual ownership is challenged in Russia which has abolished the right to private property and it for alleged public purposes without compensation. But to however, the U.S.S.R. has been compelled to reverse its policy. Influenced by communism and these States, in the name of has expropriated a large extent, They are now agrarian reform have expropriated private property either with inadequate compensation or without any compensation."

Sir, I go to other parts of the world, the entire civilised world. There individual ownership is recognised not only in the civil law of the entire civilised world, but also in the international laws, both in times of peace and of war. It is stated in that authoritative work that even in peace treaties following World War one principle that was respected by the Nations was the inviolability of private property. So far as the civil law is concerned, the French Civil Code says that "no one can be deprived of his property except for purposes of public utility and for adequate compensation." The Belgium law is to the same effect. The Italian Code says that in order to acquire property by the State, "previous payment of just indemnity" is necessary. The Spanish Code is to the same effect, namely, that compensation must be paid on a "just valuation". The law in the South American States is similar. The German Code in article 153 says that "adequate compensation" must be given. The law of the United Kingdom is that "full compensation" must be given. The U.S.A. law says that "just compensation" shall be given.

An Honourable Member: You are repeating.

Mr. Naziruddin Ahmad: I am quoting from a very recognised authority and from a recent edition, and saying that this is the law in the whole civilized world. Should we follow the law which the civilised world is following or should we follow the Russian method of expropriation? That is the question. So far as the present article is concerned, I wanted to insert certain words, such as "fair compensation" or "full compensation" or "just compensation". But an Honourable Member has already moved a similar amendment and so I did not move mine as mine suggested merely verbal variations. The substantial question is whether we should provide in our Constitution that whenever there is a law for acquisition of property by the State for public purposes, we should provide therein that the law must also provide for "fair and equitable" compensation. As I said just now, up to yesterday, the law was thus, and the point would not have required any clarification. But in view of certain declarations in the House and the language of certain clauses and sub-clauses, I think this clarification is very necessary. In fact if we really want to expropriate private property for public purposes without compensation or with a nominal compensation, that should be stated fairly, fully and openly. Instead of that there is the provision for payment of compensation. It leaves the Provincial Governments free to expropriate land on a nominal compensation. The
article provides a loophole, a linguistic loophole, through meaning in civilised countries all along has been the same.

I submit that compensation should be full, fair, just or adequate. If we do not state it, these will be serious mischief committed against private property. If we do not respect private property all talk of fundamental or constitutional rights will come to naught. We have already passed article 13 where in sub-clause (f) of clause (1) it is said "All citizens shall have the right to acquire, hold and dispose of property." If we allow right to acquire, hold or dispose of property it follows that if anybody took it full price should be given.

We hear of nationalisation. If nationalisation is to be effected free of cost, it would degenerate to a kind of cheap nationalism. It would be just adding to the practical ruination of our credit structure which we have already succeeded in achieving. If we go to the public for subscription to large limited companies for industrialisation there is no credit and no money. Our capitalists are gone. Now we have been driven to go to the foreign markets not only for loans of very big sums but also to induce them to open commercial undertakings in our country. There are the glaring examples of some clauses in the article which stare us in the face to which I shall draw the attention of the House. Will any foreigners, who are to be credited with a little shrewdness and business acumen, think of investing their money in industrialising our country whereby they stand to lose in two ways? They will stand to lose or partly lose through expropriation their capital and capital appreciation, if their business is successful, and then by helping India to be industrialised they lose their own business at home. In such circumstances there is a double check upon flow of foreign business in India.

Then there is clause (5) of article 13 which limits to a certain extent by prescribing certain restrictions. The only restriction mentioned is "reasonable restriction on the exercise of any of those rights for the general public." The only condition is that I must not "exercise' my rights over property to the detriment of the public. Rights to property are never contemplated in article 13. I submit that article 24 will go directly against article 13 in this respect. However, as I said in the course of the debate earlier, in connection with a point of order, we have a right to be inconsistent. The point of order raised was no real one. It was only a glaring piece of injustice to which the honourable Member put his finger in raising the point of order. If we adopt clause (4) of the article then serious in-justice will be perpetuated. Hence I opposed the honourable Member who raised the point of order. But I fully sympathist and agree with him and lend my feeble support to his view that this clause is a most pernicious one which will perpetuate injustice on a large scale.

Coming to the vital matter which lies concealed behind these amendments is the question of the abolition of the zamindari. Somehow or other some persons think that zamindari property is no property at all and they should be expropriated without any mercy or compensation on
the absurd ground that it would be for the benefit of the public, as if the zamindars do not form part of the public at large. I might state here frankly that I am not a zamindar and I have no interest in zamindars at all.

Mr. B. Das: I think you are zamindar.

Mr. Naziruddin Ahmad: Mr. Das says that he thought that I was a zamindar . . .

An Honourable Member: He might wish you the pleasure of the thought.

Mr. Naziruddin Ahmad: Mr. Das thinks of many things which are unreal. I was a very petty zamindar but I sold away my interests 5 or 6 years ago, for I saw what was coming. Today I am independent, free and dispassionate, a man having absolutely no interest in that question. I am safe and happy. But those poor zamindars who believe in the stability of the law of the land are today sadder, though wiser. In this business we should proceed upon constitutional principles of rights of property and so on. If it is necessary that zamindaries should be acquired, of which there is no doubt, all that I claim is that proper compensation should be paid. When the Bank of England was nationalised full compensation was given to the shareholders. In India when we nationalised the Reserve Bank the full market price was given, though at a time of depression. The question is, does zamindari property differ from other properties so as to receive this step-motherly treatment? The zamindars are small in number and are scattered. They have tenants to contend with and the Government find themselves in the happy position that they can kill them without anyone weeping for them. If we destroy civil rights the effect of it would be that it will recoil on us in no distant time.

With regard to zamindari property we should know what it means. There was nothing like a zamindar during the period of the Hindu kings. During the Muslim period they were unconsciously created as a matter of administrative necessity. On account of the exigencies of the situation military governors were despatched to distant corners of India to maintain law and order, to maintain military outposts and to maintain themselves out of the revenues of the local areas.

Shri Biswanath Das: We all know the history.

Mr. President: The honourable Member should remember that we have to finish the discussion of this article tonight. All this discussion may be interesting but let us confine ourselves to the article.

Mr. Naziruddin Ahmad: All that I am emphasising before the House is that zamindari property is like any other property. Zamindars were unconsciously created by the Moghul emperors in order to make it easy for them to realise rents to maintain themselves out of them and many people volunteered to collect rents. From these beginnings the zamindaries were formed. Zamindaries were transferable like any other properties and for the speedy realisation of revenue the early British administrators provided for the sale of the, zamindaries for arrears. Zamindari is like an ordinary property. The present body of zamindars have paid for
them with hard money. Therefore, if we can confiscate zamindari property without sufficient compensation, we would also confiscate any business concern or limited company on the alleged ground that they will be for the 'benefit of the public.' There are many properties or business concerns which come to people like windfalls. If they have acquired any right even by a windfall, should that be any reason for confiscating such property for the benefit of the public without paying compensation? I submit not. Then why is it that in the case of zamindari property this distinction is being made? I have in amendment No. 406 put a limit to the payment of compensation. I have put it at 12 times the estimated net annual income of the zamindar. In fact, the ordinary rule of valuation of such properties is twenty times on a 5 per cent. income basis. But I would put it at 12 times the annual net profit. That would be a via media between utter confiscation and . . . .

Shri Biswanath Das: On a point of order, Sir. We are not discussing the question of compensation; we are discussing amended article 24 wherein authority is being provided for legislation to be undertaken. There is therefore, no need for all this.

Mr. President: The honourable Member wants to limit the discretion of future legislation with regard to compensation by laying down a certain figure and I think lie is perfectly in order in doing that.

Mr. Naziruddin Ahmad: I am grateful to you, Sir, for this clarification. Mr. Biswanath Das has not followed the amendment or my speech. I want to limit the payment of a minimum compensation to 12 times. For instance, in the U.P. they desire to pay 8 times. I want to make it 12 times. The U.P. legislation has another loophole. Out of the income, the estimated agricultural income-tax is to be deducted. The estimated agricultural income-tax has been introduced recently. It comes to half or even more than half in the higher regions of income in the case of big zamindars. In that case, 8 times the annual income would actually mean something like 4 times the annual income. This 8 times is an exaggerated and illusory figure. In reality it is much less. So I wish to put a limit by means of proviso to clause (2).

The other point to which I wish to draw attention is the deletion of clause (4). If we keep it, the effect will be that any law which has been passed and receives the assent of the President will be regularised, but any law which has not been passed or may be passed hereafter will not stand in this advantageous position. So the Provinces which have passed the law before will be in a more advantageous position. They will not need to pay compensation as required in clause (2). Why should this distinction be made between Provinces who were first in the run and those who were late? The principle of compensation is binding on all. There should be no discrimination between one Province and another on the mere ground that it has come earlier. With regard to another amendment to clause (5) it amounts to certain verbal alterations to give effect to the principle I have chosen to submit.
Then there is an amendment to clause (6) which will also seriously affect the Compensation question. This clause says that laws which have been passed within one year would be valid notwithstanding clause (2) of this article, i.e. notwithstanding it provides for even no compensation at all. These matters centre round the payment of adequate compensation. If we really do not pay adequate compensation, it will be injustice committed on a large scale and clauses (6) and (4) are so worded as not to give obvious and necessary information. One has to guess the object of these discriminatory provisions. The real purpose has been left concealed. If the principle of compensation is binding on one Province, it should be binding on all. If any Province has made any law which would contravene this principle, to that extent it should be ultra vires and void. We are inserting article 24 in the Fundamental Rights Chapter and in clause (2) we have provided that whenever any law is passed which contravenes wholly or partly the fundamental principles of these articles, the law would to that extent be void. Why should therefore there be any exception in the case of Provinces which have disregarded the principles of clause (2)? These principles are immutable and must be respected in all cases, and if there has been any violation it has been a deliberate violation of a sound principle and should not be excused. I submit that the law of compensation should apply to all equally. I regret very much that I have taken a little more time than I might have, but I believe that the case goes without much attention in the House and that is my excuse for speaking at length.

Mr. President: Amendment 409-Mr. Bharathi

Shri L.Krishnaswami Bharathi (Madras: General): Not moving.

Mr. President: Amendments Nos. 416, 417 and 421 are covered by amendments which have been moved already. 423.

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these clauses were under consideration we also felt --and some of us felt very strongly--that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a
new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this article dealing with Property Rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these articles which we have already passed.

Mention has been made of the U.P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U.P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U.P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command proper respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.

My friends from Travancore have been extremely apprehensive as to the sort of use that might be made of this provision by a Travancore who happens to be the Finance Minister of the Centre today, and Travancore's fears appear to be shared by the neighbouring State of Mysore. I want to make this perfectly clear that, speaking for myself and for my colleagues in the Central Government today, there is nothing which we are more anxious to encourage and put through than the industrialisation of the country. And if there is any apprehension that this provision is likely to have the effect of checking the progress of industrialisation in the country, either through private enterprise or through State enterprise. I want this, House to take this assurance from me, that that is about the last thing we want to do in the use of this particular provision; because if there is the slightest possibility of the operation of this particular provision having the effect of putting some restriction or curb upon the industrialisation of the country, then as far as we in the Centre are concerned, the House may
rest assured that the operation of the provision would certainly be adjusted to the requirements of the country in this regard.

There is really no greater problem, for example, than the determination of the precise repercussions upon industrial development, of the present structure of direct taxation in the country. And as far as we are concerned at the Centre, we are anxious that consistently with public requirements, the structure of direct taxation in the country should be so modified that all unnecessary handicaps in the way of industrial development are not merely removed, but removed as early as possible. Well, that is the point of view from which the Central Government as looking at the problem of industrialisation. I am justified in asking the House to accept this assurance from me that if this Provision should have the slightest effect in checking industrialisation in any of the States concerned, then we would be the last to make of this provision.

There is another matter also in regard to which I should like to make a general observation. The speeches this morning, to my mind, seem to be based on the assumption that there is a kind of inevitable conflict between the financial objectives of the Centre and the financial objectives of the States. Nothing could be farther from the truth.

Shri T. T. Krishnamachari: Hear, hear.

The Honourable Dr. John Matthai: As things are shaping today, and as we realise more and more the need for a united structure 'in the country, both politically and economically, the identity of interests between the Centre and the States is bound to be extremely close. If by the operation of a provision of this kind it is found that the finances of a State are rendered difficult, then it is a problem which will cause anxiety not merely to that State, but to the Centre also. I am faced with that problem in a large number of cases today. Therefore, if the operation of this provision is going to have the effect of causing budgetary difficulties to any State, the House may depend upon it that it would be as much the interest of the Centre as it would be the interest of the State to see that necessary adjustments are made.

Most of the particular industries to which reference has been made by those who have spoken this morning on behalf of Travancore and Cochin and Mysore are industries which belong to the category of what are called public utility undertakings. Now, public utilities are not quite an easy matter to define with the precision required in a court of law. But we all have' a general idea of what public utility concerns imply. I would therefore give this assurance not merely on behalf of the Central Government, but I know I can give this assurance also on behalf of the Drafting committee who are responsible for this provision, that it is not our intention to levy any tax of the kind referred to in this provision, upon industries run by States whose object is to produce services of a public utility character. That, as far as our intentions go, is clearly outside the scope of the provision that is under debate today.
There is another assurance that I would like to give. If it happens that this operation is brought into force in respect of any industrial undertaking owned by a State, and if there happens to be, at the same time, an undertaking owned by the Centre of the same character, it is our intention that the liabilities imposed upon the State should be equally imposed upon the Centre. As the House knows, it is our idea that, when the Centre hereafter, promotes undertaking of an industrial character, those undertakings should, as far as possible, be organised and managed on the basis of independent public corporations. These corporations for running industrial undertakings would be treated on exactly the same basis as the States would be treated in respect of similar industrial undertakings. With regard to undertakings run by the Centre directly, departmentally, the analogy of the railways and the Posts and Telegraphs which are expected, if there is any surplus in their budgets to make a certain contribution towards the general revenues of the country, would apply.

So I am able to give this assurance. First of all, public Utility, undertakings would be outside the scope of taxation under this provision; secondly, there would not be any discrimination between the Centre and the State in regard to the taxation of industrial undertakings, and I hope the House will now find less difficulty in accepting this provision.

There is just one other point to which I would like to make a reference. As regards the question of the budgetary difficulties that might be caused to the States in consequence of taxation imposed under this provision, it is necessary for the House to remember that is in the case of every federal government in the world, so here, we are rapidly making use of the expedient of subsidies or subventions from the Centre for helping the States in promoting essential undertakings of a public utility character, and development projects of national importance. If it happens that the revenue resources of a State are seriously crippled by taxation under this provision, then, assuming that the development projects are projects of national importance, it automatically follows that there is a corresponding obligation which will fall upon the Centre to make up so far as its resources permit such shortfall as might occur in the financial resources of the States. I mention this point only to enforce the suggestion with which I started, that there is today, in the set-up which is gradually growing up and which would be finalised when this Constitution comes into force, a complete identity of interests in respect of financial matters between the Centre and the States. Any objection to this provision on the assumption that there is to be a continuing conflict between the Centre and the Provinces has no justification whatsoever.

The Honourable Dr. B. R. Ambedkar: Sir, the only part of this article which has been subjected to any criticism is clause (3). There has been no comment on any other part of this article. I do not believe that after the reassuring speech which has been made by the Finance Minister there is anybody in the House who will entertain any kind of doubts or fear of
parliament exercising this power without regard to the financial resources of the State. I do not think I need say anything more on that point.

Shri P. T. Chacko: In view of the assurance given by the Honourable Finance Minister I would like to withdraw my amendment.

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

Shri P. S. Nataraja Pillai: I would like to withdraw my amendment also. The amendment was, by leave of the Assembly, withdrawn.

Shri S. V. Krishnamoorthy Rao: I would like to withdraw my amendment.

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

Mr. President: What about Mr. Brajeshwar Prasad?

Shri Brajeshwar Prasad: I am not withdrawing my amendment.

Mr. President: The question is:

"That in amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words 'exempt from' the words 'subject to' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 266 stand part of the Constitution."

The motion was adopted. Article 266 was added to the Constitution.

Article 296 and 299

Mr. President: There are two articles 296 and 299 and some Members have presented to me that they got notice of certain amendments to these, too late.

The Honourable Dr. B. R. Ambedkar: I am prepared to hold them over,

Mr. President: So these, two articles (296 and 299) will stand over.

Mr. Naziruddin Ahmad: Can we have an assurance as to when these are coming up?

Mr. President: Some day next week. I may tell honourable Members that 'we propose to finish all the articles and all schedules except some articles dealing with States and one Schedule and certain other miscellaneous articles two or three—we want to finish all the rest. It depends on the House how soon we shall be able to complete consideration of all the rest of the articles.

The Honourable Shri Ghanashyam Singh Gupta (C.P. & Berar: General): By the 17th at the latest, I suppose.

Mr President: I have that in my mind, but it depends on the House.

An Honourable Member: Fix a date.

Mr. President: If we make quick progress I need not fix any date.

I shall now take up the entries in the Seventh Schedule which were left over-88A in List I and 58 and 58A in List II.

Seventh Schedule and Article 250-Contd.
The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted
88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein.'"

I also move:

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted :-
58. Taxes on the sale or purchase of goods other than newspapers.
58-A. Taxes on advertisements other than advertisements published in newspapers.'

Sir, with your permission I shall move the other amendment-No. 374 to article 250 also as it is really part of this.

I move:

"That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:-
(e) taxes other than stamp duties on transactions in stock-exchanges and futures, market;
(f) taxes on the sale or purchase of newspapers and on advertisements published therein.'"

Shri. T. T. Krishnachari: I would like to mention that the formal permission ad the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Mr. R. K. Sidhva: I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

MR. President: That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhva: No, Sir. He has moved an amendment to reopen the subject I am raising a point or order that it cannot be reopened.

The Honourable Dr. B. R. Ambedkar: That the President will decide--whether you are right or he is right.

Mr. Naziruddin Ahmad: There is another matter to which I would like to draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Junjhiunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough, Dr. Ambedkar's amendment No is 379 which is the section of the Indian Papal Code relating to theft. Can this sort of literary piracy be allowed?

Mr. President: You can take credit for having pointed it out.

The Honourable Dr. B. R. Ambedkar: He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad: But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not excuse it.

Mr. President: We shall deal with the entries first.

The Honourable Dr. B. R. Ambedkar: Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and
what I was prepared to accept. You were kind enough to say that the matter might be recommitted to the Drafting Committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisement in newspapers should be put in List I. That is a matter to which the Drafting Committee has now agreed. The second amendment-No. 379--is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein have been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

Shri R.K. Sidhva : Sir, I move :

"That in amendment No. 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted :-

'88-A. Taxes on advertisement published in newspapers.'"

"That in amendment No.379 of List VIII (Seventh Week), in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

Sir, when this subject came up before the House some time back my honourable Friend, Dr. Ambedkar, vehemently opposed the motion that is now sought to be moved by him, or rather moved by him and he made very strong remarks. I wish I could lay my finger on the proceedings and the speech and place them before the House, but unfortunately I could not get them. But I know the House will remember and you, Sir, will remember that he said that under no circumstances shall he allow the sales tax also to be included in List I.

Mr. President : The matter was held over for reconsideration by the Drafting committee. The Drafting Committee is not prevented from reconsidering and putting forward another amendment.

Shri R. K. Sidhva : I know that is so. Everyone has a right to change his opinion, but Dr. Ambedkar while moving his amendment should have enlightened the House as to the reasons which necessitated him to change his views.

My point is this, that this amendment, as proposed by Dr. Ambedkar, seeks that the sales tax on newspapers which is in the State. List should also be brought under List I. Now this is an invidious distinction. Sir, I think that in the list of items on which the provinces levy a sales tax there are hundreds of items. To select one item out of them and to put it in the Union List is, in my opinion, objectionable, invidious and unfair. It might be misunderstood by the people as a whole in the country. They will be suspicious as to what has actuated the Constituent Assembly to select this particular item which is rightly put in List II, and bring it to List I. It may be argued that this is done as newspapers have a bearing on the fundamental rights as was urged the other day. As you have rightly held the other day in your ruling. Fundamental rights relate to speeches and expressions. What have taxes to do with speeches and expressions?
I, therefore, fail to understand why it is going to be brought in List I. My difficulty is that when a very responsible member as the chairman of the Drafting Committee held a different view the other day, he should have explained to us what was the object. If I were satisfied, I would not have raised this point. Let all the sales tax go to the Centre. Sales tax, as it is at present levied in the different provinces, have worked havoc on trade and commerce. An article is taxed in Bombay; the same article is sent to C.P. and is taxed over again. Therefore, I certainly desire that the sales tax should come within the purview of the Centre. As at present levied it upsets the whole economy of the country. But why choose this particular item, I fail to understand. I might be misunderstood by the country as an instance of favouritism. The best course in the present circumstances would be to hold this item over till the whole question of the sales tax is decided. Let the Centre take over the sales tax. I am in favour of it.

I was myself a signatory to the amendment that was moved by my Friend, Mr. Goenka. I was very clear in my mind when I put my signature that it related to the advertisement only and not to the sales tax. But my attention was drawn to the fact that the language used covered the sales tax as well. I admit my mistake in signing it. Generally I do not sign anything without reading and understanding its implications. But my intention now is the same as it was before that sales tax should not go into List I.

Now, Sir, it may be that this inclusion in List I is for the purpose of exemption of newspapers from advertisement and sales tax. I have very great regard for the nationalist papers which have fought for the freedom of the country during the days of British imperialism whose main object was to crush nationalist newspapers. I do not dispute for a moment that they deserve all kind of encouragement; there is no question about it. But today I do not know which paper to call nationalist. Having been an editor and proprietor for over twelve years of a newspaper, I know the odds against which they had to struggle in those days. I take my cap off before them. The Bombay Chronicle one of the biggest nationalist papers in India was killed twice, but it still survives, thanks to it able editors like Mr. Horniman and Mr. Brelvi. Effort was made to kill the Indian Daily Mail started by a millionaire in Bombay and it was actually killed through the agency of British Imperialism. I appreciate all that the nationalist papers have done, but I want that appreciation to be expressed by the front door in recognition of the services rendered by them. Why do you want this to be put in List I and create complications and doubts in the mind of the public? My point is that if exemption is to be given, I am for it on the grounds I have urged. Never mind if other papers take advantage of it, but this tax is also bad. I know today 80 per cent of the papers are small ones and they could not afford to bear the proposed tax. Only 15 per cent of the papers are today rolling in money and it may be asked why should they not pay the tax? My Friend Deshbandhu Gupta – I have great respect for him. From a small man he has risen to a big man. Mr. Suresh Chander Mazumdar another
gentleman deserves same compliments. But why should these others who are rolling in wealth in other business – why should they be exempted? Yesterday, I was reading that an American syndicate is going to purchase the "Civil and Military Gazette". They are out to purchase important newspapers in India. Is it fair that they should be exempted? I do not want to make any distinction between Indian and foreign newspapers. If Times of India can be purchased, on payment of crores of rupees this syndicate can purchase all important newspapers. Why should they be exempted? When you put this tax in the Constitution, you bind down for all times. I submit the case has not been properly placed before the House and my Friend Mr. Goenka will excuse me for saying that he has bungled.

**Shri T.T. Krishnamachari**: May I tell my honourable Friend that no exemption whatever is contemplated?

**Shri R.K. Sidhva**: Well, Mr. Krishnamachari, better leave it to commonsense. You are not the authority to state here that exemption is not contemplated. I know what is contemplated. That is why I am worried. Let us be straightforward. These things should not be brought forward in this manner just to hoodwink. It is hoodwinking the people and nothing else. Let us be straightforward and honest. You cannot humbug the people or hoodwink the House. Dr. Ambedkar may be too clever but he cannot be too clever all the time. We understand what is behind the screen. I do not like this to be brought in this fashion. If this amendment is held over, let us apply our mind and put in this fashion. If this amendment is held over, let us apply our mind and put up a proper amendment. I shall be prepared to move an amendment that papers be exempted from all taxes, if it is agreeable I do realise that the nationalist papers have done service and in recognition of that service, if you want to exempt them, I am prepared for it. I am prepared to go further and exempt all papers. I suggest therefore that instead of accepting the amendment, I humbly suggest to my friends Messrs. Goenka and Gupta: "Let us apply our mind and put in an amendment or exemption, so that our position may not be misunderstood." I again repeat this august Body, this Constituent Assembly, should not be hoodwinked. This august Body should not be hoodwinked. I want straightforward manners to be adopted, particularly in our Constitution. I hope, Sir, that you, Mr. President, will also appeal to Dr. Ambedkar and Messrs. Goenka and Gupta not to put in something for which the Constituent Assembly may be ridiculed. This august Body should not be ridiculed. Let there be no criticism that we have somehow or other, for somebody's benefit, transferred this to List I in the name of Fundamental Rights which I fundamentally oppose. This not germane to the Fundamental Rights. I again appeal, in the interest of this Constituent Assembly for which I have great respect, to you, Sir, who is the President and Custodian of this Assembly – I submit to you in all humility that you will kindly prevent invidious distinction being caused. I repeat 80 per cent of the newspapers will suffer by taxes. Only some of the newspapers can afford to pay. After all, tax on newspaper advertisements will be
borne by those who advertise. The cinema tax – who pays it? The consumers pay. Provincial
governments levy it on cinemas, the cinemas levy it on the consumer. Similarly, if there is to
be a tax on advertisements, the advertiser has to pay. I do not want to envisage that position. I
do not want small newspapers to be killed. If there are ten big newspapers who will be
exempted, I do not mind. Let not 80 per cent be injured. Let us from that point of view try to
come to a settlement.

Mr. President : I confess, Mr. Sidhva, that I have not been impressed by your moral
indignation. I have not seen any cause for it. It is a simple amendment moved by the Drafting
Committee and I do not see anything wrong in the amendment proposed.

Shri R.K. Sidhva : Out of all, why is the newspaper singled out ?

Mr. President : That is a different matter.

Shri R.K. Sidhva : That is the point. Why has it been singled out ?

An Honourable Member : Wait and see.

Shri Deshbandhu Gupta (Delhi) : Mr. President, Sir, it is a matter of no small satisfaction to
me to note that the Drafting Committee has appreciated the point of view urged by my Friend
Mr. Goenka and many members of this House in the amendments which they sought to bring
before the House. It is a matter of still greater satisfaction that even Dr. Ambedkar has agreed
to these amendments and that these amendments have his whole hearted support. There is
much in one point made out by my Friend Mr. Sidhva. The House is aware that the other day
when this matter was discussed on the floor of the House, I did take fundamental objection to
the very imposition of taxes on newspapers. No one would be happier than myself and my
friends belonging to newspapers. No one would be happier than myself and my friends
belonging to the press, if the House were to decide today that newspapers will be free from all
such taxes. Of course that is what it should be, because in no free country with a democratic
Government we have any such taxes as the sales tax or the advertisement tax.

But I fail to understand the argument of my Friend Mr. Sidhva when in one breath he says
that he is prepared even to go to the extent of exempting newspapers from all taxes and in the
same breath he holds that there should be no distinction between newspapers and other goods
so far as the imposition of sales tax is concerned. This is an argument which, I must say, is
very difficult for me to understand. I claim that newspapers do deserve a distinctive treatment.
They are not an industry in the sense that other industries are. This has been recognised all
over the world. They have a mission to perform. And I am glad to say that the newspapers in
India have performed that mission of public service very creditably and we have reason to
feel proud of it. I would therefore expect this House and my Friend Mr. Sidhva to bear it in
mind at the time when God forbid any proposal, comes before the Parliament for taxation.
That would be the time for them to oppose it.
Sir, after all, this is an enabling clause. It does not say that there shall be sales and advertisement tax imposed on newspapers. It does not commit the House today to the imposition of a tax on the sales of or a tax on advertisements published in newspapers. All that we have emphasised is that newspapers as such should be taken away from the purview of the provincial governments and brought to the Central List so that, if at all at any time a tax is to be imposed on newspapers it should be done by the representatives of the whole country realising the full implications of their action. It should not be an isolated act on the part of some Ministry of some Province. That was the fundamental basis of our amendment. When we tried to convince the Drafting Committee and other Members and particularly our Friend Dr. Ambedkar, our main argument in favour of transferring the subject to the Central List was a political one. It should not be taken for granted that I or my friends of the Press of India are in any way committee or agreeable to the imposition of such taxes. Not in the least. We have been all along opposed to it; we must recognise that barring the two provinces of Bombay and Madras all other Provinces have so far stood for the freedom of the Press. They have never exercised the right of taxing newspapers. But, ever since this question came up before the country the whole Press has opposed it vehemently on fundamental grounds, and demanded that if these taxes are to be levied they should be levied by the Centre. While making this demand, are we not aware that the newspapers published from the provinces that have not imposed any such taxes remain untouched today, particularly the newspapers of Delhi which are directly under the Centre and on which there can be no question of a sales tax being imposed unless the Parliament goes to the extent of imposing it? If today all newspapers including those published from Delhi, are opposing the imposition of these taxes with one voice and demanding their inclusion in the Centre List, they do so, not because it is a question of saying some money, but because the fundamental question of the liberty of the Press is involved. By advocating their transfer to the Central List we are prepared to run the risk of having these taxes imposed in Delhi, and in other provinces which have not sought to impose such taxes so far. But we do not want to leave it to the provinces so that the liberty of the Press remains unimpaired. We have faith in the Parliament; we have faith in the collective wisdom of the country and we have no doubt that when this matter is viewed in the correct perspective, there will be no such taxes imposed on the newspapers, but we have not got that much faith in the provincial Ministries. It is in that hope and having a full realisation of the situation that we have agreed as a matter of compromise, or should I say as a lesser evil, to have these two taxes transferred from the Provincial to the Central List.

I am glad to know that my Friend Mr. Sidhva was also at one time connected with the Press like so many other political leaders who in their career had at one time or other been connected with the Press; and I am sure that if the question of imposing such taxes came up before Parliament, at any time, we will have his fullest support and his voice will be raised
against any attempt on the part of parliament to impose taxes on either the sales of or on advertisements in newspapers.

To my mind it appears that in certain quarters there exists a general prejudice against newspapers. As my honourable Friend Mr. Sidhva believes, some newspapers may have given the impression that they are "rolling in wealth", but what is their number? Sir I do not want to take the time of the House in discussing the economy of the newspapers and painting the true picture of the newspapers as to where they stand today as compared with the taxes of other free countries of the world. But, I may point out to Mr. Sidhva and those who think alike, that there may be some big newspapers which can afford to pay taxes and that it may be that it was to strike such newspapers that these taxes were conceived but take it from me that the bulk of the newspapers will be simply crushed and if there is any hope of independent journalism in this country, that can be realised only if we leave the newspapers alone and not impose these distinctive taxes. Otherwise we will be paving the way for the transfer of smaller newspapers which have been struggling all along for existence to the capitalist.

I believe no one knows better than you, Sir, as to why the Searchlight of which you were the founder has joined a chain. There are other papers which have similarly joined one or the other chain. If you look into the past history of the newspapers you will find that there was not a single nationalist newspaper in India which was not started with the beggar's bowl in the hands of its founder. Sir, who does not know that the late Pandit Madan Mohan Malaviya had to go from house to house begging people to take the shares of one of the biggest papers which Delhi is proud to own today.

Mr. President: I did not want to interrupt the honourable Member. But then here we are concerned only with the entry in the Union List.

Shri Deshbandhu Gupta: Sir, as Mr. Sidhva has raised the question that the newspapers did not deserve a distinctive treatment, I am only trying to remove that prejudice. I am fully conscious of the fact that I must not take more time of the House. But then as this is an important matter I seek your permission to give me a little more time.

The history of many other newspapers will show that they too had a very precarious beginning and that those who started them did not do so with a commercial motive. It is true that during the last few years some newspapers have financially benefited by the last war. But their past history should not be forgotten and we should not ignore the fact that after all newspapers have a mission to perform and that they are essential for the very existence of a democratic form of Government. They are essential for educating the electorate and for running the democratic form of Government in the country on proper lines. In these circumstances any step taken to weaken the Press will be calculated to harm the democratic form of Government, nay, the freedom of the people will be jeopardised as has been rightly pointed out by the U.S. Supreme Court Judges to whose memorable judgment reference was
made the other day. According to them "Fettering the press is fettering ourselves." So in the name of the freedom of the Press and in the name of the future of Indian journalism, I appeal to this House always to bear in mind that newspapers as such to deserve a distinctive treatment. Newspapers are as essential for the Government as for the good of the country and we must always regard them as such.

Sir, I hope most of the Members of this House are well aware that in the freedom movement of 1942 out of the 145 papers, as many as 96 papers voluntarily closed their offices soon after the memorable Resolution of 9th August was adopted. Can you cite another example in the history of the whole world when such a large number of newspapers at a moment's notice closed their shops without caring as to what will happen to them in the future? Most of them were not content with merely closing their shops, their proprietors and editors took active part in the movement and went to jail. Sir, even today there are many nationalist papers which, although struggling for existence, have imposed a voluntary check on themselves and do not publish advertisements of liquor, and foreign cloth? Can one deny, Sir, that these papers have placed an ideal before them and that they have been trying to live up to those ideals? Do not they deserve exemption from such taxes? It may be that even a few rich newspapers will benefit if no such taxes are levied. But such newspapers have been benefiting from the very beginning. They have been enjoying Government patronage in the past in large measure, and perhaps the House will be surprised to learn that there are some papers in this country today which had closed in 1942 voluntarily, and had always been the vanguards of the freedom movement, but are being discriminated against in the matter of placing advertisements by some Governments. In some cases old circulars still continue to be acted upon and these nationalist papers are being discriminated against in the matter of placing Government advertisements.

**Mr. President** : We are not concerned here with any circular, or any decision for levying a tax. It is only a provision in the Constitution that we are concerned with. When the question of levying a tax arises, all these arguments will arise.

**Shri Deshbandhu Gupta** : I only wish to say, Sir, that even our Government has recognised the distinctive nature of the press, in the matter of transport facilities, in the matter of concessions in postal rates, in the matter of so many other concessions. So it is already recognised that newspapers have to be treated distinctly. I do not want to elaborate the argument further but I do wish to place before the House one other aspect of the question and the reason why we seek to transfer these subjects to the purview of the Centre. There is a Bill that is pending before the Select Committee in Madras. I wish to make a passing reference to some of the clauses of this Bill. Under the Madras Bill they seek to impose an advertisement tax of 10 per cent on the gross revenue from advertisements.
Prof. N.G. Ranga (Madras : General) : Only newspapers getting above a minimum revenue.
Shri Ramnath Goenka (Madras : General) : It is not so.
Shri Deshbandhu Gupta : If you refer to the Bill, you will find that it applies to all newspapers. The Madras Government has not only gone to the extent of proposing a tax of 10 per cent on press advertisement revenue of newspapers; their Bill further seeks to give to the Government the power to exempt certain papers from these taxes. It also seeks to provide the taking of a licence by newspapers before they can start functioning. So this is the respect they show to the newspapers and to the honourable profession of journalism. There is no realisation of the fact that newspapers are the real saviours of democracy, and the fighters for the rights of the common man. The Bombay Government too has imposed a tax of 6 ½ per cent, that also on the gross revenue from advertisements. This was an eye-opener to us and a clear indication of the fact that if these taxes were allowed to remain within the purview of the provincial governments, there may come a day when most of the smaller newspapers will have to close down. It was in view of this realisation, by the Press that my Friend, Mr. Goenka and other, suggested as a lesser evil that these taxes should at least be transferred to the Central List so that the country may as a whole decide whether newspapers should be taxed at all and, if to be taxed, to what extent.
One word more and I have done. Sir, although I support the amendment proposed by my Friend, Dr. Ambedkar, I only wish to make it clear that this should not be taken to mean that we agree to the imposition of any such taxes on newspapers in the future. Perhaps the House is aware that the All-India Newspaper Editors’ Conference, the Indian and Eastern Newspaper Society and the Indian Languages and Newspapers Association, all these three bodies representing the Press of India met in Delhi last month and passed a unanimous resolution against all such taxes on newspapers – of course I am not referring to income-tax or super-tax, to which no one objects. All these bodies take a very serious view of this question. I hope that in any decision which this House takes now or the Parliament may take in future, they will always bear in mind that the existence of a vigorous and independent press is very essential for the good of the country and that anything done to weaken the press will weaken democracy, weaken the Government and will weaken the strength of the people. With these words, Sir, I extend my support to the amendment moved by Dr. Ambedkar and I thank him once again for having appreciated the point of view of the newspapers.
Prof. N.G. Ranga : Mr. President, Sir, I am glad that this clause has come to be included in the Constitution. It is necessary that the newspapers should come within the purview of Central taxation. It also shows how strong has come to be this fourth estate today. If the newspapers of this country, especially the daily newspapers, had not come to be so powerful, it would not have been possible for these alterations to be made in the lists of taxation that are proposed to be included in this Constitution. This question would not have come up at all for
such serious consideration if the Madras Government had not taken the initiative in proposing to tax all advertisement revenues of the daily press and the other presses also. Once the taxation move was made by the Madras Government, my friends of the newspapers opened their eyes and saw that any amount of mischief could be done against themselves and their revenue if ever the provincial governments were to be given this power to tax. Therefore, they have raised this matter in this forum and succeeded in including this in the Central List, as an item of Central taxation. Sir, I do not grudge this, but I do wish to maintain that the financial position of the newspapers has considerably altered ever since the last war. Whatever might have been the position of many of the daily papers in this country before the last war ever since this war most of them have come to make huge profits and many of them are not mere independent journals, mere independent newspapers, but many of them have come to be included in a series of chains of proprietors and proprietorships.

**Shri Deshbandhu Gupta**: May I ask honourable friend, who has been to the Western countries, as to how does the best of the Indian papers compare with those in the Western countries?

**Prof. N.G. Ranga**: I wish my honourable friend every success in his attempts to gain as much money as the Western proprietors are making. I would not grudge him indeed if his paper were to flower out one of these days like the *New York Times* and produce 60 or 64 pages on every Sunday and serve its readers; but I do grudge him when he has got all the revenue for himself and he is not prepared to part with a portion of it to the State. That is why I say Sir, that these daily newspapers which make these huge profits anyhow and these newspapers which are making profits over a particular prescribed minimum should not be given any special treatment but should on the other hand be made to pay as any other estate would have to pay upon the revenues that they would be deriving from advertisements.

**Shri Ramnath Goenka**: They pay income-tax and super-tax.

**Prof. N.G. Ranga**: In spite of that they make such huge profits. My honourable Friend Mr. Goenka himself must be knowing it, not to his cost, but to his benefit; and these newspapers have got to be made to pay and contribute as well as they could, and I do not see any reason why these concessions should continue to be given, and it is high time that our politicians and our legislators should be able to assert themselves in all their independence and see that these people, powerful as they are, more and more powerful as they threaten to grow in the near future, that they should be expected to make some sort of contribution correspondingly and indeed progressively as any other source of income that we find in our part of the world.

Sir, newspapers, it is true, serve a very useful national interest; otherwise, they would not be here at all. They would be prohibited just as arrack and spirits and all these things are prohibited; merely because they serve a useful purpose they are allowed to carry on their trade. As long as they are allowed to carry on their trade; let them be treated only in the same
way as all other trades and let them not ask for any special privilege. My honourable Friend, Mr. Deshbandhu Gupta has grown eloquent about the contribution made by the newspapers during the national struggle. All glory to them and to such of them which had the courage to close down their offices. That is no reason why the profits they are making today, tomorrow and the day after tomorrow....

**Mr. President** : I wish to tell Mr. Ranga, that we are not discussing any proposal for taxation today but that we are only discussing an entry in the Constitution.

**Prof. N.G. Ranga** : I am very glad indeed that this entry is being made in the Constitution. But I would have been gladder if this item had been kept in the Concurrent List so that it would have been a boon to the Provincial Governments as well as the Central Government.

**Shri Ramnath Goenka** : Have you taxation in the Concurrent List? Have you ever heard of it in our Constitution?

**Prof. N.G. Ranga** : To the extent that it can possibly be kept there.

**Mr. President** : Mr. Goenka, I hope you would not go into the history of newspapers. All that we have already done.

**Shri Ramnath Goenka** : Mr. President, Sir, I did not want to intervene in this debate, but Messrs. Ranga and Sidhva have prompted me to say a few words. So far as I am concerned, I am not proud of the fact that this entry finds a place in the Central List. In fact this taxation had been condemned as far as 150 years back in the advanced democracies of the world. I am really ashamed that such an entry should be found in the Constitution of this country. There is no Constitution in the world where such an entry of taxation of newspapers exists. This is the only country where we have it, not because it is the right thing to do, but because we have Sidhvas and Rangas and therefore it is that we have this entry in this List. I am sure, Sir, when the time comes for the Central Parliament to decide the matter in regard to the taxation, they will go by – not the revenue which the newspapers make, by circulation, advertisements and such things – but on the basis of the net profits that they make. I am one of those who will say that newspapers are not money-making propositions. I will say that newspapers are there to serve the public and give them a free flow of information. I am one of those who will go the whole hog and say that newspapers should not be allowed to make an considerable sums of money; but you shall not take away the money before they are allowed to serve the public, by taxation on sales and advertisements, whatever their incidence may be.

**An Honourable Member** : You serve the public very rarely.

**Shri Ramnath Goenka** : What I would like to say is this that if any taxation is to be levied on newspapers, it should be levied on the basis of the net profits they make. I am one of those who would say that if any newspaper makes more than 3 per cent of its capital, the rest of the money should be appropriated by the State but before you allow them to serve, you cannot take away the money from them. So far as the newspaper economy is concerned, you will be
amazed to know that the cost of the newsprint used in production of a newspaper is only equal to the net proceeds of the sale of the newspaper. Therefore, the gross revenue is only the advertisement revenue and if you take away 10 per cent 15 per cent and 20 per cent of the gross revenue, what will be its effect on newspaper economy? Do you want your newspapers to compare favourably with the Manchester Guardian, the London Times and the New York Times or would you like your newspapers to be some sort of a rag produced in this country?

Shri R.K. Sidhva: Produce the balance sheet.

Mr. Naziruddin Ahmad: On a point of order, are we considering the item as in the List or are we considering a proposal for taxation?

Mr. President: You are perfectly justified in raising the point of order. I have myself reminded the speaker several times that we are not considering any proposal of taxation but only an entry in the Constitution.

Shri Ramnath Goenka: I will bow to your ruling: but so far as the newspapers are concerned, they are not proud of seeing this entry either in List I or II, but as a matter of compromise we had to agree to it and I say that this taxation which has been condemned in all the advanced democracies of the world 150 years ago, should not have found a place in this Constitution and since we have certain difference of opinion in regard to this matter, we have agreed to this; and I hope, believe and trust that the Central Government will not resort to his taxation.

Mr. President: I do not think any further discussion is necessary.

Shri B.L. Sondhi (East Punjab: General): Closure, Sir.

Shri Prabhu Dayal Himatsingka (West Bengal: General): I should like to say just one or two words. I want the sales tax should be put in the Central List. In fact there was an amendment to that effect.

There is so much confusion in the different provinces on account of the sales tax that something must be done to regularize the thing and remove part of the difficulty that is being felt by all under it.

Mr. President: We are not discussing that now.

Dr. P.S. Deshmukh (C.P. & Berar: General): Closure will save exposure.

The Honourable Dr. B.R. Ambedkar: Sir, in view of what my honourable Friend Mr. Sidhva said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of
legislation regarding fundamental rights to Parliament and we have not left any power with
the States. It therefore appeared to me and also to the Drafting Committee that in view of
these consideration, namely, that newspapers were coming under fundamental rights, and all
laws regarding fundamental rights were being left to Parliament, it was only a natural
corollary that newspapers for purposes of taxation should also come under the authority of the
Centre.

A third consideration which prevailed with the Drafting Committee as well as with myself
was that in view of the fact that newspapers were connected with fundamental rights, namely
the freedom of expression and thought, it was desirable that any imposition that was levied
upon them should be uniform and not vary from province to province. Such uniformity can be
obtained only if the matter was left to Parliament to make laws. These are the three
considerations which prevailed with me and prevailed with the Drafting Committee in the
view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing
with making laws. It also dealt with levying a tax in so far as newspapers were included in the
term goods in entry 58 of List II. We therefore thought that in order not to deprive the
provinces of such revenue as they might be able to make by imposing a levy upon newspapers
under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in
article 250 which includes many other items and provides that if any taxation was levied upon
them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer
from List II to List I, we are injuring so to say the finances of the provinces. My answer is
that we are not doing any injury to the provinces because if the House would agree to carry
my amendment No. 374, the provinces will get such portion of any tax on the sale of
newspapers as they may have raised and now receive, under the amendment No.374. In
making these proposals, we have taken into consideration as I said the general proposition
that newspapers having been connected with fundamental rights, ought to come under the
jurisdiction of the Centre, and that any financial gain which the provinces would have got
should not be lost sight of. Both these considerations have prevailed with the Drafting
Committee in making these changes.

I submit, notwithstanding the declamations of my honourable Friend Mr. Sidhva which I can
understand, because he is smarting under a great injury which he suffered in another place, I
say that there can be no objection to the entries that we have proposed.

Shri R.K. Sidhva: Sir, I take exception to Dr. Ambedkar's remarks when he said that I am
smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw
those remarks.
The Honourable Dr. B.R. Ambedkar: I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President: That settles the matter. I shall now put the amendments to vote.

The question is:

"That in amendment No.378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted:

'88-A. Taxes on advertisement published in newspapers.'"

I think the Noes have it.

Some Honourable Members: Ayes have it, Sir.

Mr. President: No.

The amendment was negatived.

Mr. President: Then I put the original proposition moved by Dr. Ambedkar:

The question is:

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:

'88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein.'"

The motion was adopted.

Entry 88-A was added to the Union List of the Seventh Schedule.

Mr. President: The question is:

"That in amendment No.379 of List VIII (Seventh Week) in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

The amendment was negatived.

Mr. President: Then, I put the entry as moved by Dr. Ambedkar.

The question is:

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:

'58. Taxes on sale or purchase of goods other than newspapers.

"
58-A. Taxes on advertisements other than advertisements published in newspapers.’ ”

The motion was adopted.

Entries 58 and 58A, as amended, were added to the State List of the Seventh Schedule.

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Article Re-opened

Mr. President: We have got several articles placed in the order paper today which require reconsideration of the articles that have been passed. The first is article 250 which is intimately connected with the amendments which we have just now passed. Under the rules, no question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the Members present and voting. I should like to know if the House gives its consent.

Honourable Members: Yes,

Shri R.K. Sidhva: In the second reading stage, Sir, when article by article is being passed, it is not permissible to reopen. If you allow this precedent, it will be very bad precedent for the future. You cannot shut out any other Member from moving for a reconsideration of any article. There will be no finality then.

Mr. President: I cannot shut out; it is for the House to shut out. If one-fourth of the Members wish a question to be reopened, it can be reopened. I find more than one-fourth of the Members are willing to reopen this article 250.

There are other articles also which will have to be reopened which are mentioned in today's Order Paper: articles 239-242, 248-A, 263, 202. May I take it that the House gives leave to reopen all these articles?

Shri R.K. Sidhva: Sir, Members may not have objection to some articles, while they may object to some. The articles may be put one by one.

Mr. President: I shall put them one by one. Articles 239-242. I take it that the House gives leave to reopen then.

Several Honourable Members: Yes.
Mr. President: Article 248-A. I take it that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Article 263. I take that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Article 202. I take it that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Leave is given to reopen all these articles. Article 250: Dr. Ambedkar.

Article 250

Shri T.T. Krishnamachari: Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President: Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose)

Mr. Honourable Dr.B.R. Ambedkar: It is only a consequential thing, Sir.

Mr. President: There is no amendment to this. I shall put this to vote.

The question is:

"That in clause (1) of article 250, after sub-clause (d), the following sub-clauses added:-

(e) taxes other than stamp duties on transactions in stock exchanges and futures market;
(f) taxes on the sailor purchase of newspapers and on advertisements published therein"

The amendment was adopted.

Article 202
Mr. President: Article 202.

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

"That in clause (1) of article 202, after the words 'to issue' the words to any person or authority including in appropriate cases any Government within those territories,' be inserted."

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows:

"Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes."

It is just consequential.

Pandit Thakur Das Bhargava (East Punjab: General): Why do you say in appropriate cases?

The Honourable Dr. B.R. Ambedkar: Because appropriate cases will be laid down by law of Parliament.

Mr. President: The question is:

"That in clause (1) of article 202 after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories' be inserted."

The amendment was adopted.

Article 234-A

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

"That after article 234, the following new article be inserted :-

Control of the Union '234-A. (1). The executive power of the Union shall also
over States as respects extend to the giving of direction to a State as to the
protection of railways. measures to be taken for the protection of the railways
within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this critical costs
have been incurred in excess of those which would have been incurred in the discharge of the
normal duties of the State if such direction had not been given there shall be paid by the
Government of India to the State such sum as may be agreed or, in default of agreement, as
may be determined by an arbitrator appointed by the Chief Justice of India in respect of the
extra costs so incurred by the State.”

Sir, all police first of all are in the Provincial list. Consequential the protection of railway
property also lies within the field of Provincial Government. It was felt that in particular cases
the Centre might desire that the property of the railway should be protected by taking special
measures by the province and for that purpose the Centre now seeks to be endowed with
power to give directions in their behalf. It is possible, that by reason of the special directions
given by the Centre some extra cost above the normal may be incurred by the provinces. In
that event what that extra cost is, may either be determined by agreement or if there is no
agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is
analogous to many of the clauses that we have passed in the Constitution for settling the
disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P.S. Deshmukh: Mr. President, I do not feel convinced about the necessity of this
provision which refers only to railway property. I do not know what cause there is for special
apprehension so far as the property belong to railway is concerned. There will be property
belonging to the Centre spread over the length and breadth of India; and why should there be
a special and specific provision for the protection and for issuing specific directions in this
case only? The House is aware that the Centre has got authority for issuing directions in
various spheres and giving certain directions which are necessary for the maintenance of law
and order, and for protection of their property also the Centre has power of issuing those
instructions generally. Therefore, I have not been able to follow why it was necessary to refer
to it specifically and make special mention of the railway property and what causes there are
which make us apprehensive of the possible damage to railway property only. I do not think it
is proper that we should have such apprehensions apart from the general powers. We have
already clothed the Centre with more than sufficient powers and this article should not be
necessary. In any case the justification given has not convinced me of the necessity of having
this article. There is nothing to fear that the States will not carry out directions without such
an article being there and that any dispute will arise so far as the cost is concerned. These are
matters which may arise in the normal administration and they can be normally settled and
there is no necessity of abnormal provisions and abnormal means of settlement.
Shri Brajeshwar Prasad : Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). There is no reason why an arbitrator should be appointed if there is a conflict between the Centre and the States regarding costs that have been incurred in excess of that that would have been incurred in the ordinary performance of provincial duties. The master and the servant cannot be placed on the same platform. It is wrong to do anything which would bring about any deterioration of the power and position of the Majesty of the Government of India. Therefore, I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the President.

The Honourable Dr. B.R. Ambedkar : Sir this clause is very necessary. Mr. Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed - I am sorry to say - he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. Consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested viz. to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested viz., that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

Dr. D.P. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

Dr. P.S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B.R. Ambedkar : Because we find the railway property needs more attention. The safety of passengers is there.

Mr. President : The question is :

"That after article 234, the following new article be inserted :-
Control of the Union over States as respects protection of railways.

234A. (1) The executive power of the Union shall also extend to the giving of direction to a State as to the measures to be taken for the protection of the railway within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.”

The motion was adopted.
New article 234A was added to the Constitution.

New Article 242-A

Mr. President: Dr. Ambedkar, you may move amendment No.372A regarding the heading.

Shri T.T. Krishnamachari: If No.373 is passed, then the deletion of the heading is consequential.

The Honourable Dr. B.R. Ambedkar: Sir, I move amendment No. 373:

"That after article 242, the following new article be inserted :-

Adjudication of disputes relating to the use, distribution, control of the waters of, or in, any inter-State river or river valleys.

242A. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution, of inter-State rivers or river valleys.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.”
(2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.’ ”

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently, I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R.K. Sidhva : Article 242 is proposed to be deleted, and so how does this new article 242A come up after article 242?

The Honourable Dr. B.R. Ambedkar : This one only indicates the position.

Mr. President : We have passed article 242. Now, does any one want to speak on this new article ? There is no amendment to it.

Shri Brajeshwar Prasad : Mr. President, Sir, I support clause (1) of this article, but I feel that there is no necessity for vesting power into the hands of Parliament to make laws for resolving disputes in connection with inter-State river and river valleys. That matter I feel, should have been left in the hands of the President alone.

Mr. President : Now, I put the new article 242-A to vote.

The question is :

"That article 242A stand part of the Constitution.

The motion was adopted.
New article 242A was added to the Constitution.

Mr. President : Amendment No.372A.

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

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted. These are covered by article 242-A and therefore are unnecessary.

Mr. President : Does anyone wish to say anything about this amendment? There is no amendment. I then put it to the House.
The question is:

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

The motion was adopted.

The heading above article 239, and articles 239, 240, 241 and 242 were deleted.

**Articles 248-A, 263 and 263-A**

**The Honourable Dr. B.R. Ambedkar**: Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 282 because the rest are consequential.

**Mr. President**: All right.

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

"That after article 263, the following new article be inserted:-

'263A. All moneys received by or deposited with -

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be."

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.
Mr. President : Yes.

The Honourable Dr. B.R. Ambedkar : I move amendment No.380 and amendment No.381. I move:

"That for article 248A, the following article be substituted :

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of India" and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State.

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.'"

Amendment No. 381.

"That for article 263, the following article be substituted :

Custody of 263, (1) The custody of the Consolidated Fund and the consolidated Funds, Contingency Fund of India, the payment of moneys into such contingency Funds Funds, the withdrawal of moneys therefrom, the custody of and moneys public moneys other than those credited to such Funds received credited to the by or on behalf of the Government of India, their payment into public accounts the public account of India and the withdrawal of moneys from
and the payment of such account and all other matters connected with or ancillary moneys into to matters aforesaid shall be regulated by law made by and withdrawal of Parliament, and, until provision in the behalf is so made by moneys from Parliament, shall be regulated by rules made by the President.
such Funds and public accounts.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State."

Briefly, the changes are two-fold. In the original article No.248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public moneys received by the State otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

Mr. President: The question is:

"That after article 263, the following new article be inserted:

'263A. All moneys received by or deposited with-

Custody of (a) any officer employed in connection with the affairs of the Union or suitors' of a State in his capacity as such, other than revenues or public
deposits moneys raised or received by the Government of India or the and other Government of a State, as the case may be, or moneys received by public servants and courts.

(b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or of the State, as the case may be”

The motion was adopted

New article 263A was added to the Constitution.

Mr. President: The question is:

"That for article 248A. The following article be substituted -

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the Consolidated assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and public and all loans raised by them by the issue of treasury bills, loans or account ways and means advances and all moneys received in repayment of of India and loans shall form one consolidated fund to be entitled. 'The Consolidated Fund of India" and all revenues received by the of the Government of a State, loans raised by the Government of a State by States. the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled. "The Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or of the State, as the case may be.
(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

The motion was adopted.
Article 248-A was added to the Constitution.

Mr. Mr President: The question is:

381 "That for article 263, the following article be substituted:

Custody of Consolidated Funds, Contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.
aforesaid shall be regulated by law made by the Legislature of the State, and until provision in that behalf is so made by the Legislature of the State, and until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State."

The motion was adopted. Article 263, as amended, was added to the Constitution.

The Assembly then adjourned till Nine of the Clock on Saturday, the 10th September, 1949.
Saturday, the 10th September 1949

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

Mr. President: We shall take up article 24 this morning and we shall begin with amendment No. 369. I desire to impress upon honourable Members that we must finish the discussion of this article today, as we have fixed the other question regarding language for Monday and Tuesday.

I have got some 97 amendments to this amendment: many of them overlap each other and others repeat similar amendments. I hope Members will bear this in mind when insisting upon moving their particular amendments, so that we may not have the same arguments repeated by different Members while moving their amendments. The first amendment we shall take up is No. 369.

Seth Govind Das (C.P. & Berar : General): Sir, may I take it that if the discussion of this article is not over by one o'clock it will be continued in the afternoon also, so that we will have Monday and Tuesday free for the language question?

Mr. President: That we shall see on Monday. Today we shall have an afternoon session if necessary.

The Honourable Shri Jawaharlal Nehru (United Provinces : General): Mr. President, I move:

"That for article 24, the following article be substituted

24. Compulsory acquisition of property. Compulsory acquisition of property. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) No such law as is referred to in clause (2), of this article made by the Legislature of a State shall have effect unless such law having been reserved for the consideration of the President has received his assent."
(4) If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.

(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article than affect-

(a) the provisions of any existing law, or
(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the Promotion of Public health, or the prevention of danger to life or property. (6) Any law of a State enacted, not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or sub-section (2) of section 299 of the Government of India Act, 1935.

Sir, this House has discussed many articles of this Constitution at considerable length. I doubt if there are many other articles which have given rise to so much discussion and debate as this present article that I have moved. In this discussion many eminent lawyers have, taken part, in private discussions and discussion in another place, And naturally they have thrown a great deal of light so much light indeed that the conflicting beams of light have often produced a certain measure of darkness. But the questions before us really are fairly simple........

Shri H. V. Kamath (C.P. & Berar: General): Sir, the Honourable the Prime Minister is hardly audible on this side.

Shri Jaspat Roy Kapoor (United Provinces: General) : We want to hear every word of what he says.

The Honourable Shri Jawaharlal Nehru : Sir, I was saying that in spite of the great argument that has taken place, not in this House but outside among Members over this article, the questions involved are relatively simple. It is true that there are two approaches to those questions, the two approaches being the individual right to property and the community's interest in that property or the community's right. There is no conflict necessarily between those two : sometimes the two may overlap and sometimes there might be, if you like, some patty conflict. This amendment that I have moved tries to remove or to avoid that conflict and also tries to take into consideration fully both these rights-the right of the individual and the right of the community.

First of all let us be quite clear that there is no question of any expropriation without compensation so far as this Constitution is concerned. If property is required for public use it is a well established law that it should be acquired by the State, by compulsion if necessary
and compensation is paid and the law has laid down methods of judging that compensation. Now, normally speaking in regard to such acquisition-what might be called petty acquisition or acquisition of small bits of property or even relatively large bits, if you like, for the improvement of a town, etc.-the law has been clearly laid down. But more and more today the community has to deal with large schemes of social reform, social engineering etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise-apart from every other difficulty, the question of time. Here is a piece of legislation that the community, as presented in its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation too long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected; otherwise the whole structure of the State may be shaken to its foundations: so that we have to keep these things in view. If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be, for the most urgent and important reasons.

How is it going to balance all this? You may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country which 'can keep before it all the various factors all the public, political and other factors-that come into the picture. This article, if you will be good enough to read it, leads you by a chain of thought and refers to these various factors and I think refers to them in an equitable manner. It is true that some honourable Members may criticise this article because of a certain perhaps overlapping, because of a certain perhaps-what they might consider-lack of clarity in a word here or there or a phrase. That to some extent is inevitable when you try to bring together a large number of ideas and approaches and factors and put them in one or a number of phrases.

This draft article which I have the honour to propose is the result of a great deal of consultation, is the result in fact of the attempt to bring together and compromise various approaches to this question. I feel that that attempt has in a very large measure succeeded. It may not meet the wishes of every individual who may like to emphasize one part of it more than the other. But I think it is a just compromise and it does justice and equity not only to the individual but to the community.
The first clause in this article lays down the basic principle that no Person shall be deprived of his property save by authority of law. The next clause says that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law should do it. Parliament should do it. 'Mere is no reference in this to any judiciary coming into the picture. Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.

In regard to the other clauses I need say very little except that clause (4) relates to Bills now pending before the Legislature of a State. The House win know that there are such Bills pending. In order to avoid any doubt with regard to those measures, it says that as soon as the President has assented to that law no question should be raised in a court of law in regard to the provisions of that enactment. Previous to this it has already been said that the matter has to go to the President. That is, if you like, a kind of a check to see that in a hurry the Legislature has not done something which it should not have done. if so, the President no doubt will draw their attention to it and suggest such changes as he may consider fit and proper for Parliament's consideration.

Finally, there are certain other saving clauses about which I need not say much. Clause (6) again refers to any law which has been passed within the last year or the year before the commencement of the Constitution. It says that, if the President certifies that, no other obstruction should be raised. Reading this article, it seems to me surprising that we have had this tremendous debate on it-not here but elsewhere. That debate was due perhaps not to this article but to rather other conflicts of opinion which are in the minds of Members and, I believe, many outside.

We are passing through a tremendous age of transition. That of course is a platitude. Nevertheless platitudes have to be repeated and to be remembered lest in forgetting them we land ourselves in great difficulties and in crisis. When we pass through great ages of transition, the various systems—even systems of law—have to undergo changes. Conceptions which had appeared to us basic undergo changes. And I draw the attention of the House to the very conception of property which may seem to us an unchanging conception but which has
changed throughout the times, and changed very greatly, and which is today undergoing a very rapid change. There was a period when there was property in human beings. The king owned everything—the land, the cattle, the human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important. Gradually the property in human beings ceased to exist. If you go back to the period when there were debates on slavery you will see how very much the same arguments were advanced in regard to the property in human beings as are sometimes advanced now with regard to the other property. Well, slavery ceased to exist.

Gradually the idea of property underwent changes not so much by law, but by the development of human society. Land today, as it has been yesterday, is likely to be a very important kind of property. One cannot overlook it. Nevertheless, other kinds of property today are very important in industrially developed countries. Ultimately you arrive at an idea of property which consists chiefly in a millionaire having a bundle of paper in his hands which represents millions, securities, promissory notes, etc. That is the conception of property today; that is the real conception of the millionaire. It is rather an odd conception to have to protect carefully that property which, in the larger concept of vastly greater properties, is paper. In other words, property becomes today more and more a question of credit. It becomes more and more immaterial and more and more a shadow. A man with credit has more property and can raise property and can do wonders with that credit. But a man with no credit can do nothing at all. I am merely mentioning this to the House to show how this idea of property has been a changing one where society has been changing rapidly owing to the various revolutions, industrial and other.

Again, another change takes place. Property remains of course property, but the ownership of property begins to spread out. The individual, instead of owning a very small share, more or less begins to own a very large share partly and thereafter becomes the co-sharer of a very large property and gets the benefit of that, although he is not complete master of it. So co-operative undertakings, so in a sense the joint-stock system, etc., began. So in a sense also spread the idea of an individual becoming a part owner as a member of a group of properties on a big scale which no single individual can ever hold except very rarely. In recent years the tendency has been for monopoly of wealth and property in a limited number of hands. This does not apply to India so much, because we have not grown so much in that direction. But where industrially countries have grown fast there has been monopoly of capital with the result that even the old idea of property and free enterprise is not easily applicable, because in the ultimate analysis the few persons who possess a large monopoly of capital really dominate the scene. They can crush out the little shop-keeper by their methods of business and by the fact that they have large sums of money at their command. Without giving the slightest compensation, they can crush him out of existence. The small man is crushed out of existence
by the modern tendency to have money power concentrated in some hands. Thus the old conception of the individual owner of property suffers not only from social developments, as-
we see them taking place and from new conceptions of co-operative ownership of property, but from the development on the old lines when a rich man with capital can buy out the small one for a song.

How are you going to protect the individual? I began by saying that there are two approaches-the approach of the individual and the approach of the community. But how are we to protect the individual today except the few who are strong enough to protect themselves? They have become fewer and fewer. In such a state of affairs, the State has to protect the individual right to property. He may possess property, but it may mean nothing to him, because some monopoly comes in the way and prevents him from the enjoyment of his property. The subject therefore is not a simple one when you say you are protecting the individual's rights, because the individual may lose that right completely by the functioning of various forces today both in the capitalist direction and in the socialist direction.

Well, this is a large question and one can consider the various aspects of it at length. I wish to place before the House just a hint of these broader issues, because I am a little afraid that this House may be moved by legal arguments of extreme subtlety and extreme cleverness, ignoring the human aspect of the problem and the other aspects which are really changing the world today.

The House has to keep in mind the transitional and the revolutionary aspects of the problem, because, when you think of the land question in India today, you are thinking of something which is dynamic, moving, changing and revolutionary. These may well change the face of India either way; whether you deal with it or do not deal with it, it is not a static thing. It is something which is not entirely, absolutely within the control of law and Parliaments. That is to say, if law and Parliaments do not fit themselves into the changing picture, they cannot control the situation completely. This is a big fact. Therefore it is in this context of the fast-changing situation in India that we have to view this question and it is with this context in the wide world and in Asia we are concerned.

It must be said that we have to consider these problems not in the narrow, legalistic and juristic sense. There are some honourable Members here who, at the very outset, were owners of land, owners of zamindaries. Naturally they feel that their interests might be affected by this land legislation. But I think that the way this land legislation is being dealt with today-and I am acquainted a little more intimately with the land legislation in the United Provinces than elsewhere-the way this question is being dealt with may appear to them not completely right so far as they are concerned- but it is a better way and a juster way, from their point of view, than any other way that is going to come later. That way may not be by any process of legislation. The land question may be settled differently. If you look at the situation all the
world over and all over Asia, nothing is more important and vital than a gradual reform of the big estates.

It has been not today's policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system must be abolished. So far as we are concerned, we, who are connected with the Congress, shall give effect to that pledge naturally completely, one hundred per cent. and no legal subtedly and no change is going to come in our way. That is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in Judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, Ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function.

You have decided, the House has decided, rather most of the Provincial Governments have decided to have a Second Chamber. Why has it been so decided ? The Second Chamber also is an elected Chamber mostly. Presumably, they have so decided because we want some check somewhere to any rapid decision of the First Chamber, which that Chamber itself may later regret and may wish to go back on. So, from that point of view, it is desirable to have people whose duty is, not in any small matters but with regard to the basic principles that you lay down, to see that you do not go wrong, as sometimes even the Legislature may go wrong, but ultimately the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform. Otherwise, you will have strange procedures adopted. of course, one is the method of changing the Constitution. The other is that which we have seen in great countries across the seas that the executive, which is the appointing authority of the judiciary, begins to appoint judges of its own liking for getting decisions in its own favour, but that is not a very good method.

I submit, therefore, that in this Resolution the approach made protects both individual and the community. It gives the final authority to Parliament, subject only to the scrutiny of the
superior courts in case of some grave error, in case of contravention of the Constitution or the like, not otherwise. And finally in regard to certain pending measures or measures that have been passed, it makes it clear beyond any doubt that there should be no interference. I beg to place this amendment before the House.

Shri Syamanandan Sahaya (Bihar: General): Mr. President, Sir, before we proceed with the discussion of this amendment which is really the draft of article 24 now, I would like to raise a preliminary objection on a point of order. Before I make my submission, I would like to point out that I am doing so, not for obstructing this article, but in my own humble way to draw attention to a defect which exists in this. Sir, I wish to draw your attention and the attention of the honourable the Mover to clause (4) of this article which reads thus:-

"If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article."

If you will kindly refer, Sir, to the discussion in this House on the recommendations of the Fundamental Rights Committee, you will find that they accepted the principle that no property shall be taken possession of or acquired without the payment of compensation. This view, Sir, has also just now been expressed by the Honourable the Prime Minister when he said in his opening speech that there is no question of expropriation without compensation. I take my stand on that principle which we accepted in this House and on the statement just now made by the Honourable the Prime Minister in moving his amendment. Now, if we carefully read the wording of clause (4)........

Shri B. Das (Orissa: General): May I enquire what fundamental right my friend is referring to?

Shri Syamanandan Sahaya: Clause 19 of the Fundamental Rights Committee's report. If you want the page, I will give you.

Some Honourable Member: But what is the article that we have passed?

Mr. President: I would ask honourable Members to allow the Member to make his point. He has not yet come to his point of order. He is making his preliminary observations. Let him make his point of order.

Shri Syamanandan Sahaya: If you read clause (4) of this article, it will appear that a Bill which is pending before a Legislature, shall not be called in question in a court of law if it contravenes the provisions of clause (2) of this article. It is only in clause (2) that we have provided that any law that is passed for taking possession of or acquiring private property shall provide for compensation and either fixes the amount of the compensation or lays down the principles and the manner in which the compensation is to be determined. Now, clause (4) lays down that if a Bill contravenes the provisions of clause (2), even then no question can be
raised in any court, which means that it is empowering the legislature to pass if necessary, a law taking possession of or acquiring private property without paying any compensation. The compensation provision is in clause (2) only and nowhere else.

Pandit Balkrishna Sharma (United Provinces: General): May I point out, Sir, that the arguments that are being advanced by the honourable Member are in no way related to any point of order? He is only discussing the proposition before the House, and therefore........

Mr. President,: So far as I have followed him, he is raising his point of order with regard to clause (4). I do not know whether he is right or wrong. I am just explaining what he is driving at, as I have understood him. Under clause (4) in the form in which it is at present presented, if a Bill which is now pending or which will be pending at the time of the commencement of this Constitution does not contain any provision for payment of compensation or for laying down the principles and the manner in which the compensation is to be determined, if that Bill is passed and if it receives the assent of the President, that cannot be questioned in any court of law. His point of order is that you are thereby nullifying clause (2) in the case of pending Bills. That is his point of order.

Shri Syamanandan Sahaya: That is precisely my point.

Pandit Balkrishna Sharma: Is there any point of order involved in it if we are modifying the previous clause? We are a supreme body.

Shri Syamanandan Sahaya: Quite right. Let us understand it. Let the House be sure of what it is passing. If the House is prepared to pass a legislation which empowers the legislature to pass even a legislation of expropriation without compensation, and if that is precisely what is also the idea of the Honourable Premier, who is the mover of the amendment, then I have nothing to say. I take my stand, as I have stated, on what we have already passed in this House before in clause 19 of the Fundamental Committee Report and articles 13 and 15 of this Constitution and what is already incorporated in clause (2) of this very article; and when I find that clause (4) contravenes those provisions, and infringes upon them, then, Sir, I naturally feel that such a provision ought not to find a place in the Constitution, unless it is suitably amended. That is my whole point. Of course, these arguments relate to clause (6) also, but the point being similar, I do not want to take your further time.

What I desire to say before I sit down is that this is a point which is very vital. The House must know where we stand. We want to pass a law whereby we could expropriate without compensation. If that is not the view of the House and if that is not the underlying idea of this amendment, then this should be suitably amended. If, Sir, it is contended that it is not possible, that a legislation without compensation will be passed by the legislatures which have men of the highest ability and also in the various Governments and that we should not feel in any way apprehensive about such a legislation going through, I will only say that a democratic leader of the stature of the Honourable the Prime Minister would not advise us to
depend upon the goodwill of individuals and not on the provision for the safety of our rights in the Constitution itself.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Mr. President, there is no doubt that clause (4) is an exception to clause (2). In all articles there are exceptions to previous articles. We always say "notwithstanding this", "Provided that", etc., and I do not see that any point of order arises because clause (4) is simply an exception to clause (2). Whether we should have such an exception is a different matter and whether there can be an exception to a substantive clause is quite different matter. We authorize such exception in every proviso. Therefore, all that I wanted to submit is no point of order has been raised by the honourable Member. of course, if we remove the exception and give powers to the Prime Minister that such exceptions would not be made to clause (2) that is a different matter.

Shri Biswanath Das (Orissa: General): I wish to speak.

Mr. President: Do you want to support the point of order?

Shri Biswanath Das: I want to oppose the point of order raised.

Mr. President: Then you need not.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, I wish to partly support and partly oppose.

Mr. President: You have made out a case for speaking certainly

Mr. Naziruddin Ahmad: Sir, the point of order raises two questions. The first is that we are going against our own decisions on the Fundamental Rights. So far as that part of the argument is concerned, I am here to support it. The decision which was taken in the House can be changed only in the regular way and if we are to accept clause (4), we must change our decision in the regular way, namely, in the manner laid down in the rules. So this part of the point of order is conditionally right, subject to our decision being changed in the regular way.

With regard to the other part of the point of order, namely, that it contravenes clause (2), that is not really a point of order. It is rather an argument on the merits. I do not wish to go into the merits, but I think it is not a point of order. Legally this House has the power to make a law and provide exceptions.

Mr. President: I do not think that the honourable Member has raised a point of order. There are several clauses in this article, some of them qualify what is stated in the previous clause. That very often happens in all legislations and it does not raise really a point of order. It is a question whether this clause should remain as it is on its merits and that is for the House to decide, and therefore no point of order arises.

Then I will ask the Members to take up the amendments.

Shri B. Das.: On a point of information, Sir, will each Member move his amendment and make the speech or will speeches be allowed after all the amendments, have been moved?
Mr. President: I will expect every Member who moves the amendment to make his speech, so that he may not have to speak again.

Shri H. V. Kamath: Sir, there is another difficulty. I want to know whether the amendments will be taken up clause by clause, because I find from the lists that they are grouped together that way.

Mr. President: I will take the amendments and the discussion and then at the time of voting, I shall decide whether to take the whole, article or take the clauses separately.

Shri Damodar Swarup Seth (United Provinces: General):

Mr. President, Sir, with your permission, I move:

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:

"24 (a) The property of the entire people is the mainstay of the State in the development of the national economy.
(b) The administration and disposal of the property of the entire people are determined by law.
(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.
(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.
(e) Expropriation over against the States, local self-governing institutions, serving the public welfare, may take place only upon the payment of compensation."

Now, Sir, before actually speaking in support of my amendment, I hope I will be excused to say something by way of introduction to the proposed amendment. The Draft Constitution has, in my humble opinion, failed, and rather miserably to deal properly with the question of the economic rights of the people. This article 24, which is now under discussion, I am sure, is soon going to be a Magna Charta in the hands of the capitalists of India. While we were under foreign rule, a few years back, we had been hoping fondly, not against hope, that in a free India the people of this country will be able to frame a really peoples' constitution which will as a whole be the Magna Charta of the toiling masses. But, alas, Sir, two years of Swadeshi rule have not only sadly disillusioned us, but all our hopes of better living and a prosperous India have been dashed to the ground. The standard of living of the masses is slowly going down and the index of prices of necessaries of life is daily rising. It is not possible for one to say as to where and when this rise in prices and the worsening of the economic condition of the masses will end. The plight of the middle class-people, Sir, is indescribably piteous. All this is happening in the face of the famous and historical Quit India Resolution in which the toiling masses of this country were solemnly promised Ram Rajya,
i.e., that the power, political and economic, snatched from the foreigners will be vested in their hands. It is true that the toiling masses are even now attempted to be lulled into sleep by some tempting promises and sweet words. Even now if I correctly remember, Sir, the Honourable Prime Minister of India who has just moved this article 24, while speaking on the Objectives Resolution had declared in the most clear and emphatic terms 'that he stood for socialism and that India would go to the making of a Socialist Republic. If a Socialist Republic has actually to be established in this country, or as the President of the India National Congress promises every now and then, that there will be a classless society in this country during the next five years, then a Socialist Republic or a classless society are not to be dropped on this land of ours from Heaven like Manna. If they do mean anything, it requires some spade-work and clearing of way by dealing properly with the question of the economic rights of the people.

Now, Sir, this article 24 as a whole and clause (2) in particular, is worded not only vaguely, but unhappily. It is not clear whether the words "acquisition of property for public purposes" include socialisation of land and Industries or compulsory transfer of property from one set of persons to the other. It may well be argued that these words mean acquisition of property only for the general use of the Government, local self-governing, bodies and other charitable and public institutions and cannot be allowed to be stretched to nationalisation or socialisation. The subject therefore needs clarification, and that clarification, in my humble opinion, is not possible unless we discard the idea or I should say the theory, that man has natural right in property and also the idea that property is a projection of personality and any invasion on property is an interference with the personality itself. We cannot confuse personality with property; nor can we forget the social and functional character of property. Man has no natural right in property. Claim to property is acquired by law recognised by community. The community, Sir, has always reserved to itself the right to modify laws with respect to property and acquire it from its owners in the common, social and economic interests of the people. Property is a social institution and like all other social institutions, it is subject to regulations and claim of common interests.

Laws of property have been changed from time to time. Many proprietary laws of the middle ages have been abolished without compensation. For example, when the law of slavery was abolished in America, no compensation whatsoever was paid to the slave-owners although many of them had to pay hard cash while acquiring that claim. The property of the entire people, it must be understood, is the main-stay of the State in the development of national economy and the right to private property cannot be allowed to stand in the way or used to the detriment of the community. The State must have the full right to regulate, limit and expropriate property by means of law in the common interests of the people.' The doctrine of
compensation as a condition for expropriation cannot be accepted as a Gospel truth. Death duty is a form of partial expropriation without compensation and it forms an essential feature of the financial systems of many a progressive country in the world.

It is almost universally recognised that full compensation to the owners of properties will make impossible any large project of social and economic amelioration to be materialised. It is impossible for the State to pay owners of property in all cases and at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialization of big industries with a view to eliminating exploitation and promoting general economic welfare. Partial compensation is therefore suggested by many thinkers in the world as a via media and they maintain that partial compensation will neither hinder socialisation nor at the same time will it deprive a large number of persons of the means of their livelihood. Much can be said in favour of partial compensation, if socialisation is to be carried on gradually and individual economy is retained over a wide field. Even partial compensation will have no justification when general transformation of economic structure on socialist lines takes place.

In such a case all that the persons of vested interests can claim in a socialist economy is an opportunity and a share on par with all other citizens of the State. Thus it is not possible, Sir, to be dogmatic on the question of compensation and the State should be left free to determine compensation according to social will and prevailing social conditions.

Now, public needs often require, Sir, transference of property from one authority to another. For instance public utility undertakings, owned and managed by various Municipalities, may after some time be required to be pooled together on a provincial basis. Public good, may thus need their transference from one authority to another, i.e., to the provincial authority. But this transference must be accompanied with compensation, especially when different public authorities are allowed, by law, to keep separate accounts, finances, assets and liabilities. Transference of public property from one authority to another therefore without compensation may undermine the financial stability of the institutions or bodies, of lower grade and may also undermine the mutual harmony so essential amongst various constituents of a Federated State. It is therefore necessary to provide for compensation in cases of expropriation over against the provinces, the States, Local Self-Governing bodies and the associations serving public interests.

I, therefore, hope, 'Sir, that this amendment of mine will be given serious consideration by the Honourable Members of the House and if they think it desirable in the interest of the toiling masses of India that their economic rights should be dealt with properly and in the spirit in which they ought to be dealt, then I feel, Sir, that there will be no difficulty for the honourable Members of this House in accepting my amendment.

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, I beg to move:
"That with reference to amendments Nos. 720 to 769 of the List of Amendments; for article 24, the following be substituted:

24. (1) No person shall be deprived of his property save by authority of law.

(2) 'No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

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

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Sir, may I also move amendment No. 516 which really forms part of this

Mr. President:

That is separate. We will take it up later.

Prof. Shibban Lal Saksena: Sir, before making, any comments upon this I wish the House to understand the difference between my amendment and the amendment of the Honourable the Prime Minister. The Prime Minister's Resolution in clause (1) says the same thing that none should be deprived of his property without authority of law but it is in clause (2) that the chief difference lies. This clause (2) in his amendment is a pure reproduction of section 299 of the Government of India Act, 1935. Only three words have been taken away and these are 'the payment of.' I may read out clause (2)

"Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined."

So then by this new article proposed by the Honourable Pt. Jawaharlal Nehru, we are really perpetuating the provisions of section 299 in our new Constitution. Only two exceptions have been made and these are in clauses (4) and (6).

These amendments have been specially devised to protect the Zamindari legislation of the U.P. and Bihar and Madras, clause (4) to protect the Zamindari abolition Bill in the U.P. and clause (6) to protect the Zamindari abolition Acts passed by the Bihar and Madras Legislatures. Even there I am afraid the new amendment of which notice has been given by Shri Alladi and Shri Munshi Nos. 504 to 506-if they are accepted-then I think the Madras and
Bihar Bills will also become somewhat ultra vires of this Constitution in their present form. So in fact the only Act protected will be the U.P. Zamindari legislation.

Now, Sir, I want to ask this question of the House, Is the House prepared to protect the position that, excepting the zamindari property of the U.P., no other property in the country shall be acquired for public purposes, or in the interests of the State? The words used in the article moved by the Honourable Prime Minister are-

"No property .... etc....... shall be taken possession of .... etc. unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined."

In law, the word 'Compensation' means 'fair and equitable compensation'. What is to be fair and equitable compensation? Parliament, under the amendment of Pt. Jawaharlal Nehru, is not the final authority to decide that. The Parliament or the State legislatures may fix any amount or specify any principles to determine compensation, yet the Supreme Court will finally decide whether the amount fixed or the principles specified to determine compensation ensure fair and equitable compensation. So the final decision lies with the Supreme Court in the amendment moved by Pt. Nehru, and it can well declare that the principles specified by the Parliament for determining compensation are 'fraudulent'. The Supreme Court and not the Sovereign Parliament is thus the ultimate authority to decide what is 'fair and equitable compensation'. So you cannot acquire the key industries of the country and nationalise them, because, you cannot pay fair and equitable compensation. You cannot acquire even the zamindari property in any other province, e.g., in Rajasthan, for the same reason. If the article is passed in the form proposed by the Honourable the Prime Minister, it will mean permitting the capitalistic system in the country to remain intact. We cannot nationalise the key industries, nor even take over the zamindaries, except in the province of the U.P.

This being the position, I wonder if the House will accept this article as it has been proposed by Jawaharlalji. In my amendment, I say-

"No property movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bond or both of the amount determined as compensation in accordance with principles laid down by such law."

So under my amendment Parliament can lay down the rules for fixing the compensation to be paid for taking over properties, and whatever Parliament thinks is the proper compensation for any particular property shall be the fair and equitable compensation, and the law made by out Sovereign Parliament shall be final. No Supreme Court or any other body will sit in judgment over the principles laid down by our Sovereign Parliament.
I want this House to consider this fundamental question, whether it is prepared to put some other authority over the sovereignty of the Parliament which will be elected on the basis of adult franchise. Is it prepared to bind the hands of the future Parliament in this manner? Our present Constituent Assembly has been criticised on the ground that it has been elected on the basis of indirect votes of persons who themselves have been elected on a narrow and not adult franchise. The new Parliament is to be elected by adult franchise and by this article, we bind the sovereign Parliament of the future, which will be elected by adult suffrage and say that it shall not be the final authority to determine the principles on which properties should be acquired for national purposes.

Sir, I feel that we should not bind the future sovereign Parliament in this manner in such a vital matter over which this House is itself so keenly divided. My amendment in fact, leaves the Parliament sovereign and it can determine the principles on which compensation shall be paid and nobody, not even the Supreme Court, can question its decisions regarding those principles. In some cases in the interests of the nation, property may have to be taken even without paying any compensation, and it is quite possible that Parliament may decide to give full compensation in some other cases, but it will be entirely according to the judgment of the Parliament, and we trust the judgment of Parliament will be quite fair. According to the article, 24 of the Prime Minister, the law made by Parliament can be questioned by the Supreme Court and the judgment of the Court will be final, as to whether the compensation and the principles according to which this compensation is determined, are fair or not. The question to be decided is whether we should have article 24 in that form or in some other form as the one proposed by me according to which the decision of Parliament shall be final.

Sir, I have taken keen interest throughout in the making of this Constitution and I have vehemently opposed some of the articles. I have called these articles such as articles 15 and 280 which we have passed as wholly undemocratic and have said that they are a blot on the Constitution which we have framed. But I think that this article, if it is passed in the form in which the Prime Minister has proposed it, will be the darkest blot on our Constitution. I say this, firstly because as I have said, this amendment takes away the sovereignty of the Parliament and secondly because it will be a negation of all that the Congress has stood for all these so many years.

There is one interesting thing about this article which I must point out. Clauses (4) and (6) of this article are a sort of confession that the principles laid down in clause (2) of the article would lead to chaos and revolution if applied to acquisition of huge zamindari properties in the U.P., Bihar and Madras. Clauses (4) and (6) say that whatever Acts or Bills which are passed or are pending before legislatures on the commencement of this Constitution shall not be questioned before the Supreme Court, but all other Acts
or Bills shall be liable to be questioned. Therefore there is discrimination here, even so far as zamindari properties are concerned, discrimination between zamindari property already acquired or to be acquired under a pending Bill and zamindari property to be acquired hereafter. There is thus also discrimination between industrial property and zamindari property. And let me tell the House that the Congress has always stood against discrimination.

I was surprised to hear the Honourable Prime Minister making a reference several times in his speech to the ultimate sovereignty of Parliament, and yet he has proposed an article in a form which will take away that sovereignty and this sovereignty has been put in the hands of the few judges of the Supreme Court who, however able they may be, will be empowered to set at naught the considered will of the Parliament. Now let us see who will really gain ultimately by this article? I say only the lawyers will gain, lawyers who will fight out the cases in the Supreme Court, and the major portion of the property will find its way into the pockets of these lawyers. It will be a lawyer's paradise if this article is passed in this form.

As I said, this article is a negation of all that the Congress has stood for during all these years and it goes against the various resolutions of the Congress. Here I will quote certain paragraphs from the speech delivered by the revered Father of the Nation, Mahatma Gandhi, at the Round Table Conference, so that we may know what he said. He said "India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to, live a life of complete isolation whereby, it would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in mind many things that I would have to do in order to equalize conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the down-trodden, the fallen from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And, if the landlords, zamindars, monied men and those who are today enjoying privileges- I do not care whether they are Europeans or Indians-if they find that they are discriminated against, I shall sympathize with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process and without their assistance it would not be possible to raise these people out of the mire.

Look at the condition, if you will, of the untouchables if the law comes to their assistance and sets apart miles of territory. At the present moment they hold no land; they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being
able to seek the assistance of law. Well, the first act of the Legislature will then be to see that in order somewhat to equalise conditions, these people are given grants freely.

From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be therefore, a battle between the haves and the have-nots.

Mr. President: I do not want to interfere with the Honourable speaker. But I do not see the force of this long quotation that he is reading out. What relevance has it got to the article we are considering now?

Prof. Shibban Lal Saksena: I will just finish the sentence. Then show its relevance.

Mr. President: You need not have read the whole of the speech, but only that particular sentence.

Prof. Shibban Lal Saksena: No, Sir. It was also necessary.

"It will be therefore, a battle between the haves and the have-nots; and if that is what is feared, I am afraid the National Government will not be able to come into being if all the classes hold the pistol at the heads of these dump millions and say: 'You shall not have a Government of your own unless you guarantee our possessions and our rights'."

The relevancy of this quotation is this, that the Father of the Nation has said that in order to lift these untouchables and the downtrodden, and the fallen, from the mire, India would be engaged in passing legislation to equalise conditions. He said that the first burden of the National Government should be to equalise conditions. But this amendment of Pandit Jawaharlal Nehru makes all this impossible. There is no possibility of equalising conditions, because we cannot take away any property for public purposes without full compensation. The Father of the Nation provided one formula for it. He said:

"I have got another formula also, hurriedly drafted because, I drafted it here as I was listening to Lord Reading and to Sir Tej Bahadur Sapru. It is in connection with existing rights:

'No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests.

He was fighting on our behalf in the Round Table Conference that every title to prop" should be examined, whether it is legitimate or not. He was fighting to see that whatever property has been acquired was acquired legitimately and that it was not in conflict with the interests of the nation. That was the view of the Father of the Nation. In fact, he said:
"If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government I would quickly dispossess them. I would not consider them because they are Indians and I would as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. The law will be no respector of persons whatsoever."

He was for dispossessing them if he found that they had acquired property without legitimate right. In fact, my amendment, which I shall move later on, suggests that all properties confiscated from patriots, because they took part in the war of independence, shall be restored to them and those, who had got property merely because they did service to officials shall be deprived of them. With your permission, I would like to quote what Mahatma Gandhi said further. He said:

"Then you have 'not being in conflict with the best interests of the nation'. I have in mind certain monopolies legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will amuse you somewhat, but which is on natural ground. Take this white elephant which is called New Delhi. Crores have been spent on it. Suppose that the future Government comes to the conclusion that seeing that we have got this white elephant it ought to be turned to some use. Imagine that in Old Delhi there is a plague or cholera going on......."

Mr. President: Mr. Saksena, I do not think you are justified in quoting all that. I have not followed what you are saying. Are you speaking about your own amendment or are you opposing the amendment which has been moved or are you supporting something else?

Prof. Shibban Lal Saksena: I am quoting this to show that Mahatma Gandhi had said that he would be willing to expropriate property if it had not been acquired in a legitimate manner.

Mr. President: Your amendment does not say anything of that sort.

Prof. Shibban Lal Saksena: I have said in my amendment that the Parliament is the ultimate authority to determine whether compensation should be paid or not instead of the Supreme Court. That is the only difference between my amendment and that of the Prime Minister. The law is final. Parliament shall be the final arbiter according to my amendment. If you will permit me, I should like to quote a few lines more.

Mr. President: I think you should think of the time, also. At this rate we cannot go on. I have given you more time than I would have allowed to anybody else. You had better leave out the quotations. You may make out your point.

Prof. Shibban Lal Saksena: If you will permit me, I shall just read a couple of lines. Mahatma Gandhi had said:
"If the National Government comes to the conclusion that that place is necessary, no matter what interests are concerned they will be dispossessed and they will be dispossessed. I may tell you, without any compensation, because, if you want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible."

This is what the Father of the Nation said about compensation being paid.

I stand for these Congress principles. Socialists have come and attacked this article that it is not democratic. I oppose this amendment because this is a negation of all I have stood for in my life and of all that the Father of the Nation and the Congress stood for throughout all these years. I missed in the speech of the Prime Minister the fervour which usually is present in his speeches. It is clear that he is torn within himself and he has moved an amendment which he does not believe in and I wish to say that his amendment should not be accepted. I commend my amendment for the acceptance of the House.

Mr. President: Mr. Brajeshwar Prasad-385.

(Mr. Brajeshwar Prasad was cheered as he walked up to the rostrum.)

An Honourable Member: The cheers are an invitation to the Honourable Member to make his speech short

Mr. President: The cheers are to cheer you out.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I move:

'That for amendment No. 720 of the List of Amendments, the following be, substituted :

That for article 24, the following be substituted

24.(1) All private property in the means of production may be acquired by the Government of India.

(2)The President shall determine in each case, to what extent, if any, the owner whether a private individual, a State, a local self-governing institution or a company, shall be compensated.

(3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes With your permission, I want to delete.

(4)”... (4) The provisions of this article may be amended if ratified by the people signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of adult franchise."

May I move the other amendments also-387, 390, 391.

Mr. President : I do not think you can move 391 because that is not consistent with 385. I think you had better content yourself with one amendment and be consistent.

Shri B. Das : Mr. President, I submit the amendment is out of order because it negatives all existing laws and negatives the resolution moved by the Prime Minister.
Mr. President: These are all amendments for substituting an article as it was originally moved just as the Prime Minister's is for substituting the article as originally framed.

Shri Brajeshwar Prasad: Moreover, Sir, I, would like to place before you that the procedure we have adopted today is not in conformity with the procedure that we have followed up till now, because it was Dr. Ambedkar who ought to have moved article 24 or some other article in an amended form. No Member of the House has got a right to move an amendment before an article has been moved on behalf of the Drafting Committee.

Sir, I am thankful to the honourable Members of the House for their cheers. It is in no spirit of out-Heroding Herod that I have moved this amendment or this substitute article. I am a man of simple ideas and I know one thing, that this question of how property should be regulated has been determined by members of the Congress High Command and it shall always be determined by them and them alone and Parliament will have no power to come to any decision on this question. As long as there is poverty and illiteracy in this country no Parliament will be able to play any vital part in Indian politics. It is in that light,that I have deleted the word 'Parliament' and substituted the word 'President'. When I say 'President' I do not mean one man the President. I mean the President in consultation with the Cabinet, the members of the Congress High Command which consists of men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel and others.

My whole intention in moving this article is to by-pass the controversy that has arisen on the question of compensation and justiciability. I am' quite clear in my own mind that if we incorporate these principles in our constitution the result will be social injustice. The result will be that the whole country will hasten towards chaos, anarchy and civil war. With a view to avert that calamity I have moved this article. I am quite clear that no government in India as long as this Constitution is in operation, no democratic government-much less the Congress Government-will embark upon a course of expropriation of property without payment of compensation. But I feel that in the event of a crisis, when the country is confronted with dangers of insurrection and bloodshed, power must vest in the hands of the Government of India to change the very basis of society, so that the foundations of the state may be strengthened. At this moment the question of compensation and justiciability should not be allowed to thwart the greatest good of the greatest number. It is therefore with that view that I have moved this substituted article.

I hold the view that at the present moment there is a group of persons at the helm of affairs in Delhi who are in a position, by virtue of their high intellectual ability and attainments, by virtue of their nobility and character to take a long-range and disinterested view on the question of the regulation of the institution of private property. The argument may be urged that if we do not give compensation and concede justiciability there will be no industrial development in the country. Industrial development is very dear to my heart, but the
sufferings of the millions, he starving, masses in India, cannot ignored Therefore I give preference to the masses. I do not cam whether those investors, foreign or Indian, lose their profits or opportunities because in no case, under no circumstances, the interests of the millions can be sacrificed at the altar of a handful of persons.

Sir, I will enter into two or three arguments before I conclude. I am opposed to vesting power into the hands of Parliament, because I feel that a parliament elected on the basis of adult franchise in a country where millions of people are illiterate and poor will not be able to discharge its functions as far as the question of the regulation of private property is concerned.

There is also the apprehension in our minds that most of the members of the future parliament of India will come from the ranks of peasant proprietors who will each have their own property and therefore it would be very difficult for those who have got their own private property to rise to the height of the occasion and take a detached view of things. I hold the view that the system of peasant proprietorship is the greatest hindrance in the way of socialism and progress. There is much truth in the Marxist theory that the state is an instrument of exploitation in the hands of the dominant group in society.

Therefore I say that this power should be taken away from the hands of Parliament and vested in the hands of our philosopher-kings.

I know that this Constitution is not going to be a permanent constitution of this country. The question may therefore be asked, why are you laying down such provisions in this Constitution which ought to incorporate only general principles of internal value? I think that this Constitution will not last more than ten years. With this feeling in view I want that all the powers should be vested in the hands of our leaders.

I have placed this question outside the purview of the provincial legislatures because I feel that it is very necessary for the sake of uniformity that no power should vest in the hands of the provincial governments. It is too vital a power to be placed in the hands of the provincial legislatures. I am not speaking against the intellectual merits of provincial-ministers but the provincial Ministers are accustomed to deal only with provincial problems and they cannot therefore take an all-India view of things. Hence I am in favour that this power should not be vested in the hands of any provincial government.

Lastly, I am of opinion that people expect more justice from the hands of the Central Government than from the hands of the provincial governments. So it will allay the apprehension of the minorities and the apprehension of all those people who have got some private property if exclusive power is vested into the hands of the Central Government. Hence I want that this power should be vested in the hands of the Central Government. A Kher here
and a Pant there cannot basically alter the fact that provincial governments do not enjoy the confidence of the people.

One word more and I have done. I do not say that what I have said should be achieved within the twinkling of an eye. I do not want that private property should be liquidated on the 26th January 1950. I say that the power must be vested in the hands of the in this direction must be left Government of India. I strongly consideration of the House. this amendment. I sincerely people are quite free to agree Government of India and the measure of advance to be determined by the President and the commend this amendment of mine to the earnest It is in no spirit of bravado that I have moved hold the view expressed in the amendment and or disagree with it.

Mr. President: There are two other amendments which seek to replace the whole amended article. I would like them to be moved first.

Shri Kishorimohan Tripathi (C.P. & Berar States) : Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:-

24. Private property. (1) No person shall be deprived of his property save by authority of law.
(2) No property, movable, or immovable including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired under any law unless the law provides for compensation for the property taken possession of or acquired.

Provided that where an entire category of property, movable or immovable, is taken possession of or acquired under any law passed by Parliament or the legislature of a State for the distinct purpose and object of gradually and peacefully establishing a classless society in India the principles of law authorising the taking possession of or acquisition shall in no case be called in question in any court.

Provided further that it shall be the natural right of every citizen whose property is taken possession of or acquired to get rectified in a proper court of law any wrong done to in the process of execution of the law providing for compensation.

Sir, with all due deference to the observations and views by the honourable Pandit Jawaharlal Nehru, I do not agree with the draft article which he has moved. My reasons are these : firstly, that the title of the article is not proper. We are- discussing Fundamental Rights, and in this particular article we are going to describe the extent of private property which a citizen shall have. It is not a subject of compulsory acquisition of property and therefore the title should be changed into "Right of Private Property" or "Private Property".

Then, although apparently the article as moved by the honourable Pandit Jawaharlal Nehru does not discriminate between property and property, as facts stand I feel that it discriminates between industrial property and landed estates. Such a discrimination between property and
property as contained in this article. is, I strongly feel very dangerous and may create a very unhealthy atmosphere in the country which is already full of discontent. I seek in my amendment to place the whole article in such a way that while in the very serious circumstances of the country we are not in a position to socialise property, industries and other things at present, we make the article sufficiently elastic so that in future whenever occasion arises it shall be possible for Parliament to take steps to socialise any property, whether industrial or landed. In the article as presented to us by Panditji there is provision for socialisation of landed property in such provinces as have either passed necessary Acts or as would pass Act & or. introduce Bills by the 26th January, 1950, when we hope to enforce this Constitution.

But in the case of other provinces which may not be in a position to move a Bill or pass an Act for the abolition of zamindari to which we are pledged within the said time limit, the article as proposed makes no provision. This is a very vital part of the Constitution and it has been rightly observed that this article represents the soul of the Constitution, and therefore we must have a proper background to appreciate the importance of the article.

The Congress today as the largest single Organisation representing the aspirations of our people has accepted as its objective the establishment of cooperative commonwealth in this land, and this co-operative commonwealth is nothing but another name for the establishment of a class-less society in India. This article therefore must give us a proper lead towards that direction. But I feel, as it is proposed, it does not give that lead. We must also remember that the future pattern of our national economy in India will revolve round article 24, and therefore if we make any mistake in defining private property, I feel that we shall be doing something which will be very strongly hindering our progress on the path of establishing a class-less society in India. I have, therefore, amended the article in such a way as would enable the future Parliament of India, representing the wisdom of the people, to be in a position to give proper lead for the establishment of a class-less society.

At the same time I have made provision in my amendment that where in the process of execution of the principles as laid down by Parliament, or by a State Legislature, there is any mistake committed and any wrong is done to any individual, then it shall be open to the individual to seek redress in a court of law. Let us remember that that great man, the Father of the Nation, of whom, it has rightly been said that he moulded us into men out of dust, held before our people the view and the picture of Ram Rajya which to the common man never meant merely political emancipation but freedom from economic want. We must, therefore, in all earnestness see that in our Constitution this freedom from economic want is guaranteed to the common man.

If you look to the various other provisions of the different articles under the Chapter relating to "Fundamental Rights" you will notice that each fundamental right is conditioned by certain
terms. And each of the conditions, as laid down for example in the matter of Freedom of Speech, Freedom of Association, Personal Liberty, indicates a duty on the part of the citizen. So also there should be some condition in the matter of private property. And that condition should be that private property is merely a public trust and at the instance of the community or at the instance of the government it should come to the use of the community.

Some people have argued that this right should be made justiciable. While being a layman, I do not fully appreciate the implications of justiciability. I do not know how a section of our people fears that a Parliament elected under adult franchise, representing the solid will of the people and the wisdom of our leaders shall do anything but justice in paying compensation for any property that is taken possession of or that is acquired for the common good of the people. I will draw your attention to article 26 in the Yugoslavian Constitution relating to property which says:

"It shall be the right and duty of the State acting in the interests of the community and upon the basis of the law to intervene in economic, relations between citizens in a spirit of justice and with a view to averting social conflict." In the same Constitution article 37 lays down:

"Private property shall be guaranteed. The obligation imposed by the private ownership of property shall be recognised. The use of property must not be injurious to the interests of the community. The scope, extent and limits of private ownership shall be regulated by law."

So also in the Irish Constitution there are limitations which have been placed upon the right to private property. In all these cases whenever necessary, at the instance of the community and at the instance of the Government representing the community, property is made available for the social good.

It is argued by a section that in drafting this article the members of the at Congress Organisation have departed from the pledges given to the people. The pledges were that whenever private property is taken possession of or acquired, we shall equitably and fairly compensate the owner. We do not deny them compensation. But it must be remembered that we have also held out promises to another greater section of the people, the common men, to the effect that we will strive hard to give them higher and higher standards of living. We have to achieve that objective also. Therefore the criticism levelled against us that we are denying something to a certain section of the people is utterly wrong. We have to adjust the promises given to the different sections and in this connection it has to be remembered that a dynamic nation has to shape and reshape its means for the achievement of objective according to the need and demand of time.

I have another point to make. During the last two years, since 15th August 1947, it has been our sad experience that the hand of co-operation that we extended to the vested interests in this country has not been greeted by them. Capital has been shy and industries and
manufacturers have not played their part, their proper part in the matter of nation building. It is high time therefore that we now divert our attention and seek strength from the common man. We should change our policy suitably.

With these few words I commend my motion to the House for its acceptance.

Shri H. V. Kamath: Mr. President, it is with considerable trepidation that I rise to move the various amendments that stand in my name, amendments to article 24 which has a vital bearing on the socioeconomic structure of our State.

Sir, the Prime Minister has told the House that the draft before the flow represents the fruit of the ceaseless cerebral activity of many eminent lawyers. Therefore I asked myself whether, in the face of this draft produced by so many experts, I should say anything at all. But it struck me that lawyers, however eminent they may be, are likely to have their vision clouded by legalistic formulae and are sometimes apt to miss the wood for the trees. I move therefore amendments Nos. 386, 395, 403, 410, 418 and 431:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, after the word 'property' the words 'except in the national interest' be inserted."

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the words 'taken possession of or acquired' the words 'to be taken possession of or acquired' be substituted."

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'to be determined' a comma and the words 'provided that such principles or such manner of determination of compensation shall not be called in question in any Court' be added."

"That in amendment No. 369 of List VII (Seventh Week), clause (3) of the proposed article 24 be deleted."

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted:

'(4) Any Bill pending before the, Legislature of a State at the commencement of this Constitution shall not after its subsequent enactment, be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article.'"

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words 'may' within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it' be deleted."

While commending these various amendments for the consideration of the House, may I, Sir, make a few observations? The Prime Minister has told the House, firstly, that the policy of the State is that there should be no expropriation without compensation, and secondly, that the
right of he individual can in no case over-ride the right or interests of the general community. He went on to say that notwithstanding these fundamental policies, the individual has got to be protected. He remarked that of course there are a few who can protect themselves. I was wondering whether this doctrine of protection of the few, should be the foundation of our State. To me, it seems that the few are entitled to justice, but that those who are to be protected and cherished by the State are vast many. The few can in no case, in Pov event, under no circumstances, be pampered or be treated in a manner which is detrimental to the interests of the larger whole. If this is not accepted, that the few can get only justice but it is the many who are to be protected, if this is not accepted, then, Sir, I feel that in this country of ours weighed down by centuries of poverty and misery, poets, prophets and leaders will arise who will tell the people, as did the poet of revolution in England in the last century. That poet exhorted the British people, saying:

Men of England, wherefore plough for the lords who lay you low?
Wherefore weave with toil and care the rich robes your tyrants wear?
Rise like lions after slumber in unconquerable number, Shake your chains to earth like dew, ye are many, they are few

Therefore, Sir, I would suggest in all humility that the foundation of our State should be that the many should be protected and the few should be justly dealt with. Of course, nobody should be denied justice.

The Prime Minister went on to trace the evolution of the institution of property. I think that ideas about property have ranged from the divine right to property, in other words, the sanctity of private property, to the almost whilst dictum of M. Proudhon that "Property is theft. The movements for and against property have been based on this whole gamut of conceptions relating to property. On the one, hand, on the one extreme we have the divine right of property, the sanctity of private property; but that to my mind is now exploded. It is dead as the dodo, it has gone the way of the Divine Right of Kings. If at all there is right to property, I can only say that it is not the divine right of the individual to property, but it is the right of God himself to all property, and for all His children on earth. All this trouble about property could have been obviated, could have been got over if only men had clearly understood what the divine right meant, that it meant that the property should be utilised justly and wisely in the interests of the whole of mankind.

It was on this basis that Mahatma Gandhi preached and lived his doctrine of "Aparigraha" that property holders should be mere trustees of that property for the good of the community. If this had been accepted in letter and spirit by the property holders in our country and in the world at large, then so much of misery could have been prevented; but man, in his foolishness has not heeded the advice of the Mahatma and other prophets that have preceded him in the history of mankind. If the great ideal of the Ishapanished-
"Renounce that you may enjoy
Enjoy by renouncing."

had been followed by property holders, then all these conflicts, all these disputes about
property would not have arisen. But, Sir, that unfortunately has not been the lot of humanity.
The history of humanity, as had been stated by a great historian, is strewn with the crimes,
follies and stupidities of mankind.

Mr. President: Let us not talk of the follies and stupidities of mankind, Let us confine
ourselves to the article under consideration.

H. V. Kamath: I was developing, my argument about the evolution of the idea of property, as
Prime Minister has in his speech referred to the matter.

Now, Sir, about my amendments. No- 386 Is a very obvious amendment wherein I have
sought to provide that no property shall be acquired save in the national interests. The Prime
Minister has stated that the few must be protected. I agree that the few must get justice; and so
if we specifically provide that property shall be acquired only in the national interest, we
guarantee that the few who own property will be justly dealt with, because according to the
Prime Minister, on his own showing, the few cannot override the interests of the people, of
the nation as a whole. In the national interest any property can be and must be acquired. That
is with regard to my first amendment.

My second amendment No. 395 is merely a verbal amendment and I leave it to the wisdom of
the Drafting Committee to be dealt with at the appropriate stage.

Amendment No. 403 is a vital amendment and I therefore crave your indulgence to offer a
few remarks thereon. In this amendment, I seek to provide that the principles of giving
compensation, offering compensation or fixing compensation and the, manner of
determination shall not be called in question in any court. The clause, as it stands, is
somewhat ambiguous though the Prime Minister did remark that Parliament and legislatures
will be ultimately sovereign. But I feel that no loop-hole should be left for any of those few
who might take it into their heads to fight against the interests of the community. It is with
this purpose in view that I want this clause to be made clear on this point that neither the
principles nor the manner or compensation Shall be called in question in any court. What is
justiciable, what can be called into question is merely the application of these principles. If an
aggrieved party feels that the principles have been wrongly applied, have been unjustly
applied, then it is open to him to go to a Court and question the application of the principles
in that court of law, but if the Parliament or the legislature lays down the principles or the
basis of the calculation of compensation and also prescribes the manner, for instance, spread
over how many years in cash, bonds and all that, all these things shall not be called in
question in any court. The amount of compensation fixed on this basis, that is to say the
application of these principles may be made justiciable. The latest constitution to be framed in
Europe, that is, the Bonn Constitution of Western Germany has a clause similar to this. The justiciable part of that clause with regard to property is only this, that "with regard to the extent of compensation an appeal may be made to the ordinary courts in case of dispute". I seek through my amendment No. 403 that the principles and the manner of compensation shall not be justiciable, but only the amount of compensation or the application of those principles can be called in question in a Court.

Amendment No. 410 relates to clause (3) of the article which vests power in the President to assent to or withhold his assent from any Bill passed by a State Legislature. I feel that so far as that property is concerned which is within the purview of the State Legislature, so far as property listed in list 11 of Schedule Seven is concerned, if the State intends to acquire that property under this article, there should be no hurdles or obstruction placed in final acquisition of that property by the State. If clause (3) is adopted as it is, I am afraid it might result in unpleasant consequences for the State and the Union as a whole. Supposing for instance, one of the constituent units of the Union has passed a law acquiring property under this article, but some interests which are involved try to pull the strings at the Centre and the President, if unfortunately he, too, is not favourably inclined towards this measure, for various reasons into which we need not go, if the President withholds his assent from this Bill passed by the Legislature, then there is bound to arise a serious conflict between the State and the Union Government and once the seeds of discord have been sown between the State and the Union, Government, I cannot say how far this discord will go, this conflict will be waged between the State and the Union. To obviate this contingency I want to make the State Legislature sovereign in respect of such property as is within the purview of the State and want to provide that the President's assent to the legislation is not necessary before it becomes, operative. Then I come to amendment No. 418.

Mr. President: It is more or less a verbal amendment, I think.

Shri H. V. Kamath: My amendment No. 418 follows as a consequential amendment to the previous amendment to clause (3), wherein I have sought to delete the necessity for the President's assent to a Bill of the State legislature before it becomes operative; and so here also in amendment No. 418 I want to recast clause (4) on the same lines, to the effect that the President's assent is not necessary for it to become operative; when it is enacted in the usual course, it should take effect, and the rest of the clause is all right.

Then I come to amendment No. 431. Clauses (4) and (6) are similar except that clause (4) refers to pending Bills and clause (6) refers to Bills already enacted by the State and therefore the amendment which I have moved to clause (3) seeking to delete the provision with regard to the assent of the President to State legislation applies both to clauses (4) and (6) and wherever the President has stepped in into these clauses, I have moved amendments to delete
the provision for the assent of the President before the law of the State becomes operative. That is with regard to my amendment No. 431.

Before I close, I would like to urge only one consideration and that is this. We have provided in our fundamental rights, article 9, that there shall be no discrimination as between man and man. As regards women and children only there is a proviso to that article on non-discrimination. I feel that it would have been in the fitness of things if we had provided for no discrimination of whatever kind between landed property and industrial property (hear, hear), that if we wanted to lay down that the acquisition of landed property should be non-justiciable, I would have welcomed that the, acquisition of industrial property and commercial capital, ought also to be non-justiciable.

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Another consideration in that regard is article 13, sub-clause (f) of clause (1) which confers the right to acquire, hold and dispose of property. There is, of course, a proviso to that, proviso No. (5); "Nothing in sub-clauses (d),(e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public, etc., etc.”. Bearing these two articles in mind, I have suggested this amendment to clause (2) of the proposed draft article 24. That is to say, I want to provide specifically that even in the case of industrial property including any interest in or in any company owning any commercial or industrial undertaking, the principles and the manner of payment of compensation shall not be justiciable. That would approximate to the principle of non-discrimination as between industrial property, and landed property with regard to which certain provinces have already taken action. I have provided for only the amount of compensation being made justiciable, because the Prime Minister stated in his speech today that the few have also to be protected, and therefore I feel that the only safeguard that they can have is as regards the amount of compensation. On no other ground can they go to the court and question the principles or the manner of payment of compensation.

Lastly, I would refer to the Government of India Act mentioned in clause (6) of the proposed draft article 24. Section 299 of the Government of India Act lays down in sub-section, (3) that
Bills passed by the legislature of a State need not be submitted to the Governor-General for his assent. I fear that the power conferred on the President to give or withhold his assent might lead to serious complications in future and the only way to obviate any conflict between the States and the Union is to confer sovereign powers upon the legislature to acquire any property which is within the purview of the State.

Sir, I commend my various amendments to the House for its serious and mature consideration.

Mr. President: Mr. Brajeshwar Prasad, you have several amendments in your name; but it does not appear how they will fit in with the present discussion and the present amendments. Some of them are with reference to the present amendment which has been moved by the Prime Minister. Others refer to the previous amendments which have not been moved. Those which refer to the previous amendments, I rule out. There is thus one amendment No. 387 where you want to substitute "President" for the word "law". You have already spoken upon this subject at length and I take it as moved.

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word 'law', the words 'the President' be substituted."

Prof. K. T. Shah (Bihar: General): Mr. President, I have also got several amendments. May I give you a list of the numbers?

Mr. President: I have got a list.

Prof. K. T. Shah: These amendments are taking the place of those which I have submitted to the original article and therefore, those are not to be moved.

My first amendment is number 388

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24 the following proviso be added:

'Provided that no rights of absolute property shall be allowed to or recognised in any individual, partnership firm, or joint stock company in any form of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes, or seas surrounding the coasts of the, Union; and that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such enterprise.'"

The next one is amendment No. 394.

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,--

(i) for the words 'No property' the words 'Any property' be substituted; (ii) for the words 'shall be taken' the words 'may be taken' be substituted; (iii) for the words 'unless the law provides
for compensation' the words 'subject to such compensation, if any' be substituted; (iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be be determined the words 'acquired as may be determined by the principles laid down in the law for calculating the compensation' be substituted;"

If you will permit me, Sir, I may read the amended clause which would be clear instead of in this disjointed manner. The amended clause will read thus :-

"Any property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition subject to such compensation, if any, for the property taken possession of or acquired as may be determined by the principles laid down in the law for calculating the compensation."

Then, Sir,

"(v) the following be added at the end:

Provided that no compensation whatsoever shall be payable in respect of
(a) any public utility, social service, or civic amenity which has been owned, work managed or controlled, by any individual partnership firm, or joint stock company for more than 20 years continuously immediately before the day this Constitution comes into force.

I have added the word "immediately". I have an amendment No.490 in this respect. That means, not at any time, but immediately before. Then, Sir,

"(b) any agricultural land forming part of the proprietary of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

"(c) any urban land, forming part of the proprietary of any individual partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

"(d) any agricultural land forming part of the proprietary of any landowner, howsoever described, which has remained in the ownership or possession of the same individual or his family for more than 25 years continuously immediately before the day when this Constitution comes into operation;

"(e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;

"(f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination
or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation, or which has paid in the course of its operations and existence in the shape of dividend or interests, a sum equal to or exceeding twice up value of its shares, stock, bonds or debentures; or whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The next is No. 410 which has already been moved by Mr. Kamath and I do not wish to take the time of the House over that. Next is No. 419. I move

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,-

(i) for the words 'If any' the word 'Any' be substituted,

(ii) for the words 'has, after it has been' the words 'may be be substituted;

(iii) the word, 'received the assent of the President,' be deleted; and

(iv) for the words 'assented to' the word 'passed' be substituted."

Sir, I move:

'That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the article 24, for the words 'not more than one year' the words 'at any time' be substituted.'

I also move:

'That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months and ending with 'Government of India Act, 1935', the following, be substituted :

'shall not be called in question in any court on the ground that it contravenes any provision of this article.,,"

Sir, I now speak to all the amendments, which, taken together, make a constructive proposition, and an alternative to the policy laid down in the amendment moved by the Honourable the Prime Minister. The Prime Minister has advanced the proposition that under this Constitution, there shall be, no expropriation without compensation. I am afraid I am unable to share this view, if it is to apply to all property indiscriminately and without modification. For not all property is such that the present holder or owner of it can claim, in justice, in ethics, any right to be compensated since the origin of property is not always unquestionable.

A great French thinker asked the question 'What is property' and he answered it by saying 'it is theft'. I am afraid 'theft' perhaps is very often too mild a Word because much of the property has been acquired—if you go into the origins of this—by force, fraud and violence
which under any system of ethics can hardly be justified. If you are going to seek to compensate those who have acquired property, no matter how long since, by such means as force or fraud or violence or theft, I am afraid you would not be acting up to the ethical standards which are supposed to animate this Constitution.

Mention has been made by one of the previous speakers in the course of this debate, of slavery the right to own human beings, prevailing in the Southern States of the United States which was abolished at the cost of a civil war. That form of property had to be abolished, and to the best of my recollection, without any compensation. True, compensation was given for the slave-holding owners in the British West Indies Colonies by the British Government when they decided without any violence to abolish slavery. But the ethical proposition does not become objectionable because in the case of the United States, and many other countries instances can be quoted-where nefarious forms of property have not been compensated for by those who expropriated the owners of such properties.

In this case I suggest that there is a certain divergence between the sense of economics and of ethics. Property is not an ethical institution, I venture to submit. It is an economic institution with close connection with ethics. I may say the economics has suffered because of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired by force or fraud or is used or abused or even unused.

At a later stage I shall come to that part of the argument which seeks to give compensation without any condition, or according to my amendment, which restrict compensation by certain conditions. But at this stage I am concerned to point out that there are public utilities, social services and civic amenities which under the existing system are under private enterprise. They are owned by individuals who derive considerable profit. By their nature they are monopoly or they have become monopoly; and whether operated by individuals, partnership firms or joint stock companies, they tend to rob, in my opinion, the community of that which belongs and ought to belong only to the community.

For such, therefore, I venture to submit there should be no compensation. The amendment I have suggested says that whatever may have been the case hitherto, hereafter, under this Constitution, no absolute right of property shall be allowed or recognised, whether in any individual, in partnership firm or in joint stock company, which concerns the working, controlling managing or operating of any public utility, social services or civic amenity; and that these shall be in future operated entirely for the public benefit by public enterprise in which there shall not be any private profit in the least.

I trust the actual wording of my Amendment in that regard will be carefully scrutinised by those who may not take the same view as myself. I have been very moderate in laying down the conditions. I repeat I refer only to the future, without regard therefore to what has
happened in the past, in regard even to these utility services and amenities. I consider, even in regard to that future, the absolute right of ownership should not be recognised under the Constitution in any private concern whether individual or firm or company. But hereafter they must be operated by collective enterprise for the common benefit without any profit motive. I trust the essential modesty of this demand will be accepted and recognised and the Prime Minister would agree to accept this amendment.

Passing on to clause (2), I have suggested that there should be a positive clause. Instead of opening the clause in a negative manner, which somehow seems to suggest that the primary right and overriding right is that of the individual. I would lay down rather positively the right of the State or of the community to acquire any property if for any purpose it deems it necessary to do so. It has been limited by the words 'for public purposes'. In 'public purposes' I include, not merely the non-remunerative and common civic amenities e.g., when you want to clear the slum of a big city and acquire the ground held by tenements, you may keep up that ground for public purposes in the shape of parks or open spaces- I think that would be a very legitimate category of "public purpose'. But there may be public purposes which are not only of that character-not only for building open spaces, parks or gardens; not only for building schools, hospitals or asylums, but even for building those lands on a more economic and more profitable scale- I mean profitable to the community and not to any single individual.

Acquisition of lands for public purposes, acquisition of any form of property, movable or immovable, for any public purpose, including the working of that enterprise for the benefit of the public, is, I think, an inherent right of the sovereign community which should not be subject to any exception of the type implied if not so much laid down in the wording of this clause (2). I have therefore suggested that any such property to be acquired can be acquired for public purposes without defining what is exactly meant by 'public purposes' subject to such compensation if any. I would like to sound a distinct note of warning in connection with the calculation of compensation-in fact on the very basis of compensation. Not all property is deserving of compensation nor should the Constitution recognise categorically without qualification or modification the right to compensation as appears to me to be the case in the clause under discussion and hence the amendment I have suggested to it. I would certainly leave the margin of doubt whether any compensation is ever due and must be paid in every case without question. Doubt having thus been expressed by the term "if any" I would also go further and say one thing more : viz., that property having been acquired, movable or immovable, the law' should lay down the general principles according to which the, compensation will be calculated and the law should not try to lay down the exact detailed amount for each case.
I would now give you my reasons for objecting to the laying down of the amount in law, and
preferring to lay down the principles according to which compensation should be calculated.
The amount, if laid down by the
Legislature, which presumably will be dominated by parties, is liable to be fixed more,
perhaps for party reasons than because of the inherent or intrinsic justice of each claim, apart
from the fact that the Legislature would be involved in endless series of individual
recognitions. I think it would be ethically wrong for the legislature to go into the details of
each valuation, let us say of each estate, each share or stock or debenture as the case may be.
Now, it would be the best course for the Legislature to lay down only broad principles
according to which, in any case, where it is decided to give compensation, that compensation
will be calculated., and the calculation should be made- by tribunals which tribunals, as I have
always been insisting, should be free from any influence or contact with any other organ of the
Government, whether executive or legislative. You will be doing the right thing if you entrust
the administration of the principles that you lay down in your sovereign legislature to the
judiciary.
Having said this, I next lay down certain categories of property in which, according to my
judgment, no compensation should be due or be payable, and that I contend, is inherent both
in the economics and ethics of the case I am trying to advance. That is to say, any agricultural
property which may form part of any proprietary, which is utterly unused for a number of
years, neglected for a number of years, may be taken over without payment of any
compensation. The land has remained utterly unutilised, or the zamindari has become
unsocial, and therefore for that unsocial act, for that act of negligence, or for that
incompetence or indifference the community is not bound to compensate the owner. I,
therefore suggest that in the case of any property which is capable of being properly used,
which is capable of adding to the growth and wealth of the community, but which on account of
the indifference, incompetence, negligence or otherwise of the owner is not so utilised, the
owner does not deserve to be compensated and the community would be wrong if it gives any
compensation in respect of such items of property.
I say the same thing with regard to public utility and social services which may have been
hitherto operated by private individuals, corporations or firms and which, according to
general principles, should not have been left in their hands. But since they have been there, let
us compensate them, provided that these have not been held for a period exceeding the one I
have suggested or some such period. Again, the basic principle of my argument is the same.
They have gained from this kind of monopoly, from this kind of public service, a profit and a
surplus far in excess of what should be legitimate, to the exclusion of the public benefit, and
therefore, they have no right to demand compensation for such services. If the period for
which they have held it is in excess of the one I have mentioned, the presumption is that they
have already had more than enough, they have compensated themselves more than enough. Therefore no compensation is, in law or ethics or economics, due to them and should be paid to them.

Similarly too with regard to urban lands which very often is held merely in the hope that by development of population, by the growth of population, the development of social services, and of public utilities the value of the land will be increased. People simply do not want to invest any more capital and just wait, until purely by the conjunction of and by the operation of social forces, the value of the land is increased. They simply allow the forces of nature to play upon such lands, and therefore no compensation should be paid to them. I think they are social offenders and the community would be well within its rights to deal with them as social offenders for having taken potential sources of production and not utilised and developed by them. Therefore, they are not entitled to demand any compensation for this kind of unsocial or even anti-social behaviour.

I pass on now to other forms of natural wealth such as mines, forests and mining concessions which are also in the nature of monopolies. They are gifts of nature belonging to the community, but have been alienated from the community to private individuals—I will not use a harsher term. If these have fallen into hands of individuals because of our helplessness or by reason of the foreign rule, we see no reason why we should go on recognising this injustice, this robbery of the people's right. Therefore, I do not think that for these mines or mining concessions, forests or forest concessions, any compensation is due. If operated for the given number of years I have stated, the holders have in all conscience received more than enough and therefore, they cannot demand any more compensation, whether they be coal-miners, or iron miners, or gold miners. Compensation for them would be utterly unjust and must not be allowed.

Apart from these forms of natural wealth, I pass on to the next, industrial and commercial undertakings which is their own way, are no less offensive than perhaps the primary sources of production like land, mines or forests. These too have got into private hands, because of the prevailing economy of those days, and it is now too late to complain. But the have been operating, and those of them which have been operating for a number of years, have been earning sizeable profits from this operation, these should not be entitled to demand compensation, as they have already received enough, in my opinion, and more, enough and to spare, for times to come.

The three categories I have laid down are, first, those who have been paid in the aggregate more than twice the amount of their share capital or debentures or stock or whatever it may be, so that in a period of so many years they have already reimbursed themselves, and consequently therefore it is necessary, it is but just and proper that the community should be called upon to take over their enterprise and conduct it in the way that it deserves to be
conducted in a properly coordinated and planned economy for the nation: Those again, who have held it for the entire period, say for thirty years, whether with or without profit, have proved themselves either too, incompetent or unprofitable and therefore they do not deserve, to continue holding the property. Therefore they should be expropriated. The others have already received sufficient and more than sufficient to reimburse themselves for any investments they may have made, and therefore they are not entitled to any further compensation. I do not wish to offer examples of mining concerns and concerns connected with basic industries like iron and steel, banking and insurance which have in the last generation or more, particularly since the Swadeshi movement, tried and earned very fat dividends, very large, surpluses, which should be taken to have more than reimbursed them; and now in these cases, particularly those which are of basic necessity for the country's development, to pay compensation on anything like the artificial value which is given to them is, I submit, utterly unfair and ought not to be permitted. I have therefore suggested by this amendment that no compensation shall be payable to categories of property of this kind. Lastly, in the case of the industrial and commercial undertakings, in the case of those whose liabilities and assets do not tally, whose assets are much below their liabilities and therefore it being always a losing concern, for compensation to be given to such concerns would be putting a premium on wastefulness and extravagance. and uneconomic working and therefore ought not to be allowed. Time and again, the State has taken over in the past enterprises which were in the previous two, three or four years so wasting their resources as to make themselves a white elephant. I am particularly speaking of some of the railways which had to be taken over by the State and which under the terms of the agreement worked in such a manner that the assets received were much below. Any real value of the liabilities that they will Out upon us. The any such case, therefore, I submit it is unfair, it is unwise, uneconomic, unethical, to offer any compensation merely because it is a losing concern or that the owners have, proved themselves utterly incompetent and undeserving of any compensation merely because of their own negligence they have failed to make both ends meet. The other amendments which I have tabled are of a procedural character and as such I will not take too much time of the House on them. I do not think it is desirable that any room should be left for an avoidable conflict between, for example, the head of the State and the legislature. Therefore clause (3) which suggests that every Bill of this kind may be reserved for the assent of the President and make it an item of importance is in my opinion unwise and therefore ought to be avoided. I have therefore suggested that that clause be deleted. Similarly, in the case of pending Bills or Bills which have been passed one, year before or at any time before this Constitution comes into force,, there should be no need, in my opinion, for any reservation, for the approval or the assent of the supreme executive authority in the land and create a kind of tension between the Central authority, the national authority and the
local or State authority as the case may be. I trust these points that I have advanced so briefly would meet with the approval of the House and the amendments work be accepted.

Shri Jadubans Sahay (Bihar : General) : Mr. President, Sir, I beg to move:
"That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3), (4), (5) and (6) of the proposed article 24 be deleted."

My justification for moving this amendment must have been very clear to the Members by this time. The draft article as it stands before us is, I venture to submit, one of the most wonderful examples of chaos and confusion of ideas. Nowhere possibly you will find such a conglomeration of things, such a confusion of ideas, on such an important and vital issue as this concerning the property of the country. As an august body, we are going to lay down the foundation of property for future legislatures and for the posterity of this country, but I venture to submit that we have utterly failed in this task. It must be apparent to the members of this House that the more the two differing schools of thought have tried to compromise their view-points the more confounded has this entire draft become. You know that the question of property has been engaging the attention not only of this country but of other countries as well. Agrarian and industrial reforms have set at naught centuries-old definition of property in many countries. It was expected of us that at least on a matter affecting the teeming millions, on a matter affecting the future economic structure of the country, we should come out with a clear-cut economic formulation of policy regarding property. But what we find is that the draft has not been able to inspire confidence in any class.

Take the industrialists and capitalists. They are not satisfied with it. Take the landed magnates. They are not satisfied with it. So far as the teeming millions are concerned, they would not be satisfied with it, had they the voice to lay before you their feelings regarding this Draft Constitution. They in whose name we have come here and for whose sake no doubt all of us possibly are making this Constitution,-what are we giving to them ? I will not enter into the controversy as to whether compensation as provided in this article can root out the growth of capitalism that is taking place in this country so rapidly and which is bound to affect the future political economic and other growths of the country.

Suffice it to say that the conception of property has been changing. The world has been changing. From the Divine Right of the sovereign we have, come to the sovereignty of the people. But our mind- have not been changing so far as the concrete realities of the question of property are concerned. Are we going to hold out hopes for the future- that industry in this country will be nationalised or socialised in the interests of the masses of the people ? No. This Constitution does not hold out any hope; rather it binds down the future generation, the future legislatures, to pay full compensation to any industry which they may want to nationalise.
This article has not created any enthusiasm in the mind of anyone. So far as Bills, are concerned, what do we find? There is confusion reigning there because in one province we find that a Bill which is pending is given recognition here. Is it the duty of the constitution-makers to deal with Bills which are pending, which have not gone, to the Select Committee. So far as the amendment is concerned, I am seeing that chaos and confusion reigns everywhere. What would be the, effect on other provinces? Leave the case of the U.P., Madras and Bihar. What policy are you going to lay down for the guidance of Assam, Bengal and also C.P., where zamindaries may be abolished in the future. Would they be asked to pay compensation or would they get protection under clauses (4) and (6) ?

I would beg to you to consider that this article is the most important in the you whole Constitution and it is an acid test of the Members of this House. We have failed because like what we are on every other thing we have become victims of confusion. When problems face us we shirk them or we try to interpret them in two different ways. There are two schools of thought and one of them should have found place here-it is either compensation or no compensation. It is quite a different thing to say that we should not, in the present state of our country, in the present crisis in the country, proceed in a way that such a legislation might overawe our industrial magnates and make capital shy. I think the State legislatures and Parliament will certainly take note of the crisis In the country. But it is quite a different thing that for all generations to come you are going to bind the hands of the future by such provisions. It is because of this possibly that we have not enunciated clear economic policy to the country.

My forebodings may not be correct, but I fear that upon this Constitution, possibly the whole labour we have put in in this House for the last two years, might be thrown away, because it is bound to be one of the most controversial things, for we are taking a line which is neither to the left, nor to the right nor in the centre. There is conflict and confusion in our minds. Therefore I have in view that only the first clause Should remain and all others should be deleted. Let it be left to the State legislatures or Parliament or to our leaders who run the government to give direction to the country, to say how laws should be formulate regarding property in any province. But for God's sake do not burden this Constitution with all such things which you do not find in any other constitution of the world.

Mr. President: Amendments Nos. 390, 391, 392 and 393 are ruled out. Amendment No. 396 is verbal and need not be moved. I call upon Mr. B. Das to move his amendment No. 397.

Shri B. Das: Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24, for the words 'unless the law provides for compensation' the words 'unless the law provides for or and equitable compensation' be substituted."

With your permission, Sir, I would also move amendment No. 427:
"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."

Sir, I support the motion moved by the Honourable Pandit Nehru. I think it my two amendments are accepted by the House. It will just clarify the situation so that we do not fall into the traps of which we just now heard form our honourable Friend Prof. K. T. Shah, who is going to be the leader of the Opposition in the Parliament a few days hence.

On the 9th August 1942 all our leaders were incarcerated for giving the nation the battle slogan "Quit India" and they came back sanctified, and determined to achieve our FREEDOM. In 1945-46 our leaders issued the Congress election manifesto to the nation in which, referring to the reform of the land system and acquisition of property, they declared:

"The reform of the land system which is urgently needed involves the, removal of intermediaries between the peasant and the State. The right of such intermediaries should therefore be acquired on payment of equitable compensation."

It has been recognised by a majority of Congress leaders outside and some of them inside that equitable compensation should be paid for properties acquired. Somehow there has been a big controversy both inside and outside the House that nationalisation and expropriation should prevail and not fair and equitable compensation. Unfortunately when Congressmen came into power in 1947 some of the younger section of the party began to talk of nationalisation and expropriation. Today some of them are Members of this House and even of the Congress Government and they are silent over the word 'expropriation' which has been enunciated so definitely by the democratic socialist leader, my old friend Prof. Shah.

We Congressmen have an onerous duty to the country. Are we to fall into the trap of the Socialists and take shelter under the law and pay no compensation in the name of the law or are we to stand by the Congress Parliamentary manifesto that equitable compensation should be paid? That is why I want the exact words of the manifesto to be introduced in the amendment of Pandit Jawaharlal Nehru.

As regards the second amendment where it has been said "any law that has been passed one year before the commencement of the Constitution," I find that others too have tabled amendments to the effect that it should be one and a half years. Why mince matters? We attained our freedom and independence - though that independence is today qualified by our kowtowing to the Commonwealth countries. Why not say "any law that has been passed after the 15th August, 1947"? This does not alter materially the amendment which Panditji-has moved but it fixes a date which is well known and it is no use talking of one year before the commencement of this Constitution.
Coming to the motion moved by Pandit Nehru, whether my amendments are accepted by the House or not, I have to accept it, because there has been no fairer proposition that has been tabled or moved by any other member of the House. In accepting that we must admit that we recede from our original ideals. We go back on the election manifesto that gave to the country high hopes and high ideologies, for the last four years—the election manifesto of 1945-46. Perhaps as we exercised power, power-politics have upset the leaders of the nation and the leaders of the Congress Party feel that idealism is not the right thing and that there must be compromise in life.

But I am not one who will be cowed down by the Socialists. If the Socialists want to succeed the Congress in the country, let them plan out what they will do. Except making a few criticisms of Congress leaders in the press and on the platform the Socialists have not evolved or done any constructive work in the country whereby they show their fitness to succeed the great Congress Party in the country in the control of the administration of the nation, I was amused to read a little note in the "Statesman" this morning where the writer has mentioned that the Socialists have formed themselves into the Social Democratic Party in the Parliament to oppose the Congress Government. He says that besides irresponsible talks-irrelevant garrulity inside, the Assembly and little action outside, they have not so far produced any planned programme by which they can establish better Government in the country, or rather Government to usher in a peaceful era of constructive Socialism. If I am to understand the Socialist programme as my Friend Professor K. T. Shah enunciated a few minutes ago, they want expropriation of all properties. I interjected "Why does not my Friend Professor K. T. Shah want to expropriate all movable properties of the citizens of India?"

That will give him and the Socialist Party a certain amount of property and wealth by which they can carry on their so-called programme, as the Pakistan Government is carrying on by confiscating properties worth Rs. 4,000 crores of displaced Hindus and Sikhs who have migrated to India. That is not the right solution. Expropriation is not the right solution to produce better wealth. Expropriation will not work the industries that Professor K. T. Shah and perhaps the Socialists want to work in the country for greater production and larger prosperity and wellbeing of the people. No industry can survive if it is expropriated. If expropriation will make the Socialist labour workers to do better work to produce more, I think they are thinking on wrong lines. Unless there is adequate production on man-hour basis, whether industries are private-owned or State-owned, such industries must produce enough to maintain the national credit of India. If my Friend Professor K. T. Shah, who was the Secretary of the National Planning Committee, after writing those beautiful and studied volumes has come to the conclusion that national credit cannot be maintained unless you expropriate all property, be it landed property or be it public utility concerns or other
concerns, if that is the sort of dreams that Socialism has, then I pity the Socialists and they will never be at the helm of the Government of India in the near future.

In supporting Pandit Jawaharlal Nehru's motion I accept the compromise. It does not satisfy my soul, but it satisfies the present exigencies and on that ground I support it.

Mr. President: Amendment 398 is to the same effect as 397. Also 399 the first part of it-is to the same effect. Therefore these need not be moved.

Shri Jaspat Roy Kapoor: May I submit that part (a) is something different from amendment 397 or 398?

Mr. President: You may move clauses (b) and (c) of your amendment.

Mr. Naziruddin Ahmad: (b) and (c) have also been covered already-by amendment 389.

Mr. President: Yes, that has been moved by Mr. Jadubans Sahay. Therefore all these amendments need not be separately moved.

Shri S. Nagappa (Madras : General): Mr. President, Sir, I move:

That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words "for compensation for-" the words "compensation not more than 5 per cent. of the market value of" be substituted.

When these words are substituted the clause will read thus:

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides compensation not more than 5 per cent. of the market value of the property taken possession of or acquired" etc.

We have made this article non-justiciable. When we do so there must be some principle. What is the maximum that we can pay as compensation? We are not going to pay justiciable compensation. Whatever we give is supposed to be just and equitable. All these days the State has given protection to the zamindars or capitalists to acquire the properties. Now we are requiring the properties for the State, for the good of the State, for the betterment of the common people in order to maintain the national economy of the country. So we Must also take into consideration how these capitalists and zamindars have been responsible for the fall of national economy by not utilising the property in a proper manner, that is to say, by not reducing the required amount of value out of the capital that has been in their possession. As a result of that they have been responsible for the fall of production. Let us for example take a zamindar who owns thousands of acres of land. At times because he may not find enough manual labour he may not cultivate the whole land and most of the land goes fallow. Or even if he does it he may not do it with all the intensity that is required and necessary, and he may not produce the quantity that can be produced from that land. So he has been responsible for the fall in the national wealth. He therefore deserves not compensation but
something else. He must be taken to task for having deprived the nation of the national wealth.

Now we are glad that the country has realised that we should not allow properties to be owned by either individuals or corporations, but that all property should be, at the disposal of the country as a whole. We have been abolishing the zamindari system. It has already been commenced in two provinces. Now, to whom does this land go? It should not go into the hands of petty zamindars. It must go to the State. We should not create innumerable petty zamindars in the place of a few. That is not abolition of zamindaries. Now if you give more compensation, it will mean purchasing the zamindaries and not abolishing them. When you acquire properties for State purposes, the State should have control over them. After all the person who is in possession is there only to make use of the land. He need not own it. A pattadar today is not the owner of the land he is using. Government is the owner because the Government has conquered it inch by inch and should therefore be the owner. The pattadar has only the right of using the land. He can not say that the land belongs to him. Even the zamindars were there having the custody of the land on behalf of the people, that is all. They were collecting also rent from the people. Now you are taking away the right to collect rent and giving the land to the people who have been under the thumb of the zamindars cultivating it. You are not taking the land to the State. You are taking away the land from the zamindars and creating a number of chota zamindars, more numerous than the former. That way you cannot solve the land problem. The solution of the problem lies in nationalising or socialising the land. The people of the locality must be the owners of the lands; the tillers of the soil must be the owners. Then only you can say that you have acquired the land for State purposes. Until and unless this is done you can not say that you have solved your problem.

We decided in the beginning that our aim is to establish a co-operative commonwealth. Unless you socialise the land you cannot have that commonwealth. The lands acquired from the zamindars must be plotted out on a co-operative basis and given to well-trained cultivators with instructions that they grow more and more food. Now what I propose is that while you acquire land for this purpose it is just and proper that you pay 5 per cent. or less. With these few words I commend my motion for the acceptance of the House.

Mr. President: Amendment No. 401 of Mr. Naziruddin Ahmad is covered by the amendments already moved.

Mr. Naziruddin Ahmad: No, Sir.

Mr. President: All these expressions 'fair compensation', 'full compensation', etc., mean the same thing.

Mr. Naziruddin Ahmad: There is a shade of difference between them.

Mr. President: Well, shades of differences are matters for drafting. Amendment No. 402 is also covered.
Pandit Thakur Das Bhargava (East Punjab: General) : This item (iii) of 402 is entirely different. This is not covered.

Mr. President: Only item (iii) in amendment 402 which seeks to introduce appropriate” before the word "principles" is new. You may move it.

Pandit Thakur Das Bhargava: I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24- before the word 'principles' the word 'appropriate' be inserted."

Then, Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the word 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair', be inserted." Mr. President: Your amendment No. 479 cannot be moved. It is covered by previous amendments. You may move amendment No. 487.

Pandit Thakur Das Bhargava : "Then I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' or alternatively, 'fair' be inserted."

Next I move, Sir,

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is' be substituted."

Mr. President: Your amendment No. 503 is covered by amendment No. 389. Amendment No. 512 also cannot be moved.

Pandit Thakur Das Bhargava : Then with your permission I move:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :

'(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article'."

In regard to the amendments, I beg to submit that the present principle of acquisition of property for public purposes is sought to be saved by clause (5) of the proposed article. The existing law is contained in Act 1 of 1894, according to which, before property is acquired or requisitioned, compensation is to be paid. The compensation which is laid down by the law to be paid is the market value of the property at the time of the acquisition plus 15 per cent. for
disturbance. I understand that clause (5) of article 24 saves that law, so, that before any other provision is made by the legislature subsequently, this law will hold the field, and if any land is acquired, it will be acquired according to this law. Under the present law, an executive officer determines the compensation but his determination is not final. A person aggrieved from this order can go to a civil court or a District Judge and there get the order revised, if he is not satisfied by the order of the executive officer or the revenue officer or whoever the officer determining the compensation may be. After that, it becomes a civil suit and the civil court will find out what the market value is and add 15 per cent. to it. This is the present law. According to amendment No. 369, if any law is passed by the legislature subsequently, then that law will be on the lines given in article 24.

Now, this article 24, as it is, seeks to delude any person who reads it that he has got a justiciable right. We have been told times without number not in this House but in other places, that this right is justiciable. Exception was taken on the core that it should not be justiciable so far as zamindars are concerned. The whole dispute centered round this question whether the right given by article 24 of the Draft Constitution was justiciable or not. From the very start I have been of the opinion that there is little of justiciability in article 54 of the Draft Constitution, because after the legislature has laid down the principles, those principles become unalterable. These principles cannot be questioned in any court of law. Nobody can agitate before a court that the principles which have been approved by the legislature fail to give adequate compensation. The word "compensation" itself means a good quid pro quo. In the word "compensation" itself the adequacy and fullness of the consideration is implicit, though doubts have also been thrown on this connotation of the word "compensation". I do not know whether this word compensation has got this meaning or not, but as I understand this article 24, I am absolutely clear in my mind that if clause (2) remains as it is on the Statute Book, then the legislature and not the courts shall become the final arbiters of the compensation.

It would follow that if the principles are given in a piece of legislation, those principles will ultimately decide what the compensation has to be. Of course, if practically no compensation is given, a man can go to a court of law; otherwise he cannot go to a court of law. Thus if the compensation paid is a fraud upon this section, then in that case the matter can be taken to courts. It means that if instead of 100 rupees one rupee is paid, then it will be complete destruction of the word "compensation". If out of one hundred rupees one rupee is paid, it will be a fraud; if ninety-eight rupees are given or five rupees are given, it would not be a fraud. I think Sir, that this clause (2) is at present a fraud on us because I understand that it is not justiciable. It is made to appear to be justiciable to convince the general public. My submission is that it can only be justiciable in one way and that is what I have submitted for your consideration in my amendment No. 402 that the word "appropriate" be added before the
word "principles". If the House accepts this it will mean that the principles must be appropriate, must be fair, and the application of these appropriate principles must result in one thing viz., that full compensation, or fair compensation will be given. My submission, Sir, is that if the word "principles" remains here without any adjective, I am sure the clause is not justiciable. Therefore if the House accepts my amendment, then we can make this right justiciable, as it is evidently the intention of the framers of the Constitution that it should be so. And 'so my submission is that the House will be well-advised to accept my amendment.

I have heard the arguments of my Socialist friends who are of the view that if the legislature fixes some compensation, or the principles, then the courts should not have any power, should not have the final say in the matter. I do not quarrel with them because it is only a point of view, but to those of us who believe that the courts in this country, as in all other countries, are the final arbiters of civil rights, to them it is very clear that this article 24 goes against the very principal of justiciability and the rights of property, even as recognised and guaranteed under article 13.

Now, Sir, the Honourable Prime Minister, when he moved this amendment, told us that the rights of the individual as opposed to the rights of the community should also be considered. I quite agree, in the Objectives of our Constitution, we have already laid down that we want to ensure justice, economic and social. I want that the dignity of the individual and the unity of the nation must be there. I think, Sir, that we should arrive at a happy blend between the rights of the individual and the rights of the community, and in this regard the Congress and the whole country is committed to the abolition of the zamindari. We shall not be in the, right if we go back and say that there will be no abolition of zamindari. I do not want that the whole thing should be resolved in this manner. Every person in this country should understand and accept the principles, the broad principles of legislation in this respect.

With regard to clause (4) I have seen the legislation of the U.P. and I am satisfied with the principles which govern this legislation. The whole idea of that legislation is that the peasants should become owners of the property, that every person must be made the owner of his land, so that he may take full interest in the land and develop it as much as he can. I accept the principle that if for the purposes of agrarian reform by virtue of which the peasants or the tenants are made proprietors and the zamindari is abolished, then in that case such compensation may be given as is equitable and in that case the State Legislature may be the final arbiter and the best judge of it. Therefore, I have put in an amendment No. 514 which seeks to have another clause, namely clause (7) wherein I say that if such an occasion arises when any State in future also wants to have a law, like this, it can have the benefit of the law under clause (4).

In regard to clause (6) I have given an amendment that it should be deleted. I am not satisfied with the Bihar law at all. I went through the Bihar law and when I read its provisions, I was
simply startled. Its provision says that from a certain date when the public notification is there, all rights of property will be confiscated and those persons who were owning properties today will become only occupancy tenants if they possess, Sir, lands. So far as this, law is concerned, the Bihar Government is not affected at all because if they want to have a law on this new basis, if they abolish zamindari and then create instead peasant proprietors with full rights of ownership, I am one with them. There is another amendment sought to be moved by Messrs. Munshi and Alladi Krishnaswami Ayyar and that amendment says that if such law goes to the President, the President shall have the power to require any specified amendments to be made in such law.

Moreover I cannot understand why Madras, U.P. and Bihar Governments should have such laws passed in this manner and other States should be denied the liberty of having the Zamindari dissolved. I think we ought to be fair and equitable. If the basis of the U.P. legislation is accepted by law, we should see that that principle is applied to all the other cases. These words “that there must be an agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors” are there in my amendment and these principles are sound. They have been sanctified by experience of ages, of course there are the people who have owned those properties for a long time and on account of their absence from their places the exercise of rights by those people cannot be so useful to the community as in the case of others. Unless this exception is made and this is made applicable to all the provinces, this will not be fair.

I have put in amendment No. 496 which seeks to substitute the word "is" for the words "having been". If my amendment is accepted it would mean that the Provincial Government will thereby be compelled to hold it for the assent of the President and then the, President will give the assent because today, supposing a Provincial Government does not hold the Bill back for the assent of the President, then a difficulty would arise as it may not be allowed to go to the President at all.

In regard to all these, I have to submit that these fundamental rights we have been told are justiciable, times out of number. Now I see that attempts are being made to see that the rights which are guaranteed to the citizens of India are being taken away, one by one. Two or three days back, I had occasion to say that article 16 was sought to be taken away and it will be taken away and article 13 is also I see being burdened with such reservations and being subjected to such modifications that it is also being taken away. The accursed article 15 is neither fundamental nor justiciable.

If we really mean to have a Constitution of this nature for which we have been boasting all over the country, we should not enact a provision like article 24 because it is the very negation of the rule of courts in this country. In our country where we have got this freedom without going through any bloody revolution, it is necessary that we should see that discipline
and democratic ideals are installed in our hearts and that the law of the land becomes the law by which every person is governed. Unless and until the courts are empowered, and the courts are the final arbiter of the civil rights and of the liberties of the people, I feel that if the legislatures alone are given the power we are coming to a point where fiats of executive officers will deny us our rights and this would be very wrong. I feel in the activities of the Government a tendency that everywhere we seek to destroy the powers of the courts and substitute therefore the power of the legislature or the executive.

What is an executive officer? Supposing an executive officer has to decide my fate; he is the person who is interested in getting my property and giving me a very small compensation. That is not fair. He should not be a person who should represent the Government's interest in all the stages. The courts will also be appointed by the Government. Let those courts decide our civil rights so that people may have confidence; and moreover, Sir, in regard to ordinary properties excepting the Zamindari, etc., I am not fully satisfied as to how the principle of superiority of the rights of the community has precedence over the rights of the individual.

After all where is the law that you should usurp the rights of the individual with a view to benefit the rest of the society excepting that individual? The salutary rule which we have accepted for the last sixty years and more is that the present market value is the proper basis for fixing the amount of compensation and this should not be departed from, unless for scheme of agrarian reforms involving millions of people and multiplicity of litigious suits. I understand that my socialist friends come here. Some of them are very rich themselves and do not practise what they preach and are engaged in amassing as much property as they can lay their hands upon. I just want to submit for the consideration of the House the views of the common man. The common man does not recognize your doctrines of "Property is theft". He believes in the sanctity of property. Supposing any land or house is taken away for the purpose of a railway line or some undertaking of the Government, no doubt for a public purpose, will any one be satisfied if he is not given full compensation, and is there any valid reason why he should not be fully compensated? As a matter of fact no one will feel confident if you enact laws as you propose to enact that not the courts but the executive officers should be the final arbiters of the civil rights of the people, and it is not politic to undermine the confidence of the people.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, Sir, I move:-

"That in amendment No. 369 of List I (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

Sir, I have also given notice of another amendment which is No. 434, I do not propose to move the first portion by which I sought to add 24A, but I would beg leave to move the last
portion, Sir, which is styled here as 24B and if it is accepted it will have to be numbered as 24A.

Sir, I move: -

"That with reference to amendment No. 369 of List VII (Seventh Week) after the proposed article 24, the following new article be added: -

'24A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property."

Sir, this is undoubtedly a very important provision in the Constitution and it is not therefore surprising that we have been deliberating with regard to these provisions for a very long time. In spite of our efforts, it has not been possible to evolve a formula which is acceptable to everybody. Sir, the claims to property or our outlook towards property is next only to individual liberty the very essence of all political thought and constitutions. More and more as time advanced, the outlook towards private property has been undergoing very great changes. On the one hand there has been a system of excessive capitalism; on the other we have the instance of Russia where all private property was confiscated. India has come into its own as one of the greatest nations of the world and on this one thing as to how we regard private property is going to depend the state of politics if not the governance and fate of this country.

The formula that has been presented here in the shape of this article, in my opinion, is a half-hearted one. It neither protects private property, nor does it confiscate it. If it is necessary to respond to the cry of the people who are more and more being dominated by proletarian ideas that all land, all mines and all things belong to the people as such and there can be no preserved or separate right of any individual with respect to it. If we wanted to give effect to this or to respect the wishes of the people or act in consonance with this demand of the people, which, in spite of all our efforts to keep communism away, is getting more and more popular with our people, if we do not want to go back on the of-proclaimed promises held out under different conditions and circumstances, it would be necessary for us to go much further than we have been able to go in this particular formula. But, Sir, I wish to advise a cautious attitude. I believe, sooner or later, there will be no private property in India. We are fast approaching that ideal, that goal, or that catastrophe if you like to describe it in that way. But, for the present, I would have liked to keep the thing in a somewhat fluid, undefined and elastic condition by accepting the amendment that has been moved by my honourable Friend, Mr. Sahaya.

I think, Sir, as I have advocated on many occasions, that we should not try to commit or fetter the powers of Parliament in such a matter and at this stage any way. This is a matter which
requires very careful and thorough consideration and I feel at the present moment it is impossible for us to spare for it the time that is needed. In my opinion we have hardly had time to collect all the relevant information and if I may say so, the worthiest amongst us has not been able to decide upon a definite policy with regard to property as a whole in the whole of India. It is clear from the nature of the amendments that have been given notice of and put forward in this House that very few people including my friends the Socialists have a clear conception as to how exactly we are going to deal with these rights to private properties, whether we are going to preserve them or whether we are going to abrogate them so far as all private property is concerned. of course it is noteworthy that even Socialists have not advocated expropriation.

That being so, it is not at all easy to determine, where the limit may be set or where the line should be drawn. Especially when we are making a constitution, we have no time to investigate the various circumstances of this whole sub-continent, where the conditions vary from district to district and vary still more immensely from province to province. Each one of us has different ideas and there are every where different tenures of land, Jagirs, Zamindaris, Izardaris, Malgujaris, etc., and it is not possible for us to deal with them all in one way or to evolve a formula which would be not only acceptable to everybody, but of which we shall be able to say for certain that it is going to achieve the salvation of India, and that no other solution would be better fitted to meet the circumstances of the case.

From that point of view, I would have much rather liked that all that we say and provide is the first clause which is of course the same as in the Government of India Act : "No person shall be deprived of his property save by authority of law." If we had done this, then all the various things that we have included in the article as it has been placed before the House by the Honourable the Prime Minister would have been unnecessary. The article has perforce to be an involved one; there have got to be 'save' and 'except'; there have got to be "notwithstanding" this and that; "nothing in this will apply to that" and "subject to what is stated" etc. I do not think we are in a position to judge of the future so quickly and in such definite terms as to lay down a certain formula which will be, without doubt, of benefit to the whole country. I would therefore urge that all that we should say is that Parliament may by law determine property rights from time to time.

There have been two interesting speeches delivered by my honourable Friends, Mr. Kamath and Professor Shah. They have described property by quoting certain definitions. Mr. Kamath said that some one had defined property as theft. My honourable Friend, Prof. Shah has gone further and quoted that it was described as "robbery, dacoity, deceit" and what riot. shudder to think what will happen to the fine shervani which Prof. Shah is wearing or the silken upper garment that Mr. Kamath puts on on his shoulders if we were to accept any of these
definitions and give effect to the purpose behind the definitions. But, we are unable to fly so
high or accept the ethical and spiritual heights to which our spiritual friends, if I may be
permitted to say so, have flown. We cannot in this important matter commit our future
successors to any policy which will fetter their discretion, and which will probably create
innumerable difficulties in their way. We are also in the midst of a financial crisis; it is not a
crisis of this country alone; it is a crisis which the whole world has to face.
Under these circumstances also, even if we do not like it, we have got to curry favour with
capitalists and those who have got large properties and in view of the results that may accrue,
we cannot wholly disregard them. On the other hand, there, is the demand by the people that
they want to own, and to re-distribute the whole land. In the province of Berar, more than
two-thirds of the land, I think, is owned by money-lenders. It is natural when the whole nation
is thinking and becoming conscious, that they should not like any individual proprietors to
monopolise such extensive properties. Therefore, the pressure is going to be more and more
that there shall be a re-distribution of property especially landed property. If we wish to resist
this demand, then we will have to make up our mind solidly and plainly say that private
property rights which are existing at the present moment shall continue to exist. But we
cannot have a half-hearted, half-way house like the one which has been presented here, which
neither takes us nearer those whom we wish to please, nor shall we be consistent with what
we have declared from time to time. Under these circumstances, Sir, I think it would be better
to leave the more detailed description of the rights to property to the future Parliament.
Sir, the second amendment that I have moved refers especially to religious trusts. I know, Sir,
that most people are aware of the way in which these religious trusts are managed and I think
it is necessary that the question of compensation cannot arise in this case. The sooner we
utilise these vast properties for the benefit of the nation, the better it would be. This is
something that is extremely desirable, and I hope, Sir, that this addition that I have proposed
to article 24 would also be accepted.
Mr. President: Amendment No. 405: that is covered by the amendment which has just been in
moved by Dr. P. S. Deshmukh. Amendment No. 406: Mr. Naziruddin Ahmad.
Mr. Naziruddin Ahmad: It is already one o'clock, Sir.
Mr. President: We shall then meet at four o'clock.
Shri H. V. Kamath: May I suggest, Sir, that we might meet at nine o'clock in the night, if that
be convenient to you?
Mr. President: I think it suits Members more to meet at four o'clock rather than at nine
o'clock. The House stands adjourned to four o'clock.
The Assembly then adjourned till Four of the Clock in the afternoon. The Constituent
Assembly re-assembled after Lunch at Four of the Clock. Mr. President (The Honourable Dr.
Rajendra Prasad) in the Chair.
Mr. President: Mr. Naziruddin Ahmad.

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

"That in amendment No. 369 of List VII (Seventh Week) after clause (2) of the proposed article 24, the following proviso be added:

Provided that when any such law provides for the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or any intermediaries whose interests are to be acquired."

My amendment No. 417 is already covered.

I move:

"That in amendment No. 369 of List VI (Seventh Week) for clause (5) of the proposed article 24, the following be substituted:

'(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.'"

I also move No. 425.

"That in amendment 369 of List VII (Seventh Week) in clause (5) and in clause (6) of the proposed article 24, the words "Save as provided in the next succeeding clause" be deleted."

I also move

"That in amendment No. 369 of List VII (Seventh Week) in clause (6) of the proposed article 24, the words, figure and brackets 'clause (2) of this article' be deleted."

I do not move No. 439.

The proposed new article 24, to say the least in effect though not in appearance, a most revolutionary provision. It indicates a serious departure in the policy of the Government. The article is simple-looking, but as I have already indicated in effect it is extremely dangerous.

The crux of the whole problem before the House, so far as this article is concerned and which affects the various, amendments, centres round one important principle viz., the principle of compensation. Should you or should you not pay compensation for lands and properties acquired for public purposes? Compensation, before this new article 24 was ushered into this House, had a definite meaning. Compensation meant that sufficient, fair, legal or equitable compensation must be given. Whatever be the description you must pay for what you take. That was the idea in India before article 24 was introduced and that is still the idea in all civilized countries. That was the idea in India before this article came into the scene. Sir, the payment of fair compensation seems to me to be so just, so fair and so reasonable that it would not have required any arguments to support the idea. There is the provision for
payment of compensation in the new article. But in view of the context, and in view of certain pronouncements and in view of certain subtle provisions lying concealed within its meshes, one should proceed rather cautiously and warily in dealing with this subjects.

The situation has become much more difficult on account of certain pronouncements in this House by our honoured Prime Minister. Sir, I have the highest respect and affection—my humble respect and affection for him—but the legal proposition which he has enunciated requires respectfully to be dissented from. He has in effect said that property belongs to the public, to the people. I do not quote him verbatim, but this seems to be the effect of what he said, that "property belongs to the people, and the people want it, and therefore they must take it; compensation or adequacy of compensation does not enter into the picture". But as I was submitting, the adequacy of compensation or its fairness and the like is the most vital thing.

So, far as the entire civilized world is concerned, the law is that whenever you take property for public purposes, you pay fair and adequate compensation. It is only in Russia that property is taken without compensation or only with mere nominal compensation. We are today going to imitate the example of Russia, a singular example in the civilized world in this respect. That is the example which we are going to follow. In fact, so far as this matter is concerned, there is no difference between the authors and the Supporters of this article, and the Communists today, except in the manner of their approach, except in the method of the execution of their policy. Sir, believe the Communists, the Socialists and the supporters of this article would kill and extirpate the middle classes and the upper classes altogether. These three groups of persons agree amongst themselves in their ideal, they differ only in their methods of approach and in the practical way of attaining it. Whilst the Communists would kill them by use of force, and violence, while the Socialists would kill them—as apparently Prof. K. T. Shah would do by arguments and speeches and theories, the sponsors of the present article would kill them by legal means. There is essentially no difference in the ultimate effect or desire. The question now is this, We are in the middle of a road and the road bifurcates. Which way to proceed is the question, to proceed as the Communists have done or to proceed along the road that the entire civilized world has followed?

Sir, I shall briefly state before you the law of compensation in all civilised parts of the world. The whole subject has been dealt with very elaborately in the Encyclopaedia Britannica, subject-Compensation, Vol. VI, pages 177 to 179. I do not want to go through all of it, but only mention certain points. Compensation, according to that great authority is "reparation or satisfaction made to the owner of the property which is taken away by the State for State purposes. The right of individual ownership is challenged in Russia which has abolished the the right to private property and it for alleged public purposes without compensation. But to however, the U.S.S.R. has been compelled to reverse its policy. influenced by communism
and these States, in the name of has expropriated a large extent, They are now agrarian reform have expropriated private property either with inadequate compensation or without any compensation."

Sir, I go to other parts of the world, the entire civilised world. There individual ownership is recognised not only in the civil law of the entire civilised world, but also in the international laws, both in times of peace and of war. It is stated in that authoritative work that even in peace treaties following World War one principle that was respected by the Nations was the inviolability of private property. So far as the civil law is concerned, the French Civil Code says that "no one can be deprived of his property except for purposes of public utility and for adequate compensation."? The Belgium law is to the same effect. The Italian Code says that in order to acquire property by the State, "previous payment of just indemnity" is necessary. The Spanish Code is to the same effect, namely, that compensation must be paid on a "just valuation". The law in the South American States is similar. The German Code in article 153 says that "adequate compensation" must be given. The law of the United Kingdom is that "full compensation" must be given. The U.S.A. law says that "just compensation" shall be given.

An Honourable Member: You are repeating.

Mr. Naziruddin Ahmad: I am quoting from a very recognised authority and from a recent edition, and saying that this is the law in the whole civilized world. Should we follow the law which the civilised world is following or should we follow the Russian method of expropriation ? That is the question. So far as the present article is concerned, I wanted to insert certain words, such as "fair compensation" or "full compensation" or "just compensation". But an Honourable Member has already moved a similar amendment and so I did not move mine as mine suggested merely verbal variations. The substantial question is whether we should provide in our Constitution that whenever there is a law for acquisition of property by the State for public purposes, we should provide therein that the law must also provide for "fair and equitable" compensation. As I said just now, up to yesterday, the law was thus, and the point would not have required any clarification. But in view of certain declarations in the House and the language of certain clauses and sub-clauses, I think this clarification is very necessary. In fact if we really want to expropriate private property for public purposes without compensation or with a nominal compensation, that should be stated fairly, fully and openly. Instead of that there is the provision for payment of compensation. It leaves the Provincial Governments free to expropriate land on a nominal compensation. The article provides a loophole, a linguistic loophole, through meaning in civilised countries all along has been the same.

I submit that compensation should be full, fair, just or adequate. If we do not state it, these will be serious mischief committed against private property. If we do not respect private
property all talk of fundamental or constitutional rights will come to naught. We have already
passed article 13 where in sub-clause (f) of clause (1) it is said "All citizens shall have the
right to acquire, hold and dispose of property." If we allow right to acquire, hold or dispose of
property it follows that if anybody took it full price should be given.

We hear of nationalisation. If nationalisation is to be effected free of cost, it would degenerate
to a kind of cheap nationalism. It would be just adding to the practical ruination of our credit
structure which we have already succeeded in achieving. If we go to the public for
subscription to large limited companies for industrialisation there is no credit and no money.
Our capitalists are gone. Now we have been driven to go to the foreign markets not only for
loans of very big sums but also to induce them to open commercial undertakings in our
country. There are the glaring examples of some clauses in the article which stare us in the
face to which I shall draw the attention of the House. Will any foreigners, who are to be
credited with a little shrewdness and business acumen, think of investing their money in
industrialising our country whereby they stand to lose in two ways? They will stand to lose or
partly lose through expropriation their capital and capital appreciation, if their business is
successful, and then by helping India to be industrialised they lose their own business at
home. In such circumstances there is a double check upon flow of foreign business in
India. Then there is clause (5) of article 13 which limits to a certain extent by prescribing
certain restrictions. The only restriction mentioned is "reasonable restriction on the exercise
of any of those rights for the general public." The only condition is that I must not "exercise'
my rights over property to the detriment of the public. Rights to property are never
contemplated in article 13. I submit that article 24 will go directly against article 13 in this
respect. However, as I said in the course of the debate earlier, in connection with a point of
order, we have a right to be inconsistent. The point of order raised was no real one. It was
only a glaring piece of injustice to which the honourable Member put his finger in raising the
point of order. If we adopt clause (4) of the article then serious in-justice will be perpetuated.
Hence I opposed the honourable Member who raised the point of order. But I fully sympathist
and agree with him and lend my feeble support to his view that this clause is a most
pernicious one which will perpetuate injustice on a large scale.

Coming to the vital matter which lies concealed behind these amendments is the question of
the abolition of the zamindari. Somehow or other some persons think that zamindari property
is no property at all and they should be expropriated without any mercy or compensation on
the absurd ground that it would be for the benefit of the public, as if the zamindars do not
form part of the public at large. I might state here frankly that I am not a zamindar and I have
no interest in zamindars at all.

Mr. B. Das: I think you are zamindar.

Mr. Naziruddin Ahmad: Mr. Das says that he thought that I was a zamindar...
An Honourable Member: He might wish you the pleasure of the thought.

Mr. Naziruddin Ahmad: Mr. Das thinks of many things which are unreal. I was a very petty zamindar but I sold away my interests 5 or 6 years ago, for I saw what was coming. Today I am independent, free and dispassionate, a man having absolutely no interest in that question. I am safe and happy. But those poor zamindars who believe in the stability of the law of the land are today sadder, though wiser. In this business we should proceed upon constitutional principles of rights of property and so on. If it is necessary that zamindaries should be acquired, of which there is no doubt, all that I claim is that proper compensation should be paid. When the Bank of England was nationalised full compensation was given to the shareholders. In India when we nationalised the Reserve Bank the full market price was given, though at a time of depression. The question is, does zamindari property differ from other properties so as to receive this stepmotherly treatment? The zamindars are small in number and are scattered. They have tenants to contend with and the Government find themselves in the happy position that they can kill them without anyone weeping for them. If we destroy civil rights the effect of it would be that it will recoil on us in no distant time.

With regard to zamindari property we should know what it means. There was nothing like a zamindar during the period of the Hindu kings. During the Muslim period they were unconsciously created as a matter of administrative necessity. On account of the exigencies of the situation military governors were despatched to distant corners of India to maintain law and order, to maintain military outposts and to maintain themselves out of the revenues of the local areas.

Shri Biswanath Das: We all know the history.

Mr. President: The honourable Member should remember that we have to finish the discussion of this article tonight. All this discussion may be interesting but let us confine ourselves to the article.

Mr. Naziruddin Ahmad: All that I am emphasising before the House is that zamindari property is like any other property. Zamindars were unconsciously created by the Moghul emperors in order to make it easy for them to realise rents to maintain themselves out of them and many people volunteered to collect rents. From these beginnings the zamindaries were formed. Zamindaries were transferable like any other properties and for the speedy realisation of revenue the early British administrators provided for the sale of the, zamindaries for arrears. Zamindari is like an ordinary property. The present body of zamindars have paid for them with hard money. Therefore, if we can confiscate zamindari property without sufficient compensation, we would also confiscate any business concern or limited company on the alleged ground that they will be for the ‘benefit of the public.’ There are many properties or business concerns which come to people like windfalls. If they have acquired any right even
by a windfall, should that be any reason for confiscating such property for the benefit of the public without paying compensation? I submit not. Then why is it that in the case of zamindari property this distinction is being made? I have in amendment No. 406 put a limit to the payment of compensation. I have put it at 12 times the estimated net annual income of the zamindar. In fact, the ordinary rule of valuation of such properties is twenty times on a 5 per cent. income basis. But I would put it at 12 times the annual net profit. That would be a via media between utter confiscation and . . . .

Shri Biswanath Das: On a point of order, Sir. We are not discussing the question of compensation; we are discussing amended article 24 wherein authority is being provided for legislation to be undertaken. There is therefore, no need for all this.

Mr. President: The honourable Member wants to limit the discretion of future legislation with regard to compensation by laying down a certain figure and I think lie is perfectly in order in doing that.

Mr.

Naziruddin Ahmad: I am grateful to you, Sir, for this clarification. Mr. Biswanath Das has not followed the amendment or my speech. I want to limit the payment of a minimum compensation to 12 times. For instance, in the U.P. they desire to pay 8 times. I want to make it 12 times. The U.P. legislation has another loophole. Out of the income, the estimated agricultural income-tax is to be deducted. The estimated agricultural income-tax has been introduced recently. It comes to half or even more than half in the higher regions of income in the case of big zamindars. In that case, 8 times the annual income would actually mean something like 4 times the annual income. This 8 times is an exaggerated and illusory figure. In reality it is much less. So I wish to put a limit by means of proviso to clause (2).

The other point to which I wish to draw attention is the deletion of clause (4). If we keep it, the effect will be that any law which has been passed and receives the assent of the President will be regularised, but any law which has not been passed or may be passed hereafter will not stand in this advantageous position. So the Provinces which have passed the law before will be in a more advantageous position. They will not need to pay compensation as required in clause (2). Why should this distinction be made between Provinces who were first in the run and those who were late? The principle of compensation is binding on all. There should be no discrimination between one Province and another on the mere ground that it has come earlier. With regard to another amendment to clause (5)-it amounts to certain verbal alterations to give effect to the principle I have chosen to submit.

Then there is an amendment to clause (6) which will also seriously affect the Compensation question. This clause says that laws which have been passed with-in one year would be valid notwithstanding clause (2) of this article, i.e. notwithstanding it provides for even no compensation at all. These matters centre round the payment of adequate compensation. If we
really do not pay adequate compensation, it will be injustice committed on a large scale and clauses (6) and (4) are so worded as not to give obvious and necessary information. One has to guess the object of these discriminatory provisions. The real purpose has been left concealed. If the principle of compensation is binding on one Province, it should be binding on all. If any Province has made any law which would contravene this principle, to that extent it should be ultra vires and void. We are inserting article 24 in the Fundamental Rights Chapter and in clause (2) we have provided that whenever any law is passed which contravenes wholly or partly the fundamental principles of these articles, the law would to that extent be void. Why should therefore there be any exception in the case of Provinces which have disregarded the principles of clause (2)? These principles are immutable and must be respected in all cases, and if there has been any violation it has been a deliberate violation of a sound principle and should not be excused. I submit that the law of compensation should apply to all equally. I regret very much that I have taken a little more time than I might have, but I believe that the case goes without much attention in the House and that is my excuse for speaking at length.

Mr. President: Amendment 409-Mr. Bharathi
Shri L.Krishnaswami Bharathi (Madras: General): Not moving.

Mr. President: Amendments Nos. 416, 417 and 421 are covered by amendments which have been moved already. 423.

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move:
"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these clauses were under consideration we also felt --and some of us felt very strongly--that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this
article dealing with Property Rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these articles which we have already passed.

Mention has been made of the U.P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U.P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U.P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command prop-or respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.
there is so much discussion about this subject here and elsewhere. Property is not of a single species; property is or various species. I may particularly point out to you Sir, and the honourable Members, that clauses (4) and (6) of this amendment refer to a particular species of property, namely zamindari property. I really feel that the word "property" should not be applied to this particular species at all, because when the sanad was granted in 1802, or earlier than that in Bengal when the Permanent Settlement was introduced, the sanad milkiyat intirmari, gave the right to the zamindars to collect the rent only. They were only mere agents to collect the rent and were asked to pay a portion of it as peshkash to the Government. Therefore the belief that the zamindars have got a right of property in this business is far from the truth. It is a well-known maxim that nobody can confer on someone what he does not himself possess. From time Immemorial the tradition and the law of this country has been that the tiller of the soil, or the society of which he has been a member, is the owner of the village or the particular holding. Therefore, when only the right to collect the rent was conferred on the zamindar it can never be said that a kind of property was conferred upon these gentlemen because the grantee himself had no proprietary right in that land.

Secondly, even this right to collect rent was restricted even from the beginning. Regulation No. 25 of 1802 in Madras granted the sanad Milkiyat Istimrari on the 13th of July 1802. On the same day four other Regulations were issued. Regulation No. 30, called the Patta Regulation, definitely said that the rent that was to be, collected from the individual Pattadar should bethe same as it existed on that date and should not be altered. The word "unalterable" was used in the Regulation No. 30 of 1802. These Regulations, having been promulgated on the same day and by the same government, we have to draw the conclusion that while the sanad granted him the right to collect the rent, another Regulation of the same day stated that the rent to be paid by the particular pattadar, should not be increased by the zamindar. This was made clear after a long struggle, by Regulation No. 5 of 1802 which definitely said...

Shri Alladi Krishnaswami Ayyar (Madras: General): On a point of order, Sir, are we just now interested in going into the whole history of zamindari with reference to a consideration of clauses (4) and (6) of the draft article?

Shri Kala Venkata Rao: The question has been asked on the floor of this House as to why there should be any discrimination as is shown in clauses (4) and (6) regarding zamindari property. My submission is that 'zamindari' is not a property at all and therefore it should be discriminated from the other types of property. From our knowledge of history and the zamindari legislation I assert that it was never deemed to be real property, as we know it to be in some other categories.

I will illustrate this. And I am telling you what His Excellency our present Governor-General said when he took part in the discussion on the Estate Lands Committee report in the Madras Legislative Assembly in 1939. Say that I have a house in a village near Delhi. I passed, say
B.L., and was coming to Delhi for starting my practice. I gave that house on rent to Mr. Munshi saying
"you please pay me Rs. 8 as rent every month". But as I was just leaving I met Mr. Krishnaswami Ayyar and I said to him "please collect Rs. 8 from Mr. Munshi every month and send me Rs. 6 and for the trouble you take please take Rs. 2 as commission". After ten years I returned to my place and found that there were few tiles on the roof or no cement at all on the flooring. Then I asked Mr. Munshi "How is it you have kept my house in bad repair though I gave it to you for a small rent of Rs. 8 ?" Mr. Munshi said to me "I was paying Rs. 24 as rent for this house all along and Mr. Krishnaswami Ayyar has all along been collecting it". This increase of rent from Rs. 8 to 24 was unauthorised and has been pocketed all along by the gentleman whom I requested just to collect the rent. The result was that neither the owner of the house nor the tenant thereof got any benefit out of the increase. The gentleman who was mere rent collector has been pocketing this difference of Rs. 16. If Shri Krishnaswami Ayyar gets what is called property in this transaction the zamindars also have property.

In Madras, in the year 1802 the total rental of all estates was Rs. 72 lakhs of which 48 lakhs were paid to the Government as peshkash. Now the zamindars of Madras are collecting Rs. 219 lakhs as rent, but pay the same 48 lakhs as peshkash even today. I therefore say this is no real property as we ordinarily know it and so should be treated on a different footing.

Then I have to mention in this connection that the zamindar did not also always discharge his obligations as were fixed in the sanad. It has been laid down that he must maintain irrigation works, etc. He never did anything of the kind. All the irrigation works are in disrepair and everywhere rent was increased nonetheless without any benefit coming to the ryots. Mr. Veblan defined what a 'vested interest' in property means as "a marketable right to get something for nothing". We could have terminated this authorisation to collect rent by issuing a notice but we are giving compensation and therefore be ought to thank us., Many of the zamindaries were created at the time of the decline of the Moghul rule when jungle law prevailed. We want today to compensate them under the rule of law. Bihar has to pay 130 crores; United Provinces has to pay an equally big sum and Madras has to pay about 15 1/2 crores. All these sums will go to the zamindars just because they possess some sanads. We are not treating those sanads as mere scraps of paper. As a matter of fact are treating them as scrips. We are paying for these scrips a value related to their history and based on equity. Therefore I maintain that from every point of view we have to treat this species of property called the zamindari right as one different from the ordinary type of property, which we come across ordinarily.

Section 299 of the adapted Government of Act practically been redrafted as the present article with only a few alterations. The only main change is the dropping of the word 'payment'. It
has been held by an eminent jurist that as long the word 'payment' is there, we have to pay compensation only in the legal tender of the country and therefore in cash. Therefore many of the provincial legislatures have to suffer. Now under this clause the amount can be paid in bonds. So, the provincial Governments can reconsider the question of paying the first instalment of compensation at an early stage. As a matter of fact, it will benefit the provincial governments to pay like this in bonds, particularly in Madras where section 50 makes liberal provision for interim payments. If there is an estate with an income of 6 lakhs, the sum of one lakh will be the basic annual sum. We have to pay this one lakh till we pay the total compensation without counting these payments as part of it. If we pay in money or bonds now we will gain much in the shape of interest.

Mr. President: I would remind the honourable Member that we are not discussing the Madras Bill here.

Shri Kala Venkata Rao : I am only illustrating Sir.

Mr. President : I know that lie was Revenue Minister there and knows more about that Bill than anybody here. But he need not give the benefit of that knowledge to this House. He may confine himself to the article.

Shri Kala Venkata Rao : I will just conclude Sir. Instead of paying at the rate of one lakh of rupees as interim payment for some years we will be paying Rs. 30,000 only as interest on bonds.

I would like to say one thing more. The right of Parliament to fix compensation or the principles of compensation must be kept sacrosanct. Only when a fraud is committed on the Statute the courts can interfere in the matter.

Sir, as you pointed out, I am not justified in going into all these details. I was only trying to point out that the zamindari property is a different kind of property and therefore it has been rightly treated so in clauses (4) and (6) of this article.

I want in this connection to tell my friends what Mr. Fosdick said "History's current is sweeping us into the future and the illusion that security is dependent upon the absence of change is perhaps the most dangerous form of imbalance which plagues the mind of men".

With these few words I request the honourable Mover to accept my amendment to substitute 'eighteen months' for 'one year' in clause (6), for the simple reason that if the Constitution does not come into force on 26th January 1950, there may' be some difficulty for the Madras Bill which received assent in March 1949. If the mover accepts my amendment that anticipated difficulty can be removed. Mine is only a formal amendment and I request the honourable Mover to accept it.

Thank you, Sir.

The Honourable Shri Krishna Ballabh Sahay (Bihar: General): Sir, I do not move my amendment. My purpose will be served if the honourable Mover win see his way to accept the amendment moved by Shri Kala Venkata Rao.
Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added:-

'(7) The provisions of clause (2) of this article shall not apply to any property belonging to evacuees to the Territory now included in Pakistan and declared as evacuee property by any law promulgated to deal with such property in the event of failure of any agreement being arrived at between India and Pakistan on the subject of property belonging to evacuees to both the countries.'"

The word 'communities' is a mistake for 'countries'.

Sir. on the same subject there is another amendment which I have tabled, No. 510. It reads thus:

That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of clause (5) of the proposed article 24, the following new Sub-clause be added:-

'(c) the provisions of any law already enacted or which may be enacted for the administration or disposal of any property which may under or for the purpose of the law be regarded as evacuee property.'

Sir, I had occasion to discuss both these amendments with the Honourable Shri Gopalaswami Ayyangar and as a result of that discussion, we have come to the conclusion that the purpose of these amendments will be well served if amendment No. 510 is slightly amended and I therefore seek your permission, to move this redraft.

Mr. President: Read out the Amendment.

Shri Jaspat Roy Kapoor: I move:

"That in sub-clause (b) of clause (5) of the proposed article 24 the word 'or' be added at the end."

This is only a formal thing. The substantive thing follows-

"That after sub-clause (b) of clause (5) of the proposed article 24, the following sub-clause be added :-

'(c) the provisions of any existing law made or of any law that the State may hereafter make in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.'

Mr. President: Yes, you can move it.

Shri Jaspat Roy Kapoor: Thank you, Sir. The other amendment that stands in my name is amendment No. 488.

Mr. President: What about 511?

Shri Jaspat Roy
Kapoor: I do not propose to move it. The amendment that I have just now moved with your permission will take the place of 510 and 433. Amendment No. 488 which stands in my name reads thus:–

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the word 'determined' the words 'and given' be added."

Mr. President: This is already covered.

Shri Jaspat Roy Kapoor: I am sorry, Sir. The other amendment which stands in my name is No. 495. Sir, I move—unless it is already covered by any amendment previously moved—

Mr. President: I do not remember. You may move it formally.

Shri Jaspat Roy Kapoor:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'unless such law having been reserved for the consideration of the President has received his assent the words 'has received the assent of the President' be substituted—"

Then there is another amendment, No. 508. Sir, I move—

"That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted."

I must confess, Sir, that I am feeling very unhappy, and I believe I am expressing the view of many other Members of this House because I am sure they also feel unhappy, at the manner in which this question of compensation is being dealt with and the long debate that it has necessarily given rise to. This subject of compensation has not been placed before us as a new subject. It has been engaging the attention of the country for the last so many years. It has been discussed thoroughly in the country by various political parties, in the press and on the platform, it has been discussed here in the Constituent Assembly, while we were discussing the report of the Fundamental Rights Committee, and we have—all the political parties in their own way, the government of the day, the Prime Minister and the Constituent Assembly—all, have reached definite decisions on the subject, and all that remained for us or for the Drafting Committee was to draw up an article in consonance with those definitely accepted principles and commitments.

But unfortunately we find that in the article now presented to us, all those things, to a very large extent, the whole question has been thrown open again for discussion and final decision. A point of order was raised by my Friend, Mr. Symanand Sahaya but that was disallowed by you, Sir; but apart from that being a point of order, there was very great substance in his submission that a good portion of this article includes things which run contrary to the decisions Constituent Assembly.

Let us see, Sir, what are those various things that have been discussed in the country and by the Constituent Assembly also and on which final decisions have already been arrived at. So far as the Congress is concerned, the government is concerned, the Honourable the Prime Minister is concerned and this House is concerned, these three things have already been
decided: No. 1, that the zamindari system shall be abolished; No. 2, that just and equitable compensation shall be paid to those from whom these zamindari rights are acquired; and No. 3, with regard to any other property that we acquire, just and fair compensation shall be paid. These are the three things that have been decided, to which the Congress is committed. This was what we put down in our election manifesto. This is what was also incorporated in the resolution of the government as announced from the floor of this House on the 6th April 1948. This again is the thing which was declared by the Honourable the Prime Minister on the floor of the Parliament on the 6th, April 1949. Not only this, during the course of the statement made by the Honourable the Prime Minister on the 6th April 1949, be went further to assure the foreign investors that not only would they be given just and fair compensation for any industrial concern of theirs that shall be acquired but that necessary facilities would also be given to them for the transmission of their money to their own country. These are the commitments of ours, of the Constituent Assembly, of the Government and or the Honourable the Prime Minister.

Now, Sir, it does appear to me and I am sure it must appear to all other Members here that it is not fair, not proper, neither desirable, to go behind either wholly or even partially what we have already stated and promise in the past. Let us see, Sir, whether this article is in conformity with what we have decided or whether there is any departure from those commitments of ours. If there is any departure from these commitments of ours, surely this should not be accepted by us.

In clause (2) while it is conceded that no property shall be acquired without compensation therefor being determined, it does not say that the compensation shall be fair, just and equitable, the three essential words which we have always been using in our election manifesto, in the decision arrived at here and in the Honourable Prime Minister's statement and the Government's statement on industrial policy. These are essential words, Sir, and I see no reason why they should not be incorporated here. If it is contended that they are redundant and unnecessary, I do not think it is correct because these words have been deleted after due, deliberation and discussion and with a definite purpose. I submit, Sir, that it should not be so. It was, in one of the amendments that stood in my name, which, of course, is now barred by another amendment which is moved by another honourable Member and I desire that at least the word "equitable" should be inserted before the word compensation". I was agreeable to delete the words "just and fair" even, because it appeared that feelings are running, very high on this and in order that it may not appear very irksome to some of our friends to incorporate them here. of these three words, I thought if we have only the word "equitable” It may be acceptable to them and it may improve the draft at least to some extent. I do not see any reason, Sir, why at least the word "equitable" should not be placed before the word "compensation". After all, what is the intention of the framers of this resolution or of the
honourable the mover of this article? Is it not his intention that an equitable compensation is paid? If it is his intention, then let the word be there; and if it is not, it is going behind our professions, assurances and commitments. It is said that if we insert the word equitable” here it would become justiciable. Why should we be afraid of anything being justiciable? The Honourable the Prime Minister had said with very great enthusiasm and very loudly that "we are determined to stand cent per cent"-that was the expression used by him-"by all our commitments". I want no more than this and no less than this. If you make a statement with a good deal of enthusiasm, it does not convert anything into a fact, if really it is not. What were our commitments? That we shall abolish the Zamindari. Well and good. That we must reserve to ourselves the right of acquiring the industrial property. Well and good. But what about the third of the commitments which is given the go-bye, that we shall pay "fair, just and equitable compensation"? It is only 66 per cent. at best of the commitments that we have made: Out of these three, only two are accepted now. The third is thrown to the winds. I submit, Sir, it is not correct to say that we are prepared to abide by our commitments cent per cent.

Now, Sir, I was submitting, why is it that we are afraid of making these justiciable? I have faith in our legislatures; I have faith in our Parliament and I am sure that at no stage any State Legislature or our Parliament will enact any law whereby any property would be taken away for public purposes without provision being made for an equitable compensation being given. Well, if we really mean to give equitable compensation, why should we think that the judgment of a court will go against what we shall be providing in the law? Surely we should not think so. The word "equitable" is a very flexible one. What is equitable today may not be equitable tomorrow. "Equitable" as I understand, is something which is equitable in accordance with the existing political theories, the existing accepted economic principles of the society, and surely our judges and our courts of whom we have very satisfactory experience would never fail us. Have we not seen, that the interpretation of the samelaw has been different by different judges from time to time in accordance with the accepted political and economic principles of the day? Take, for instance, the case of the law of sedition. The particular section of this law is the same now as it was ever before. But then in the year 1906 in the days of Lokmanya Tilak the interpretation of the Jaw of sedition was something entirely different from what the interpretation of it is today. What was sedition then is, now merely a criticism of the Government and even a fair criticism and is not only tolerated, but even encouraged not only by the courts but even by us here. MN, submission is that our judges have always interpreted laws in accordance with the needs of the society and in accordance with the accepted political, economic and social theories of the day. To take one more illustration, judgments in and interpretation of Hindu law have been changing with the changing views and needs of the society. I find rot dilate
further upon it now. Sir, I submit that there is no reason why we should be afraid of making all these provisions justiciable.

Then I submit, Sir, the worst into consideration, if a particular Bill, a particular Act is taken to a court of law by any person to test its legality, what will happen? If we provide in an Act that we shall pay Rs. 100 for the acquisition of a certain property and if the court of law declares that Rs. 100 is not equitable and it adjudicates that it should be Rs. 125 or Rs. 150, we do lose nothing, because the framers of this article have taken jolly good care to provide clause (b) to clause (5) wherein they say: "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect-

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger of life or property."

I draw your attention particularly to the words "for the purpose of imposing or levying any tax". Now this is a very big right which you are reserving to yourself. If in the place of Rs. 100 the court adjudicates that you must pay Rs. 150, why not say "Thank you, my Lord, we shall pay Rs. 150" and then come back and enact a law under clause 5(b) saying "thirty-three per cent. of that shall be taxable" and realize that Rs. 50 by way of taxes. I, therefore, submit with these powers reserved to us under clause 5(b), it is absolutely unnecessary for us to be afraid of making the whole thing justiciable. It is what we say: "Gunah belazzat". Why have the odium of all this? Why expose yourself to the the charge that you are afraid of making your law justiciable? We have nothing to gain thereby and everything to lose. I would, therefore, submit that the word "equitable" at least must be added before the word "compensation" and certain consequential amendments in clause (2) may also be made, notice of which I have already given, but the consequential amendments are a minor matter.

Coming now, Sir, to clauses (4) and (6) which are sought to be incorporated in this article, what do we find? The first impression of a man who reads these two clauses is that they are something which are difficult to understand. Of course, we who know what really is behind these clauses can understand the reason and the motive behind them. But, if a foreigner were to read these two clauses, he would simply rub his eyes in wonder and enquire what is the logic behind these, what is the reason behind these? He may even say, what after all is the sense behind these?; for what purpose they have been incorporated? Clause (4) says: "If any Bill pending before the Legislature of a State at the commencement of this Constitution etc. Why should there be a particular sanctity attached to a Bill which is merely pending in a legislature on the date on which this Constitution comes into force? There is no logic behind it; there is no reason behind it. It is merely an arbitrary thing.

Then, Sir, clause (4) makes a distinction between one State and another. It makes a distinction between a State which has a legislature and a State which has no legislature. We know that
we have several States which have no legislature. If a Bill is pending in the legislature of a State, it will have the benefit of clause (4). But, if there is a State which unfortunately has no legislature, it cannot have the advantage of the provisions of clause (4). To make a distinction between one State and another certainly appears to me to be something ridiculous. Not only that, Clause (6) makes a distinction between a State which has a Governor and a State which has no Governor. Clause (6) says, "Any law of a State enacted not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor, of the State to the President" so on and so forth, and thereafter, if the President certifies that Act, it becomes very good law and the whole of the provisions of clause (2) may be nullified thereby. But if a State has, unfortunately or I do not know-fortunately, a Ruler and not a Governor, that State even though it may have enacted a law heretofore or may enact a law tempted by these provisions, between now and January 26, 1950 on, which date this Constitution is to come into force, that State cannot take advantage of the provisions of clause (6). Why this distinction. Is it our intention to encourage a revolution in those States? Is it our intention to ask the citizens to somehow stage a showdown and get a Governor so as to be able to take advantage of the provisions of clause (6)? Several honourable Members who are representatives of the States are very sore on this count and rightly, because they say "we also want to abolish Zamindaries in our States; we also want to abolish jagirdaris in our States; but we have neither a legislature, some of us; nor have a Governor." While a State having a legislature and a Governor can appropriate Zamindaries and industrial property by merely enacting a law between now and 26th of January 1950 without making the slightest provision for compensation--for that after all is the implication of clauses (4) and (6), your intention is a different thing-the States which have neither a legislature nor a Governor have no right to do that. Why this invidious distinction? Not that I want that they too should have the same right; but I am only submitting how absurd is the insertion of clauses (4) and (6) in their present form. (An honourable Member: Question).

There is one more defect in clauses (4) and (6), as I have already submitted, the intention of the framers in clause (4) is to safeguard the U.P. Zamindari Bill and the intention of clause (6) is to safeguard the Mad as and Bihar Acts. If you had put it down specifically there, it would have been an evil only to that extent. You do not say that specifically; but you make this provision in a general way which means that any other State or even the States of U.P., Madras and Bihar may enact any law whereby they can take to themselves the right of appropriating the Zamindaries or any property whatsoever without making provision for the payment of one single cowrie. After all, that is the implication of these clauses. It is a different thing that in your fairness you may not go to that extent; but the law must be clear and definite on that subject.
One impression that we create on everybody's mind by having this article in this way, particularly by having clauses (4) and (6), would be that the period between now and the commencement of the Constitution is going to be one of the darkest periods in the history of India. Is the pre-republic period in this country being made so dark that the subsequent period after the republic comes into being must appear to be very bright? That period will indeed be bright in itself. It is no use king the pre-republic period, a period of five months or so, appear so dark and gloomy and arbitrary. I submit therefore that it looks very ridiculous to have particularly these clauses (4) and (6) in the Fundamental Rights. These do not give any fundamental rights; in fact, they are a negation of the fundamental rights, which we have already adopted while adopting the Fundamental Rights Committee's report. With your permission, Sir, I would like to read the resolution adopted along with the report of Fundamental Rights Committee.

Mr. President: I would ask the honourable Member to finish.

Shri Jaspat Roy Kapoor: I am finishing, Sir; I will not take more than a couple of minutes.

I shall not even read; that honourable Members know that only too well. I will proceed immediately to my next amendment which seeks the deletion of sub-clause (a) of clause (5). Sub-clause (a) of clause (5) says: "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect: (a) the provisions of any existing, law." May I ask, what is the necessity for this sub-clause? What are the existing laws which are in contemplation? I know of one law, and that is the law relating to the acquisition of larded property, take Land Acquisition Act. So far as that Act is concerned, it is certainly in consonance with the provisions of clause (2), because, that Act specifically lays down the basis on which property must be acquired. That Act needs no safeguarding by this clause. Which other Acts are intended, I do not know. I certainly would wish that it must be made clear as to what other laws there are in force today in this country which are intended to be safeguarded by this clause. Is there any other law the provisions of which are not in consonance with the provisions of clause (2)? I am lot aware of any; though I cannot venture to hazard an opinion on that subject being no expert on legal matters, I want to seek enlightenment on this subject from the honourable the Mover of this article as to what are those particular laws which he has in view and which he wants to safeguard. Even if there be one, the provisions of which are not in consonance with the provisions of clause (2), why should that Act be safeguarded?

The object of this article 24 is to make provision for Fundamental Rights. They are to be safeguarded and not any law which strikes at the root of a fundamental right. I, therefore, submit that these clauses must go. Otherwise, it will encourage States to rush in for laws to appropriate property without any fair compensation during this intervening period,
for all these laws will be considered to be existing laws on the date on which this Constitution comes into force and will be beyond the scrutiny of a court of law.

Lastly, I come to my amendment relating to evacuee property which, in fact, is the most important of all the amendments. Though it is the most important of the amendments, I would not dilate upon it, firstly because it is rather a very delicate subject, and secondly because I am glad it is going to be accepted by the honourable the Mover. One word only about it, I will say. Our refugee brethren who have come over from Western Pakistan have left their property worth about 1,500 crores and the evacuee property in this country is worth about 500 crores or so. Delicate negotiations are going on between this country and Pakistan and they are being carried on by no less able a negotiator than the Honourable N. Gopalaswamy Ayyangar. So far, he has failed to bring about any settlement on this issue in spite of his accommodating nature, in spite of his reasonable attitude, in spite of all the greatness he has in him. So far, he has to persuade Pakistan to come to a settlement, on this question. Perhaps a settlement may be found or it may not be found In either case it is necessary that any law that we may be under the necessity of enacting hereafter and all the existing-laws and Ordinances on this subject must be beyond the pale of the provisions of clause (2), because if it is not so, when unfortunately at a subsequent stage in the event of no agreement being arrived at, we have to appropriate evacuee property, not only then we shall be losing all the property of the refugees to the extent of 1,500 crores but we shall be compelled under clause (2) to pay compensation to evacuees also. Therefore I submit it is necessary, and since it is going to be accepted I need say nothing further on this subject. With these words and with my amendment I beg to support the article which has been moved.

Mr. President: No. 474-Mr. Ibrahim. I would remind honourable Members that we have to finish this article tonight whatever the time taken and I would request them to cut short their remarks as far as possible.

Mr. K. T. M. Ahmed Ibrahim (Madras: Muslim): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, the following be added at the end :-

'and except on payment of fair and equitable compensation based on the market value of the property.’"

I also move

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words I provides for compensation' the word is 'Provides for fair and equitable compensation based on market value’ be substituted."

Article 24 lays down a vital fundamental right and I think I am not going too far in stating that the entire economy of the country depends upon the proper enforcement of this Fundamental Right. Clause (1) provides that no person shall be deprived of his property save by authority
of law. That is a fundamental right which is sought to be created by this article. But the succeeding clause, viz., clause (2), in effect deprives the citizen of the Fundamental Right that is sought to be secured by clause (1) because it gives to the Legislature power to determine the entire value of the right that is secured to him by clause (1). The value of any property depends upon the price it would fetch in the open market but clause (2) says that the value can be fixed by the Legislature according to its sweet will and pleasure. Then what would be the value of the property in the open market? On account of clause (2) there is bound to be uncertainty about the value of property and a sense of insecurity in the land. What would be the effect of such a sense of insecurity and uncertainty of the value of property in the economy of this country? That is the question that arises. I would say that on account of this, clause (2) takes away almost completely what is sought to be secured to the citizen by clause (1).

Even now under the existing law we find that compensation is to be awarded to properties according to the market value of similar lands adjacent to the land sought to be acquired. That is the well-known principle of law that is being administered in this country but what would be the effect of this clause on that principle. That would be completely annulled. The Legislature can fix any amount of compensation. The scale of compensation depends upon the Legislature and the principle for awarding compensation also depends upon the Legislature. Such being the case there cannot be certainty about that value. There will be no incentive for people to invest money in lands or commercial undertakings or industries. It is very comprehensive and all sorts of properties are included in this clause with the result that there will be no incentive for people to invest in commercial undertaking or lands. That is the problem which arises out of this clause (2).

I would request the House to consider this impartially and without any passion and prejudice. This is a matter affecting the economy of the land. Will this clause ensure the confidence in the minds of people which is needed most for the success of any commercial undertaking or for the success of any agricultural undertaking? Surely not, because the whole thing is nebulous and nobody knows what value the legislature will attach to any kind of property at any time. It is only from that point of view I request the House to look at this clause and my amendment is based only with this perspective in view.

I do not think that in any part of the world compensation is awarded for any kind of property at the pleasure of the Legislature. Probably the framers of this article have been obsessed with the present question of the abolition of the Zamindari system. If you want that the Zamindari system should be abolished even without any compensation, you may frame some other article for that purpose. Let that question be not confused with the general idea of property and the general-Fundamental right of property.
My Friend the Honourable Mr. Kala Venkata Rao said something about Zamindars. He proceeded on the assumption that the whole class of Zamindars comprises of only farmers of revenue; but I would remind him that that is not a proposition which can be, accepted without any qualification. There are zamindars who have been or who are descendants of Rulers and Princes and there are Zamindars who are descendants of persons who have paid full value for the lands which they originally bought from the East India Company; there are also zamindars who have paid full value to the descendants of the persons who were originally appointed as tax-gatherers. They have paid full value to them with the knowledge and with the full consent of successive Governments. Successive Governments have allowed even these farmers of revenue to treat their property as their own property and have allowed them to alienate, lease and mortgage them. Therefore are they not ostensible owners of these properties? Have you not allowed them to sell these to others? Have they not paid their hard-earned money for these? That also has to be taken into account while you assess the compensation for these Zamindars.

Sir, I think nothing more need be said regarding the importance of my amendment. It is only intended to ensure confidence in the people and to enable them to feel that property will have full value in the eye of the administration of the country, and that properties will not be valued according to the whims and fancies of legislatures. So that there can be development of industry, development of agriculture and development of commerce. Sir, with these words, I commend my amendment to the House.'

Mr. President: Amendment No. 475--Shri Phool Singh.

Shri Phool Singh (United Provinces : General): Mr. President, Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), for clause (2) of the proposed article 24, the following be substituted

'(2) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the toiling masses.

(2a) In the case of acquisition or taking possession of any property movable or immovable including any interest in or in any company owning an, commercial or industrial undertaking such property shall be acquired or taken possession of only in accordance with law which shall determine the cases in which compensation is to be allowed as also the amount of compensation to be allowed and the manner in which the compensation is to be given.

(3) No such law shall be called in question in a court of law on the points Stated in clause (2a) above."

Sir, the only points that arise for consideration in this connection are, whether in case of acquisition, any compensation should be allowed, and if so, what should be the amount of compensation, and what should be the manner of its payment. The other point is, whether this right should be justiciable. This takes us to the question of private property, whether it should
be an absolute right-or whether it should be a right so far as it is consistent with the interests of the toiling masses. To hold that there should be no acquisition without compensation is to mortgagee the future or to tie. future generations so long as this law stands. Cases are quite conceivable when it may not only be just, but it may be necessary to acquire property without compensation. Under these circumstances, it will be best to leave it to the future Parliaments to decide as to whether compensation should be allowed in the different cases that will come before Parliament from time to time. Similarly, the amount of compensation cannot be decided only with reference to the value of the property. There have been speakers who have even supported full compensation. I wonder why they hesitated to put in the word "market price". What is full compensation? Market price would have been the proper word. But I think it full compensation is conceded, then it is better to say that there should be no acquisition, because the few legislations that are before the different States, they alone show that if full compensation were to be allowed, there would be no acquisition.

When fixing the amount of compensation, it is not the value of the property alone but there are many other considerations that have to be taken into account. The capacity of the State to pay the compensation, the profit that the owner of the property has already derived and the purpose for which the property is to be acquired, these are only a few of the considerations that should be taken into account when making a decision as to what should be the amount of compensation. Similarly the question whether the compensation should be paid in cash or whether it should be paid at the time of acquisition or at a later date, also cannot be decided once and for all. All these questions have to be decided when the particular case arises according to the circumstances of each case. Sir, to decide all these points once and for all is to lose faith in the national commonsense. I think those who will come afterwards and who will legislate and decide these points will take all the relevant factors into consideration, and I think it will be better not to fetter their judgment. It is for this reason that I neither take the view that compensation should always be allowed, nor support the view that there should be no compensation whatsoever. I think the best and the proper course will be to leave it to the Parliament to decide as each case arises.

The next point is about the justiciability of this right. The amendment that was moved this morning by the Honourable the Prime Minister states that only under two conditions the law passed will not be called in question by a court of law, and they are, either where legislation is pending when this Constitution is enforced, or when legislation is passed within one year of the date of coming into force of this Constitution. When this clause is applied to the facts, the position is this, that only in three cases, the cases of the U.P., Bihar and Madras, the courts will not be permitted to question the legality or otherwise of the legislation. But it does not
take into consideration all the numerous States that have merged into our Union and where there are no legislatures, and consequently where it is not at all possible to introduce any legislation before the new Constitution is brought into force. It will not be out of place to say that it is probably those very States which most need such a provision as this. I therefore, suggest that it will be better to protect all such legislations, whether they be pending when the Constitution comes into force or they are introduced at a later date, all such legislations should be protected from interference by courts of law.

I do not want to waste the time by repeating my previous argument. I think when the representatives of the nation sit, they will take care to pass a legislation which will be fair and just and if the representatives of the whole nation go wrong, I doubt if any court of law will be able to correct it. To allow a court of law to go into this question is to nullify the very purpose of introducing such law.

With these words, I commend my amendment to the acceptance of the House.

Shri Guptanath Singh
(Bihar: General): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24-

(i) for the words 'No property' the words 'all property' be substituted; and

(ii) for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'with or without compensation as determined by law' be substituted."

If you trace the history of private property, you will be pained to find that it is a tale of awful woes, a story full of fraud, felony, exploitation, expropriation, inhumanity, injustice, treachery, torture, tyranny and tears. So, Sir, private property can briefly be described. In the words of a French writer, in a single sentence "all property is theft." Certainly it looks very odd, but the fact is that property is theft. It has been declared and confirmed by Lord Christ, by Maharshi Vyas and Mahatma Gandhi. Sir, if you go through the Mahabharat, Shanti Parva, Adhyaya 15, Shloka 2 you will find that the Rishi has described property beautifully, plainly and frankly. He says:

Colossal money, big capital, cannot be amassed unless and until you scratch the of others, commit heinous acts and kill others by entrapping the people just as the fishermen butcher fishes by entrapping them. When I first came across this Shloka and the verdict of the French writer, I could not believe or agree to it, but gradually and gradually when I began to see the tendencies and forces working in the society, I came to the conclusion that these thoughts were quite correct. People claim compensation for their private property. If you will permit me to use Vedic phraseology, I will ask my capitalist friends and zamindar brothers
Whose property is this? Our capitalist friends and zamindar brothers win come forward with red eyes, clenched fists and frenzied emotions and say, "Well, chap, Do not you know that the whole world dances on the tip of my finger?"

What is why, they will say, they are claiming Compensation. But I tell you that what they claim as their private property is the property which belongs to, the nation. In Vedic parlance it may be said:

All this property belong to (Isha) and (Isha) is represented by the nation and nation is represented, by the society and society is represented by cultivators and labourers who represent the teeming millions. Thus all property belongs to the society and not to a particular individual.

So, all the massive big buildings, mansions, and all the factories belong the nation and the society and not to a particular individual. People say that they have purchased some factories, built some buildings, and bought some lands. But I ask them where did they get the money from and how did they earn it and who erected the buildings and factories. They were erected by the teeming millions; they were cultivated by the farmers and labourers and not by those factory owners and land-lord zamindars. Therefore, these people do not deserve and cannot claim compensation for their property as a matter of right. On the merits, they have no claim, but if you examine the income of property owners, zamindars and capitalists, you will find that they have expropriated, they have consumed, they have enjoyed, several times more than the capital they invested. They have acquired and consumed lakhs of rupees. They have purchased jewelleries worth crores of rupees. They have created numerous sources of incomes.

According to Manu, the land belongs to the cultivators.

The land belongs to the man who cultivates it, not to the big zamindar friend. Therefore, the claim of compensation made by our zamindar friends is not right. I ask them one single question, Will compensation for Red Fort and other things be allowed to the descendants of Moghul Emperors? Sometime ago, I came across a news in some paper in U.P. that the descendants of Moghul Emperors had requested Pandit Jawaharlal Nehru that compensation should be given to them for their ancestral property. Is it not a fantastic thin-? Have Britishers given any compensation to descendants of Moghul Emperors for the Red Fort and other massive mansions and buildings? Numerous buildings were constructed by Britishers though the money belonged to us, but have we given anything, to them when they quitted? These people cannot claim compensation for their property. They should not be given any compensation at all. They cannot claim it as a right but it is due to our generosity that we are allowing something to them. We have allowed compensation in Bihar, 20 times to 3 times. In Madras also the
Government have allowed and in U.P. the Government are going to allow something; but as a matter of right Zamindars cannot claim any compensation.

There is one thing which does not seem to me to be good. There is some discrimination made as between abolition of capitalism and zamindaries, between nationalisation of factories and other means of production and the abolition of zamindaries. Lands and factories both belong to the same category and both must be nationalised or socialised in the course. Some provision must be made in the Constitution to abolish both these things when time is ripe for it.

Panditji has moved an amendment and made a speech. If you give the speech of Pandit Nehru to a person without telling him whose speech it is, as also 'the amendment moved by him, the man will say that the speech 'has been made by some revolutionary and the amendment has been moved by someone other than a revolutionary. Pandit Nehru has certainly a revolutionary mind but the article in its present form seems to be framed by brains controlled by sonic unseen forces.

On merit, people do not deserve compensation, but some provision must be made in the law that compensation should be given to those who deserve and for those properties for which compensation should be paid. The forces that are working in the- country and the word are concentrating towards the elimination of capitalism, and the House and the country must realise this and act accordingly. Therefore I appeal to the House to accept my amendment.

(Amendment No. 481 was not moved.)

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, the words 'and either fixes the amount of the compensation, or specifies the principle, on which, and the manner in which, the compensation is to be determined' be deleted."

This amendment was one of was of several other amendments given notice of by me, but which have been moved by others. By my amendment I want to make it specific that the compensation to be paid should be fair and equitable for the property acquired. So far as the fixing of the price and the manner in which compensation is to be determined are concerned, we have already laid down in Concurrent List item 35 of the 7th Schedule that both the Centre and the States will have the right. The Prime Minister in his speech today has stated that the compensation to be paid will be equitable and fair. That has also been the the considered statement of the Government in their declaration on their industrial Policy on the 6th April 1948. The same principle was repeated in the Honourable Prime Minister's statement on the 6th April 1949 in which foreign Capital was invited.

Therefore there is no reason why the compensation should not be clearly stated to- be equitable, fair or just, whatever word is acceptable to the framers of the article. so that there will be no doubt that the compensation intended to be paid will be fair and equitable if
property is acquired. It is a question of creating confidence in the minds of investors and if we want the country to be more and more industrialised and that people should be encouraged to put in their money in industrial undertakings, there should be some sort of guarantee that if and when such properties or undertakings are acquired by the State a fair and equitable compensation will be paid. That will be a definite encouragement to the people, and, industrial development, also will be given an impetus. It is a psychological factor, and might act as a damper. Economic conditions are already bad and if the clause acts as a damper it will further aggravate the economic condition. Without economic improvement it will be very difficult to carry out any of the nation-building activities or other improvements we are anxiously aspiring for. My amendment is aimed at defining compensation payable for acquisition of property and I hope the drafting committee will accept it.

(Amendment No. 485 was not moved.)

Shri B. P. Jhunjhunwala (Bihar: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, the words 'either fixes the amount of the compensation, or' be deleted, and the following provisions be added at the end of the clause:

'Provided that in applying such Principles, due regard shall be paid to the consideration whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the sum total of the country's wealth:

Provided further that this proviso shall apply also in the case of all laws which have been passed within one year before the commencement of this Constitution and to all Bills pending it the time of the commencement of this Constitution."

Before speaking on my amendment I wish to make a few remarks on the proposed article moved by our respected Prime Minister, the Honourable Pandit Jawaharlal Nehru. There are two questions involved in this article. One is acquisition of property by the State and the other is the payment of compensation for the same.

The main principle enunciated by our respected Prime Minister, is that the interest of the individual is subordinate to the interest of the community or of the state, and no patriotic Indian should deny this principle. In other words if the interest of the state or community demands, the individual should ungrudgingly give. The whole question while acquiring the property is whether it is acquired in the interest of the State or not. Secondly, when the property is acquired, whether due compensation is paid to the property owner or not.

What are the circumstances under which property should be acquired by the State? If the principle as enunciated by our Honourable Prime Minister is applied; certainly I presume that the State should acquire the property of any individual only when it is in the interest of the State but not by merely saying we want to nationalise a particular industry, and therefore we
want to acquire it.” Nationalisation of a particular industry may not be in the interest of the State at all. I shall just give an instance in respect of England which is such an advanced country where recently the transport was nationalised. And the report is (it appeared in day before yesterday's papers) that Britain's nationalised transport-road services, docks and waterways—ended its first year 1948 of State ownership with a loss of pound 4,733,000, and the report was summed up as unsatisfactory and prophesied that a further marked deterioration of the working result was "inevitable" in 1949.

As I have said, there are two principles which have to be taken into consideration in connection with this article. One is the acquirement of the property. My amendment relates particularly to this first principle. If any property or industry is to be acquired proper attention should be paid as to whether such principle is applied, and the State Legislature or the Parliament while fixing the principle for compensation as mentioned in clause (2) of the article should state whether and what if any advantage will accrue to the State be it a zamindari property or an industrial concern, and further in laying down the principle, it should be taken into consideration as I have said here "whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the, sum total of the country's wealth" or whether the owner was wasting the property along with his energy in antisocial and anti-national activities. If we find that the owners of the private owned properties or private-owned industries are making good progress in increasing the wealth of the country and have not in the past and are not indulging in anti-social activities, in that case there should not be any occasion for the State to acquire that property, and if it is to be acquired full compensation should be given. That point has been made clear in our Industrial Policy enunciated in the Legislative Assembly where it is said that at least for ten years there are certain industries which shall not be nationalised and after ten years stock will be taken of the position as to whether there is any justification for acquirement of any industry or not and then that industry will be acquired.

If this principle is accepted, as has been accepted in the Legislative Assembly and as has been so many times made clear by our respected Prime Minister, I do not see any reason why there is so much stir among the industrialists or among the public and why the capital is becoming shy and is not coming forward for investment in industry.

The second question which is, engaging the attention of the people is, if our industry will be acquired at all, whether they shall be given proper compensation or not. On this point also our Prime Minister has said that there is no question of expropriation if any property will be required by the State. People are watching as to what this Constituent Assembly does regarding this article 24. So in moving this article our Prime Minister has made it explicitly clear that no property will be expropriated and that if any property is acquired it will be acquired by giving compensation.
The only question which remains is what sort of compensation it will be, whether it will be equitable and fair compensation or any compensation which Parliament will decide, and whether the decision and the principles which will be decided by Parliament will be justiciable or not. That is the only point which is engaging the attention of the public outside. There are differences of opinion on this point and I am not competent to say one way or the other. But if it is made clear that it will be justiciable, then there is no reason for any apprehension or any encroachment upon the fundamental right, as had been said by my honourable Friend Pandit Thakur Das Bhargava that this article is a sort of encroachment upon our fundamental right.

As I have said, when giving compensation the most important point which has to be taken into consideration is whether the person to whom compensation is given was utilising the property for improvement and in increasing the wealth of the country or not. That point should be included in the principle which the law lays down. If the industrialists or the zamindars have utilised and are utilising their wealth more in anti-social or anti-national work, and have outlived their utility that in my opinion should be a point which the Parliament should take into account while fixing the principle or amount, for compensation. If these points are covered by the article there is no necessity for any stir in the market.

There is a view that compensation should also depend upon the purpose for which it is acquired, i.e., if it is acquired for philanthropic purpose for the benefit of the people or under any scheme, the compensation may be less. In this connection I have to say that if that point is contemplated in this clause I do not know if it is there a person of small means who happens to own a property which may be necessary for a benevolent purpose or under a scheme, these persons, should be fully compensated. With these few words I support the article.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, my amendment reads as follows: -

"That in amendment No. 369 of List VII (Seventh Week), at the end of the clause (2) of the proposed article 24,

the following proviso be added :-

'Provided that no compensation shall be payable to any owner or holder of any movable of immovable property, who, having owned or held such property for thirty years continuously immediately before the coming into force of this Constitution, has either not habitually resided within the State were such property is situated, or has not done anything to develop such property."

Mr. President, we have stated earlier in our Constitution that we would provide social, economic and political equality to everybody. In view of this declaration that we so emphatically made to the whole world, it is our duty to consider how we can secure it and what provisions we should make for it. It is in view of that that many Members have stated
that the question of property is the most important in the scheme of the Constitution. This should be decided after proper consideration.

We should first of all decide as to what would be the shape of, the free India. When we go on saying that we would abolish the class distinctions, we would not run our country on the basis of religion and that we would make it a secular State, we should think over the ways of securing these objectives. In the Directive Principles also we have stated that it shall be our duty to see that the operation of the 'economic system does not result in the concentration of wealth and means of production to the common detriment'. When many a man accumulates vast wealth, we would scarcely be able to shape India in our way. We cannot do so. Thus we should give very deep consideration to the question. Take a few instances. Today there are big industries.

*[] Translation of Hindustani Speech.

In an industry, one person accumulates so much wealth; after ten or twenty years, he grows so rich that he does not regard anybody else as a man. The fact is that he begins to live in a dreamland, thinking very highly of himself and looking down upon others as petty men. This system will have therefore to be abolished. I belong to a poor family, I never put on a shirt since my childhood till my matriculation. I know what hunger is. When I was a student in the Engineering College, I had nothing to eat, so I left the College, and was on the verge of committing suicide.

I therefore wish that this matter should be decided properly. One man earns Rs. 600, or 800, or 1,000 in a day, but the average income of a person in this country is merely 6 annas daily. How then can we make the people of free India happy? People say that my province, Orissa, is a very poor province, and a very small province. Why is this so? This is the matter that needs consideration. When I talk of Orissa it may well be that some people may insinuate that it is the spirit of provincialism that makes me do so. It is not provincialism that makes me to talk of my province. It is out of sheer necessity of self-existence; I desire to live. But in order to do so I must also see as to how the people around me keep healthy and how they can live happily. I wish to tell you that all the land in Orissa has passed into the hands of the absentee landlords. They do not live in Orissa but live outside,, and come there only to recover their dues. Now, if you look into the matter you would find that these people have not got their lands by spending much money. The people of Orissa lost their land through he operation of the Sunset Law. At that time the High Court was at Calcutta and not at Cuttack. Many people therefore lost their rights in land. In this way two-thirds of the land in Orissa passed into the hands of absentee landlords. How can Orissa progress in such circumstances?

I therefore wish that there should be such a provision as would ensure that the persons who have vast lands, who cannot improve them, and who have enjoyed them for 30 years should
not get any compensation. We want to shape the world in a new fashion, and want to abolish capitalism at once. Even our ideal was this:-

[Always take wealth as a source of great evil. Surely, it cannot impart even little of pleasure. The maxim "Those who are after riches are even afraid of their own progeny" has been proclaimed everywhere.]

This is from Shankaracharya. We used to prepare the people of this country for this ideal. Later on, however, new ideas began to pour into our country from the West, and the most powerful of this was the spirit of free competition; we had to adapt ourselves to their values. But the consequence of all this was that the poor man was ruined while the man with the means became almost like a conqueror, knowing not moral law. Might became right and the powerful acquired domination over the people and the country.

I therefore submit that keeping in view our goal of building up India, on new principles, it is our duty to keep before us the outlines of the new system, and we should think out how these ideas can be realised in the various provinces. I have suggested this proviso from the viewpoint of my province. I believe that you would be taking a correct decision in this matter but if you fail to do so, it will not be in the interests of my country; I have therefore suggested this proviso I wish that you consider it thoroughly.

Among the aboriginals, a system obtains that all the land is distributed equally among the people and in case somebody accumulates more land the position is readjusted after every 10 or 12 years. Our society is static. It has been standing still like the Himalayas since long, has been unmoving; it does not move. Those who joined the western new-comers began to perpetrate cruelty on their people and lowered their status. For this reason we should have a provision like this while we are constructing a new India. I want to say only this much.]

Mr. President: Mr. Mahboob Ali Baig, No. 493.

Mr. Mahboob Ali Baig (Madras: Muslim): I have also, Mr. President: You can move that also.

Mr. Mahboob Ali Baig: Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'unless due compensation is paid for', or, alternatively, 'unless the law provides for due compensation' be substituted."

I also move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, the following be substituted :-
'(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President.' "Sir, the other amendments have been covered already and therefore I do not propose to move them, but I will offer my comments on them. Sir, my amendments have a two-old purpose. The first is that they seek to declare the right of a person to property as fundamental in character, independent of the legislature or any other authority. Secondly, my amendment seeks to declare this right justiciable beyond any shadow of doubt. While the Government must have the unquestioned right to acquire property owned by individuals for public purposes, it cannot compel the owners thereof to part with them for any value less than their proper value, and the right of the person whose property is acquired to have the value determined by a court of law cannot be taken away. Our State has not yet abolished private property; at any rate this Constitution does not abolish and is not abolishing it. I refer to article 13, clause (1) sub-clause (f), that is, "subject to the other provision of this article, all citizens shall have the right to acquire, hold and dispose of property" and the sub-clause which controls this right is sub-clause (5) and there it is stated "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses. . . . . ". Even this sub-clause (5) which modifies the fundamental right says you can impose only restrictions on the exercise of any of these rights.

Therefore, Sir, it is clear that our Constitution does not propose to abolish private property, as the U.S.S.R. has done in its Constitution. The U.S.S.R. has clearly abolished private property. Our society is still based on what is technically called capitalistic system of economy, meaning thereby that property is held by individuals and not by the entire people. Our system is similar to the system prevailing in the U.K. and U.S.A. and in the Constitution for the U.S.A. it is clearly laid down that the State cannot deprive a man of his life, liberty or property without due process of law. So is the case in the U.K. To illustrate, when the present socialistic Government of England acquired mining rights from private owners, it awarded compensation which was found to be in excess of what the courts themselves determined the value of the mines to be.

Thus, Sir, their society is based on the recognition of private property and is based on the capitalistic system of economy. The persons whose property is acquired must be paid the proper price and the machinery to determine what the proper price is, is the court. So, Sir, two important and inevitable concomitants of the nature of property as private property are these two, that the rights are fundamental and the rights are justiciable beyond any shadow of doubt, but it is open to us to abolish private property altogether, which we have not done till now. It would be a different matter if private property is abolished altogether and people are
assured free medical aid, free education and they are assured of employment. The structure of
the society has not changed.
What I am seeking today now is, while we recognize private property under article 13 and
also by implication under clause (1) of this article itself, what we are trying to do tinder
clause (2) is that we are giving power to the legislature to grant any compensation it pleases
or retain principles for assessing value of the properties. Now, Sir, whether it is permissible
under any Constitution which frames fundamental rights, whether the legislature of the
country should be given the power, the jurisdiction to deal with those fundamental rights,
tinker with them and abridge them, is the question before us. My submission is this, that this
article finds a place in the chapter which deals with fundamental rights. Fundamental rights
are those with are beyond the jurisdiction of a legislature, especially of party legislature in
parliamentary democracy. As soon as they are, subject to the jurisdiction of the legislature,
they cease to be fundamental. What is the fundamental right that you are giving to the people
under article 24 as sought to be amended by the Prime Minister? There is nothing at all.
Therefore, it would be better not to have mentioned these rights at all under the chapter
dealing with fundamental rights. The only thing that I could understand from the speech of
the Prime Minister is "Your rights are recognised" yes and "when they are going to be
acquired, compensation will be given to you", "What is the amount of compensation that will
be given to you will not be determined by a court of law". In fact he would have, nothing to
do with courts and law. He would vest this power, to determine what the compensation will
be, in the legislature. He calls the legislature 'sovereign'. It would be more correct to say that
the Constitution is "sovereign". The legislature, the executive and the judiciary and all of us
are governed by the Constitution. A legislature cannot have overriding powers over the
provisions of, a Constitution. It is the Constitution that is binding until it has been amended
by the will of the people.
Therefore, Sir, the legislature is sovereign in the sense that the people are sovereign and if the
people elect members with a particular purpose of
changing the Constitution, then it is correct to say that that body which is elected by the
people for the purpose of changing the Constitution, that is sovereign. This question of a
legislature being sovereign overriding fundamental Tights is not correct at all. Either you
declare under article 24 fundamental rights or not at all. It would have been better if article 24
bad not been enacted at all and not been proposed at all; I could understand that. It will be
open to the legislature provided that is liable under law to grant compensation in any way it
pleases. Therefore, Sir, my submission is that it is a misnomer to say, it is incorrect, it is
misleading to say that we are under article 24 declaring rights in property. Mr. President: The
honourable Member has made that point formerly.
Mr. Mahboob Ali Baig: Therefore, the amendment which I have moved, No. 482, proposes that in the matter of granting compensation, the, fixation of the amount of the laying down of the principles on which compensation should be determined be entirely taken away from the jurisdiction of the legislature. If it is necessary that a certain land should be acquired for a public purpose, it would then pass an enactment saying that this property shall be acquired giving compensation. What the compensation should be must be determined by a court of law.

Now, Sir, one word with regard to clause (3). I have stated that the law that may be passed by a State legislature or the Union legislature must receive the consent of the President. In the clause as proposed, it is stated "such law having been reserved for the, consideration of the President". want that to be categorically stated that all such laws whereby property is sought to be acquired must necessarily receive the assent of the President. Sir, one word with regard to clause (4) I have to offer and it is this. The Prime Minister said in the morning that under clause (1), unless the legislature has abused its powers, the court's jurisdiction is ousted. What he meant perhaps is that if the legislature granted compensation which is a pittance or merely illusory, then, the courts can interfere. Now, Sir, my point is this. Why not you give that benefit at least to cases that come under clause (4)? Is it fair, I ask, that even that chance of a person who is deprived of his property to contend that the compensation that has been given to him is a pittance or merely illusory, or is a fraud on the statute should be taken away? Why should we deprive a person who is aggrieved in that way of his right to have the matter agitated in a court, and ask it to decide whether the compensation is merely illusory, whether it is a fraud on the statute, while it grants this right under the circumstances in clause (2)? Therefore, it is very unreasonable and as my honourable Friends Pandit Thakur Das Bhargava and Mr. Jaspat Roy Kapoor have said clearly, such a thing is unknown to law, unjust and unfair and discriminatory. Therefore, clause (4) must go.

My comment with regard to clause (6) is this. When some Acts were passed by some local legislatures, the law prevailing was the Government of India Act of 1935, section 299. Laws were enacted for the abolition of Zamindaris and that was the law applicable. Is it fair, I ask, that you should prevent those persons from going to court and asking the court to determine whether the enactments were ultra vires or intra vires. Even in this case, as I have said, whatever chance a man may have under clause (2) to show in a court that the compensation is merely illusory is taken away. I have not come, across any such constitution where rights which accrued previously and which were enacted under certain laws, were purposely taken away. As I said, Sir, in this case also, it is very unjust, unfair and discriminatory.

One word more before I sit down, that is, with regard to certain remarks made by my honourable Friend Mr. Kala Venkata Rao. I agreed with him in the legislature of the province of which he was the Revenue Member that these Zamindaris should be abolished.
Even earlier, than be thought of it, in 1938, as a member of the Zamindari Abolition Committee I have clearly advocated that these Zamindaris must be abolished because they were anachronisms and they have ceased to servo their purpose. I also held that owner of the property must be the tenant and not the Zamindar. I agreed with him so far. But, I found that from 1802, rightly or wrongly, according to me wrongly. Sir, the Permanent Settlement Regulation XXV vested- the proprietary rights in the Zamindar.

Mr. President: It is not necessary to go into that.

Mr. Mahboob Ali Baig: I am just pointing out. My Friend Mr. Kala Venkata Rao is wrong in saying that that Regulation did not vest the proprietary rights in the Zamindar. The very expression "Sanad Milkiyat Istimrari" when translated. means, Sanad of Permanent Settlement of proprietorship in the Not only by enactment, but the highest courts have held that the Zamindar is the owner, as I said, on the basis of legislation which according to me was passed wrongly. On this basis several transactions have taken place : sales, mortgages and all sorts of things. Over a period of 150 years these Zamindars and their transferees have acquired substantive legal

I differ from my honourable Friend on the question or compensation. said that compensation must be given. I am not going to refer to the several inaccuracies in the statement of law and facts made by them. Therefore, the question whether the compensation that these Zamindari abolition enactments have given is just, fair or equitable, or is merely illusory, must be left to the court to determine. As I have said, till we change the structure of society from a capitalistic system of society, to a socialistic society, where it is not the individual, that owns the property but it is the entire people or the State or the co-operative agency, till then, we cannot get away from the fact that due, proper compensation should be, given.

I am compelled to remark, Sir, that in this matter, we are not very definite and bold enough. If we think that this society must be changed, we must take courage in both the hands and act. This sort of dealing with property will land us in difficulties.

Mr. President. The honourable Member is repeating h imself.

Mr. Mahboob Ali Baig: As Mr. Naziruddin Ahmad asked, what is the impression that is going to be created on the public, especially on persons who are asked by us, who are asked by the Government to invest money in factories and industrial ventures? Would they dare to do it? Would anybody come forward with his money to invest his money in any venture? Tic would read this and say......

Mr. President: I think you have taken more than enough time. You in”) finish now.

Mr. Mahboob Ali Baig: Sir......

Honourable Members : Order, Order

Mr. President : No. 499.

Shri Ajit Prasad Jain (United Provinces : General): Sir I do not propose to move it.
Mr. President: No. 500.
Shrimati Renuka Ray (West Bengal : General): Sir, I move:
"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :-
'(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specific are fraudulent or inequitable."
I am compelled to move this amendment even at this late hour because we are faced with a very genuine and a real difficulty. By clauses (4) and (6) of the draft that we are considering, we, find that pending legislation or legislation that has already been enacted in regard to compensation for property is to be treated on a different basis to compensation for all other types of property. If it becomes necessary to have an exemption clause for certain types of zamindari property—for, coming to brass tacks, it means the zamindari Bills of U.P. and those of Madras and Bihar are to be exempted—it necessarily follows that all other property including zamindari property in other areas must be justiciable. It means that the authority of the sovereign Parliament is to be challenged by Courts of law. I know that there is difference of opinion amongst some of the lawyers. Some hold that although other forms of property are included as justiciable, the Courts of Law will not challenge the authority of Parliament in laying down principles of compensation until and unless there is intent to fraud. Other lawyers again support the view of the Supreme Court of the United States that the word 'compensation' means equivalent value. I am not a lawyer and I have neither the merit nor the right to enter into the hair-splitting arguments that are the lawyers paradise; but as a layman I would like to know that how it is that there has to be this differentiation. Is it then that the provision of the U.P. Zamindari Bill has shown an intent to defraud, or that no compensation to be paid under its provisions? Why is it that the special provisions have to be made for the Zamindari Bills of U.P. Madras and Bihar? If it were that the lawyers who hold the view that the justiciability would not be challenged unless there was intent to defraud, were correct then it would not be necessary to include clauses (4) and (6). Shorn of all legal technicalities, as we can see it, the position really comes down to this, that it is not the Sovereign Parliament that has the last word, but it is the Court of Law that will have the last word in case of other properties except those covered by clauses (4) and (6). I would like to ask what justice is there for this procedure? There are other fundamental justiciable rights, but even these rights are subject to the, proviso that it is under the authority of law, e.g., the right of freedom of speech and expression, to assemble freely without arms, to form associations or unions—all have limitations, by which they come under the authority of Parliament. What is the justification 'in 1947 for us to place property on a very different basis? Pandit Nehru said in his speech this morning that the very
conception of property is changing. The sacrosance attached to property it no longer there. Surely when we are deciding this issue today we must make it so that it is Parliament whose authority shall be supreme and that we shall not lay down a vested interest for all times.

It is quite true that Parliament sometimes does pass hasty legislations. Well we have the second chambers as Panditji pointed out this morning. Apart from that there is clause (3) of this article which gives the President, i.e., the Central Government, final power as assent has to be given by the President before any such legislation comes in. I think the safeguards here are surely enough. It is not for us to include provisions whereby there can be various interpretations given by Courts of Law. If there can be various interpretations amongst a few lawyers, even now just think of the varying interpretations that we shall have with different courts deciding differently. As I said before it will indeed become a lawyers Paradise and litigation will become even more widespread.

Mr. President: You have made out that point.

Shrimati Renuka Ray:- There is no question of expropriation of property. The question of nationalisation or socialisation really does not arise today. These are issues that have been raised to confuse the matter: The Government has laid down its economic policy. That policy does not include any nationalisation or socialisation except in the case of the abolition of Zamindari.

Shrimati Durgabai (Madras: General): May I know from the speaker through you, Sir, whether it is her intention to oust the jurisdiction of the Court even when the compensation so fixed is fraudulent?

Shrimati Renuka Ray: I say, who is to decide what is fraudulent? Is the Zamindari Bill of U.P. and the compensation fixed in it today fraudulent, and if that is not so, then why have we to make provision for an exemption clause? Therefore, I say that it must be Parliament that must have the supreme voice in the matter, and it cannot be left to Courts of Law to challenge the decisions of Parliament even on the excuse that it is fraudulent-A Court of Law may decide that even paying half the value is fraudulent. There will be nothing to debar it unless this amendment is included.

Now, as I said, there has been confusion of issues. This question of expropriation of property has been brought up. There is no question of expropriation today, and even in the Parliament of tomorrow I do not think that so long as there is a constitutional authority and so long as there is responsible government there can ever be any question of expropriation of property, without paying compensation. Even those people who want a new economic structure and who believe in the gradual transformation of the present structure into a new economic structure where economic justice prevails, even they do not want that a new class of destitute or poor should be created. We do not want and the government of the future will not want to create a new liability for the State. Thus, neither the Parliament of today nor that of the future will expropriate property without compensation, because their object will be to bring about a
reduction in the disparity of wealth and not to create new class who will become the concern of the State.

Mr. President: I hope you have finished now?

Shrimati Renuka Ray: I have just one or two more points.

Mr. President: More points or more words?

Shrimati Renuka Ray: More points, Sir. Another point that has been raised in some of the speeches made today is that because of the economic difficulties of today it is essential for us to put this clause in the draft. Mr. Himatsingka asked the question as to how production could be increased if you do not satisfy the capitalists on this point. I say, we have been making concession after concession to capitalists, and still production has not gone up so far. The question of capital for nation and of increased production is an urgent one today. Even if capitalists do not conform, we have to find ways and means towards this end. We cannot be at their mercy altogether if they do not play the game. But I fail to see what this article has got to do with this. This is not a provision that is being incorporated in an Act of the Legislature, but something we are considering in a permanent Constitution for the future.

Sir, before I conclude, I just want to point out that if we do not allow constitutional remedies, if we bind and fetter the future, then a timer will come when extra-constitutional remedies will be resorted to, and when this Constitution will be treated as a scrap of paper.

Sir, before I conclude I would appeal most particularly and most especially to Pandit Jawaharlal Nehru who, above all, believes in economic justice and social justice, to accept this amendment and substitute clause (4) by my amendment. I appeal to the Drafting Committee that if they have, any differences of opinion, then this makes it quite clear. If they believe that the provision does not mean justiciability, then what objection can they have to my amendment?

Last of all, I appeal to this House and say, let us not accept something which posterity may point to and say that, we were more interested, and concerned at all in entrenching vested interests in the Constitution, than all other rights. Let them not say that the right of property was the only fundamental right in which we showed most concern as only to it we gave a double assurance by the incorporation of article 24 in this manner let us not forget that no other economic right is incorporated in fundamental rights—all others are on directives as pious hopes for the future.

Mr. President: Shri Siddaveerappa, No. 502.

Begum Aizaz Rasul (United Province: Muslim): Sir, may I invite your attention to the fact that it is quarter past seven now and we have been sitting for more than seven hours? There are still a large number of speakers who want to take part in this important subject. Therefore, may I request you, to adjourn the discussion after taking the consent of the House till Monday and resume it again on Monday?
Shri R. K. Sidhva (C.P. & Berar: General): No, Sir. Most of us want to finish this subject today.

Shri Mahabir Tyagi (United Provinces: General): Sir, even if they cannot have full compensation, let the zamindars have their full say.

Sardar Hukam Singh (East Punjab: Sikh): Yes, let them have their dying sobs and sighs.

Shri Deshbandhu Gupta (Delhi): Sir, may I suggest that the general discussion may be postponed to Monday and the discussion on amendments finished today?

Shri H. V. Kamath: I suggest, we may meet after dinner, say, at ten o'clock tonight.

Mr. President: My intention was to finish this article today and I expressed this intention to the House more than once, and I wanted the speakers also to take this into consideration while speaking. But unfortunately, it is not possible for me to stop speakers when they are dealing with their amendments and when they are to the point. Therefore, I have not been able to stop them and more time has been taken than I had anticipated. Now it has been suggested by some Members that we should adjourn till Monday next. I should like to know the view of the House. (Cries of "Adjourn" and "Do not adjourn."

The Assembly divided (by show of hands)

Ayes: 48
Noes: 47

Shri Syamanandand Sahaya: There has been some misunderstanding, Sir. I thought those who wanted to bring up this article on Monday should raise hands now.

Mahavir. President: The House is almost evenly divided, 48 being for adjournment and 47 against.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, if I may respectfully interpret this voting, it means that there is a very large section of this House desiring adjournment. We have discussed matters of much smaller importance for a much longer time. We are now holding two sessions. But we are trying to bring the discussion of a very important article to an end speedily, merely in order that the second reading may practically come to an end on the 17th September. Is this such an important purpose, that we should, go any length to achieve it rather than allow more time for such a debate?

Mr. President: The House stands adjourned till nine o'clock on Monday morning.

The Assembly then adjourned till Nine of the Clock, on Monday the 12th September 1949.
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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

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

Shri Hira Vallabh Tripathi (United Provinces : General).

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:-

"283A. Provision for protection of existing officers of certain services. 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 appointed day to serve under the Government of either of the now Dominions 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."

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"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 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."

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 because 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 tie 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

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 different. So far as salaries are concerned, they are 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 the bureaucracy under the new Constitution as 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 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 now 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. I 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 Friend 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 guarantee 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 many matters that Mr. Ananthasayan Ayyangar said, and I hope the Drafting Committee will consider this and see 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 that 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 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 and 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.

Translation of Hindustani Speech.
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 vacuum—for there is no substitute of which he has thought of except the Congressmen or the Congress workers. I feel 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 representatives, 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 truncated 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 tone 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 talking 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 setup? 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 rupees.”, 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 inspite 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 had 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 understand 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 down. 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 new 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 new 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.

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 a formal nature. Possibly, in many cases the words "Governor-General" will have 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 307, 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 whichever 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 relating 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."
Monday, the 10th October 1949

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 Krishna. machari 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 if 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.

Shri Biswanath Dag (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 under 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 the 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 know, 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 till now in this regard. This is, a very big order that he wants to be given to him. There are 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 the 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 I 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 Commisioner 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 filed. 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 of 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. Shbibban 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 are 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 in 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 has 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. I. Muniswamy Pillay: Sir, I would ask for leave to withdraw my amendment.

The Amendment was by leave of the Assembly withdrawn.

Mr. President: 136. I 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-caluse (b) of the proposed caluse (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 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."

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 II 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.

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 far 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 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."

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 judgment, 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, how 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. 1, 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:-
1(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.
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 11? This matter is to be dealt with under Schedule 11 and the proper time would be when Schedule 11 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:-

'310. Provisions as to Judges of High Court (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." The motion was adopted.

Article 310 was added to the Constitution.

Article 311

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

"That for article 311, the following article be substituted:-

'311. Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof. (1) 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.

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 311, 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 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'."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:-

'(3a) 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 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 are 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."

I shall not move amendment No. 147.

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 mis apprehension. 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. I 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 Vindhy Pradesh; still unrepresented in this Assembly. During the last session, you, Sir, were good enough to tell us that the Rajpramukh of Vindhy 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 he 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.