

Thursday, 18th August, 1949

Volume IX

**30-7-1949
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 18th August 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock in the afternoon, Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

Mr. Vice-President (Shri T.T. Krishnamachari): I have been asked by the Honourable the President to say how sorry he is that he is unable to attend the Assembly today as he has been advised medically to take complete rest. He hopes to be back on Sunday and attend the Assembly from Monday onwards. He trusts that the Members will excuse his absence. I am sure that all of us wish him a speedy recovery. (*Cheers*).

I call upon Shri N. Gopalaswami Ayyangar to move his Bill.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT) BILL

Shri H. V. Kamath: (C.P. & Berar: General) : On a point of Order, Sir, That point of Order is three-fold. Firstly, I would invite the attention of the House to Rule 38-A of the Constituent Assembly Rules of Procedure and Standing Orders as amended up to 31st May 1949. That rule refers to "any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order Rule or other instrument made thereunder or to the Government of India Act 1935 as adapted under the said Act etc. etc." I would appeal to the House to read closely the language and the wording of this rule. It refers to 'the Government of India Act, 1935, as adapted under the Independence Act, 1947'. Now the Bill before us which you just a few minutes ago called upon the Honourable N. Gopala swamy Ayyangar to move before the House refers to sub-section (1 A) of Section 8 of the Government of India Act, 1935. I have secured from the library a copy of the, Government of India Act, 1935, as adapted under the Indian Independence Act, 1947.

Shri B. Das (Orissa: General): We have the precedence of Dr. Syama Prasad Mookherjees Bill which was introduced and passed in this House the same day.

Shri H. V. Kamath : Mr. B. Das may support or oppose me when he is called upon to speak. I have tried to find out what sub-section (1-A) of Section 8.....

Shri S. Nagappa (Madras: General) : Mr. Vice-President, Sir, on a point of Order. As the Honourable Mr. Gopalaswami Ayyangar has not moved the Bill yet the point of Order cannot be raised before the Bill is moved.

Shri H. V. Kamath : My point of Order arose because you called upon him to move it.

Mr. Vice-President : Will Members resume their seats and let the Member proceed ?

Shri H. V. Kamath : I am raising the point of Order with regard to the introduction of a Bill in the House.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Surely there is no motion before the House.

Mr. Vice-President : Let Mr. Ayyangar move the motion.

Shri H. V. Kamath : I am objecting to the introduction itself.

The Honourable Shri N. Gopalaswami Ayyangar (Madras: General) : Mr. Vice-President, my motion is a very brief one and I do not want my honourable Friend Mr. Kamath to wait longer at the rostrum than may be necessary. My motion is:

“That I beg to move for leave to introduce a Bill for further amending the Government of India Act, 1935, as adapted.”

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to oppose...

Mr. Vice-President : Mr. Kamath.

Shri H. V. Kamath : I thank you very much for having given me this opportunity of clarifying the point of Order that I have raised. The first point was that reference to sub-section (1-A) of Section 8 of the Government of India Act, 1935 is not at all clear. I have got a copy of the Act as adapted and I find there is no sub-section.....

The Honourable Shri N. Gopalaswami Ayyangar: May I ask the Member whether his contention is that there is no sub-section (1-A) ?

Shri H. V. Kamath : Yes.

The Honourable Shri N. Gopalaswami Ayyangar: May I supply him with an up to date copy of the Act ?

Shri H. V. Kamath: Mr. Ayyangar may supply me a copy, and I shall be grateful to him. I got this from the library.

Mr. Vice-President : Apparently Mr. Kamath's copy is not up to date.

Shri T. T. Krishnamachari (Madras: General) : This is a formal motion and it is customary according to Parliamentary practice not to oppose the motion.

Shri H. V. Kamath : I was not opposing. This is a point of Order. I hope there is only one Chairman in this House. I hope I shall not be interrupted or called to order by any other honourable Member.

The second part of the point of order is this, that rule 38 (a), sub-rule (ii) lays down that the period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice. But there is nothing in the Order Paper or in the foot-note thereto to show that the President has waived that rule and has allowed this motion to be made at shorter notice than fifteen days. I have got the Order Papers here and there is nothing in them or in the foot-note to say that the President has waived this rule.

Mr. Vice-President : I have allowed this motion to be made at shorter notice.

Shri H. V. Kamath : Then it is all right.

The third part of the point of Order is this. This Bill which Mr. Ayyangar has sought leave to introduce in the House comprises two entirely different matters. One relates to Section 8 (a) and the other to Section 291 (a) evacuee property—and something about provincial legislatures respectively. I think this is one Bill relating to two diametrically opposite matters, and so it should not be introduced as a single Bill in the House. Two separate Bills may be introduced and not one Bill comprising both these matters.

Shri T. T. Krishnamachari: Why, why?

Shri H. V. Kamath : Why ? It is for Mr. Krishnamachari to say how it can be when he speaks later on. Well, Sir, this is the third part of my point of order. I have raised this three-fold point of order with regard to the motion for leave to introduce the Bill.

Shri R. K. Sidhwa (C.P. & Berar : General) : I want to reply to the point of order.

Mr. Vice-President : I am asking Mr. Gopalaswami Ayyangar to do so.

The Honourable Shri N. Gopalaswami Ayyangar : The Honourable Mr. Kamath raised three objections. Two of them have been disposed of already. He was mistaken in thinking that there was no sub-section (1-A) of Section 8 of the Government of India Act, 1935, and I myself made him drop that objection like a hot potato.

With regard to the second objection, that has been met by your saying that you have given permission for this motion even though fifteen days' notice has not been given; and you have got the right to give that permission, under the rules as they stand. So these two objections have been disposed of.

The third objection is familiar to those who have got to deal with courts, particularly criminal courts-mis joinder of charges. Unfortunately we are not now before a court of law where we can say the charges against the person are not properly made, or have been joined in a wrong way. The only thing that I have got to say is.....

Shri H. V. Kamath : On a point of order Sir, Mr. Gopalaswami Ayyangar is very far from correct.

The Honourable Shri N. Gopalaswami Ayyangar : I am afraid I did not quite catch what the honourable Member said just now, but that of course does not matter. I need only point out that the Bill is a Bill for amending one Act, and that is, the Government of India Act. Even if I had to amend one hundred Sections of that one Act, I am entitled to bring in one single Bill.

Mr. Vice-President : I rule out the point of order raised by Mr. Kamath.

The motion for leave to introduce the Bill is now before the House.

Maulana Hasrat Mohani: Sir, I have to oppose this motion.

Mr. Vice-President : The Member is not allowed to make a speech.

Maulana Hasrat Mohani : I request you to give me an opportunity to oppose this motion of giving leave to introduce the Bill.

Mr. Vice-President : The Member can say, "I oppose" and sit down. The question is :

That leave be granted to introduce a Bill further to amend the government of India Act, 1935."

Maulana Hasrat Mohani : I oppose that he should not be allowed to

Mr. Vice-President : I have already put the question.

Maulana Hasrat Mohani : Am I only to vote and not allowed to speak, and say what is my purpose in opposing it?

Mr. Vice-President : You will get an opportunity later.

Maulana Hasrat Mohani : I do not want it to come to the stage of consideration. I want to oppose it now. I do not want leave to be given to him. This thing must be decided first.

Mr. Vice-President : The House will decide it. I want to put the motion to the House. The question is :

“That leave be granted to introduce a Bill further to amend the Government of India Act, 1935.”

The motion was adopted.

Mr. Vice-President : Leave is granted. I now call upon Mr. Gopalaswami Ayyangar,

The Honourable Shri N. Gopalaswami Ayyangar : I introduce the Bill.

Mr. Vice-President : The Bill is introduced.

I hereby direct that the publication of the Bill in the Gazette of India as required by Rule 38 (c) be dispensed with.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I beg to move that the Bill which has been introduced be taken into consideration.

The Bill is a simple one. It deals with two matters, broadly speaking. The first matter relates to evacuee property and the relief and rehabilitation of displaced persons. The second part relates to the taking of power to the Governor-General to issue orders, for regulating any general elections in a province that may be decided on before this Act, namely, the Government of India Act, 1935, gets repealed.

Now, with regard to the first subject, honourable Members must have been following the negotiations that have been taking place between India and Pakistan as regards the custody, management and disposal of property left by displaced persons in the Dominion in which they were residing originally and from which Dominion they have passed on to the other Dominion for permanently settling there.

Now, so far as evacuee property is concerned, the present law is that the legislation should be provincial. We have an Ordinance in force in the Centrally Administered Areas issued by the Central Government. In each province and in each of some of the States there are Ordinances or laws which have been enacted by the appropriate authority for dealing with this matter within their respective jurisdictions.

Now, this multiplicity of law-making authorities for dealing with a subject which requires uniformity of legislation is an inconvenience which this Bill seeks to rectify. We have hitherto had laws or Ordinances issued by the respective legislative authorities in order to get over the difficulty in the existing Government of India Act. We have addressed Provincial and State Governments to clothe the Central Government with authority by a resolution passed in accordance with Section 103 of the Government of India Act to enact legislation that may be necessary for dealing with this matter. Some of them have sent up resolutions from the appropriate legislature. Others have not. Some of them have issued ordinances; others have passed Acts of the Legislature. But we have not got a uniform law applying throughout the country so far as evacuee property is concerned. Evacuee property is to be found almost everywhere in the country because it is really property belonging to persons who on account of the setting tip of the two Dominions have made up their minds to leave India to go to Pakistan and settle down there.

There is also another aspect of the matter to be taken into consideration. Negotiations are carried on between the two Dominion Governments and it is desirable that the Dominion Government should be able legislatively to deal with this matter fully. As a matter of fact, Pakistan enacts all its legislation with regard to, evacuee property at the Dominion level, and as honourable Members must have noticed Ordinances and orders under Ordinances have been issued in fairly quick succession in Pakistan during the last few weeks. It is necessary that one authority like the Dominion Government here should be in a position to deal with the situation created by such legislation on the other side with promptitude and with the assurance that that legislation will be implemented throughout India. Those are really the reasons why we wish to vest this power in the Dominion Government for the purpose of enacting the appropriate legislation.

We, however, recognise that, in regard to certain details of the administration of evacuee properties, it is desirable that provinces and States should have the discretion to enact legislation or issue orders which would supplement or fill lacunae in the legislation that may be enacted by the Centre. So it has been decided that this Bill to legislate in regard to the custody, management and disposal of evacuee property should be a subject for legislation which should be included in the Concurrent List of subjects and that you will find is provided for in clause 5 (b) of this Bill—the last of the five clauses. It seeks to add to the Concurrent List the following two subjects :

“31 B. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

31 C. Relief and rehabilitation of persons displaced from their original Place of residence by reason of the setting up of the Dominions of India and Pakistan.”

There is one other matter in connection with this particular part of the Bill to which I should like to draw the attention of the House. You will find that clause 3 of the Bill seeks to add two clauses to sub-section (1 A) of Section 8 of the Government of India Act. It practically repeats what is contained in clause 5 (b). The reason why we have to put these two items in sub-section (1 A) of Section 8 is that in the legislation that we may decide to enact on this question we should be at liberty to provide for the exercise of central executive authority in relation to these subjects. If we entered these items in the Concurrent List alone, this executive authority will not be attracted to the Centre and, as you will remember, because this House itself passed the necessary amendments to Section 8 which enabled the Central Government to take power of this kind in regard to other subjects, it is necessary that we should include it in Section 8 in order to be able to provide for the exercise of central executive power even in the provinces in relation to these subjects. As honourable Members are aware we want uniformity even in the implementation of the law that we may enact. We want also the authority to exercise executive authority in regard to the implementation of schemes of relief and rehabilitation which my honourable Colleague, the Minister for Rehabilitation, wishes to see implemented in the various provinces and which are really financed from the Centre

So much, as regards evacuee property and relief and rehabilitation.

The other part of the Bill refers to the, substitution of a new section for Section 291 of the Government of India Act. As honourable Members are aware, the present Section 291 provides that, in case no other provision exists in the Government of India Act or has been made under the provisions of that Act, the Provincial Legislature is given the discretion to enact legislation in regard to a number of matters which are mentioned in existing Section 291. Now what we are attempting to do is this. I wish to make it clear at this age that the introduction of this Bill and the inclusion of this particular clause the Bill does not amount to the announcement of any decision as regards holding of general elections, in any province. We have got another four

[The Honourable Shri N. Gopalaswami Ayyangar]

or five months more before we shall bring the new Constitution into force. But during this interval situations might develop in a province or in more than one province for which an appropriate remedy might be the ordering of a general election even under the existing Government of India Act. In case such a contingency should arise, we wish to be in a position to hold those elections with the appropriate modifications as regards composition of the legislature, franchise, delimitation of constituencies, methods of voting and so on. We wish to take the power to enact these things by orders issued by the Governor General, and that is why we are putting in this clause 4. If you compare this clause with Section 291 of the existing Act you will find that there are two differences, those being contained in item (a) relating to composition of the Chamber or Chambers of the Legislature, which I believe does not exist in Section 291, and in item (j) which relates to matters ancillary to any such matter as aforesaid. All the rest of the items is a repetition of what is contained in the existing Section 291.

I have already stated, and I have said in the Statement of Objects and Reasons, that no final decision has been taken in regard to the holding of general elections in any province up to now; but it is quite possible that such a decision might be taken or might in fact be forced on those who are responsible for looking after these things between now and for instance the 26th January 1950. If such a contingency should arise we wish to be in a position to make the necessary amendments in the existing rules and regulations, even it may be in the existing provisions of the Government of India Act itself, so that we might bring those elections into conformity with the state of things as it exists today.

If, for instance, we decide to hold general elections in West Bengal or East Punjab, it would be impossible for us to ignore the claims of people who have migrated from West Pakistan into East Punjab or from East Bengal into West Bengal for being included in the electoral rolls and for being considered for election to the legislature that might have to be constituted as a result of the general elections. It may also be necessary for us to carry out modifications in the delimitation of constituencies. As honourable Members are aware, we have constituencies based upon separate, electorates in these provinces and it would not be right for us, after all the decisions we have taken on the Draft Constitution, to hold general elections even under the Government of India Act, 1935, on the basis of separate electorates. It may be necessary for us so to read just the electorates as to make them conform to the general principles we have agreed to already; and I wish to warn honourable Members that what is said in the Statement of Objects and Reasons about joint electorates with reservation of seats has only been said by way of illustration. There is no decision that joint electorates should be combined with reservation of seat it will be a matter for consideration when the Governor-General comes to issue his amendments, rules and regulations, in what way the general principle of joint electorates could be given effect to without involving an amount of chaos and confusion that might result otherwise. So I wish honourable Members to take it from me that that particular reference to reservation of seats does not represent any decision of Government and it does not mean that when the Governor-General comes to issue his amendments, rules and regulations, this reservation of seats will be provided for. The greater likelihood is that every attempt will be made to give effect to the decision which has been taken by this Constituent Assembly as regards the new Constitution.

So with that explanation I think I have given sufficient indication as to why this legislation has become necessary. Both the matters provided for in this legislation are matters which cannot afford to wait they have got to be implemented under the provisions of the present Government of India Act, 1935.

They cannot brook delay, and therefore it is that I am troubling this Constituent Assembly, this particular session of which will perhaps be the only one at which an amendment of this sort could be moved, before we find it necessary to give effect to what is contained in this legislation. It is for that reason that I am asking the House to take this Bill into consideration.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Mr. Vice-President, I may say at the very outset that I do not wish to enter into any controversy so far as the provisions in the proposed clause 3 of this Bill are concerned. My remarks and observations are going to be confined to the proposed change in Section 291 of the Government of India Act. In spite of the fact that I changed my seat for the sake of hearing Shri Gopalaswami Ayyangar carefully—(I hope I have heard him at least to the extent of 75 per cent. and I hope also that I have been able to listen to most of what he had to say)—yet I do not feel convinced that it is necessary to take the House by surprise in the way the Bill seeks to do and to place such extensive and unheard—of powers in the hands of the Governor-General.

Here the proposal is to change Section 291 of the Government of India Act and to substitute it with the one that has been embodied in this Draft Bill. I do not know whether the persons who drafted this Bill were conscious of the existence of another section in the Act of 1935, viz., Section 61. In the whole of the speech that was delivered by my honourable Friend I did not find any mention of what was going to be done to Section 61, which refers to the composition of the various chambers in the provinces. There is no suggestion in this Bill whether that section, will go : there is no suggestion in the Bill whether this section is going to be altered in any way. This section is a very important section inasmuch as it not only refers to the composition of all the chambers in the provinces but it has as many as three extensive schedules which are governed by this particular section.

The first schedule that is governed by this section is Schedule 1. Schedule 5 is exclusively governed by section 61 and Schedule 6 which is based on and result of schedule 5 to 9 are very important provisions proceeding from Section 61. I do not know if it is the intention of this Bill to do away with every thing that exists in Section 61 as well as the schedules referred to by one and to give the Governor-General a blank cheque not only so far as elections are concerned I am not at all concerned about the elections to which repeated reference was made by my friend : I do not mind if the decision with regard to West Bengal has not been taken. It would not worry me if it has. What matters to me and should matter to the House is what is the exact position so far as these schedules are concerned : whether they are considered to be wiped out : whether the Governor-General after the passing of this Bill will or will not have the authority to alter the composition of any of the existing legislatures including both the chambers wherever they exist; whether he can without any further reference to the Parliament issue an order so as to alter anything that forms part and parcel of the schedule. That is one question which I would like to ask my honourable Friend. I would also like to tell him that the structure of Section 291 has been so completely altered from the one that existed before and still exists up to this moment as part of the Government of India Act, 1915, and I would ask him whether it excepts and renders nugatory all the provisions so far as Section 61 is concerned.

In this particular Bill which is before the House the beginning sentence of Section 4 reads:

“The Governor-General may at any time by order make such amendments as he considers necessary whether by way of addition, modification, or repeal, in the provisions of this Act or of any Order made thereunder in relation to any Provincial Legislature with respect to any of the following matters”

[Dr. P. S. Deshmukh]

Then the various categories are mentioned. The beginning portion of Section 291 as it stands reads :

“In so far as provision with respect to the matters hereinafter mentioned is not made by this Act.”

That is to say the original Section 291 gives residuary power to His Majesty in Council for supplying those omissions and making such orders so as to fulfil the other purposes of the Act. As against this, the section is going to be altered in such a way as to make the existence of Section 61 absolutely meaningless and if the section goes the schedules also cannot remain. Therefore I want to ask what is the contingency, what is the crisis or emergency that has arisen on account of which the Governor-General is going to be empowered to interfere with the composition or the very existence of the chambers in the provinces and all the various matters that have been mentioned here. I would like to ask my honourable Friend this question, because he has made no mention of Section 61. He has not mentioned why it is necessary to clothe the Governor General with all these powers. My submission to the House is that the dignity of the House and the esteem in which it has been held by people is already suffering a great deal. We are passing all manner of legislation and making and passing many amendments to Acts or moving Bills with much less consideration than the public think they deserve. It will be in the fitness of things if I respectfully ask the honourable Members of this House to see that we do not give more powers to the Governor-General than are absolutely necessary unless the honourable Member will convince us that unless this Bill is passed some great calamity is likely to befall. So far as the elections are concerned even supposing we are faced with a crisis in West Bengal and elections are necessary, I do not think there will be any difficulty in holding the elections. But is it necessary for that only purpose to threaten even the composition or the very existence of the provincial legislative chambers and leave them to the sweet-will and good intentions of the Governor-General himself?

What is the crisis or emergency that is making us do this? I do not think that there is such a crisis or emergency that it is necessary that Section 61 should not be there, that the schedules should be replaced by anything that the Executive Government of the country will propose at any time. Instead of this, why not examine the whole position and frame the new schedules and then place them before the Members of this House ? I believe the honourable Members of this House are entitled to be taken into greater confidence than has been the case in this matter. Mr. Gopaldaswami Ayyangar merely said that no decision has been taken regarding the elections. That makes us ask all the more as to what then is your intention in placing all these powers in the hands of the Governor-General. If you are going to interfere with the schedules, with all the electioneering rules that are in existence today, why not say so and give some indication to the House and to the country as to the exact change you propose ? Why keep us and the country in the dark and give us a surprise and take to yourself every possible power ? The constitution and composition of the chambers of the provincial legislature are not small matters. They are matters over which years were spent. It is down on record that the Round Table Conference was not prepared to leave it to the sweet-will of the members of the Parliament. They wanted those schedules to be drafted before them. They were not prepared to leave it to His Majesty's Orders in Council. The schedules were drafted in collaboration, in the Round Table Conference in the select committees and other committees. Those schedules were not prepared by one single individual. They took months and years; and here you are by one stroke of the pen wanting to take the authority to alter them in any manner whatever. Even the composition of the chambers is not sacred to you.

I am prepared to give another instance as to why my apprehensions are, thoroughly justified. This Government, Sir, is being carried on in the most arbitrary manner possible. We, have had hasty legislation brought, in and rushed through because we have a majority in the House and we, humble Members, could not withstand the majority opinion.

There are also so many other things that are being done. I have been searching for the last three days to find if there has been any Bill or other measure brought before this Assembly by which dozens of nominated members from the Indian States can be made members of the respective Provincial Legislatures. As many as 37 per cent. of the Members of the Bombay Legislative Assembly are now to be nominated members.

Mr. Vice-President : Will the honourable Member confine his remarks to the motion on the Paper ?

Dr. P. S. Deshmukh : Yes Sir. But if I may point out respectively I am speaking strictly on the motion. I am submitting that the wide, powers are absolutely unnecessary. The nominations that have been made on behalf of the Deccan States and Baroda are not based either on the popularity or the character, qualifications or the position of those people in society. Even though no regular election was held for selecting members to represent the merged States like the Chattisgarh States in C. P. on this Constituent Assembly, an electoral college consisting of the members of the municipalities, the local boards or Janapadas was formed. In this case there was at least a show of election for the purpose of representation of those areas on this Assembly. Even this system is not being made use of for the selection of members of the Legislative Assembly from the Central Provinces and Berar. Neither such a show of elections is being made so far as Kolhapur, Baroda etc. are concerned. Under what section of the Government of India Act these arbitrary powers of unfettered nominations are, being exercised nobody knows. An item of news appeared in the papers recently to the effect that 27 members have been already nominated on behalf of Baroda. If that is the way things are done without any provision therefore, I looked in vain in the Constituent Assembly Act, I of 1949, for a provision—how can we agree to give the Governor-General or other authority power to nominate members to the fullfledged Legislatures of Provinces ? My submission therefore is that after the way in which we are acting and utilising the powers conferred or not conferred, I think we are entitled to look with apprehension at a Bill of this nature trying to take every possible power so far as election, franchise, qualification of candidates etc., are concerned. Even the Orders-in-Council, promulgated by His Majesty the King not in his individual judgment but after careful consideration and in conformity with the recommendations of the Joint Select Committee of Parliament of Great Britain, may be replaced in any way that the Governor-General likes. Please *see* the Orders issued under Section 291 of the Act of 1935, as it stood. I do not agree that by one Act we should take away the entire power conferred by the Government of India Act and leave it all in the hands of the Governor-General. I do not think the country is faced with any grave situation in this respect necessitating an Act of this kind. We have not been told about the urgency of this measure or even about its necessity. If my honourable Friend convinces me that such an emergency has arisen, that all these rules must be thrown into the melting pot and the Governor-General must be made the sole repository of all power, I would sent to this measure.

Sir, I do not propose to move my motion. But if honourable Members think that without moving my motion I should not have offered my views on this measure, which after all may not be accepted by the honourable Member in charge, I would move my motion.

Mr. Vice-President : The honourable Member may move his motion.

Dr. P. S. Deshmukh : Then I move:

“That the Bill further to amend the Government of India Act, 1935 be referred to a Select Committee consisting of :

The Hon'ble Dr. B. R. Ambedkar,
The Hon'ble Shri N. Gopalaswami Ayyangar,
Shri K. M. Munshi,
Pandit Hriday Nath Kunzru,
Pandit Thakur Das Bhargava,
Shri M. Ananthasayanam Ayyangar,
Shri B. M. Gupte,
Pandit Lakshmi Kanta Maitra,
Shri H. V. Kamath,
The Hon'ble Shri Mohan Lal Saksena,
Shri Rohini Kumar Chaudhury,
Shri Jagat Narain Lal,
Shri K. Hanumanthaiya,
Dr. Bakhshi Tek Chand,
Dr. P. K. Sen,
Shri B. Das and
the Mover.”

I would also like to suggest that the Committee may be directed to report on or before the 22nd August 1949. I would be glad if this motion is accepted. The Bill deals with many fundamental points which ought to be considered more carefully. I will be happy if this motion is agreed to.

Mr. Vice-President : Shri B. Das may move his motion. I see that the honourable Member is not in the House. The motion is not therefore moved.

The next motion stands in the name of Mr. B. Pocker.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): My amendment is there, Sir.

Mr. Vice-President : The amendment of Syed Karimuddin is a dilatory motion. It is therefore out of order.

Mr. Pocker may move his alternative amendment. His main amendment is out of order because there is no provision, in the Constituent Assembly Rules for circulating Bills for eliciting public opinion. He may therefore move his alternative amendment.

Mr. B. Pocker Sahib (Madras: Muslim): Sir, of course I have to bow to your ruling whether the motion is out of order or not. But I submit.....

Mr. Vice-President : Your motion is out of order under rule 38-D. Will you please move your alternative amendment?

Mr. B. Pocker Sahib : I am just submitting, Sir, that these rules of the Constituent Assembly are not exhaustive. Therefore on the ground that the rules do not provide for circulating Bills for eliciting public opinion, this motion of mine cannot be said to be of order. Sir, in the absence of any express provision it is the fundamental principles which governs parliamentary procedure that you have to apply and allow me to move that amendment and not rule it out of order on the ground merely that the rules do not make any express provision for it. The rules, as I said, are not exhaustive, and you know, Sir, that the Constituent Assembly has been constituted for passing the Constitution and that the provision in the rules thereof for moving of Bills and such other matters are not so exhaustive as are generally provided for by rules of procedure in Parliament. Therefore, in so far as the rules are not exhaustive, general principles should this ease. I would, appeal to you to reconsider the matter and allow me to move the first part of my amendment also.

Mr. Vice-President : I am afraid I cannot consider the matter. The rules are quite clear.

Mr. B. Pocker Sahib : If that is so, I bow to your ruling. I have only to make a few remarks so far as the Bill is concerned, before formally moving the motion for referring it to a Select Committee, I am rather surprised why Government should have taken to this course of springing on this august body a Bill which practically provides for an Interim Constitution before the Constitution is framed. In my opinion, Sir, the Bill is uncalled for and unnecessary and it is an autocratic measure which ought not to be passed by this House. I ask, what is the justification for bringing in a Bill of this nature at such short notice and without giving any opportunity for the people of the country to know what is going to be done here with reference to this matter ?

The Bill consists of two parts; the first portion is intended to make a uniform law as regards the management and disposal of evacuee property, but the more important portion of the Bill is Section 4 which practically imposes an interim Constitution of a very autocratic nature on the country behind the back of the people, without their knowing what is going to be done here and without making any provision for giving an opportunity to the public to express their views on a matter which vitally affects them. The provision is that Section 291 of the Government of India Act should be substituted by this new section and this new section has the effect of transferring all the powers which Section 291 gave to the provincial legislatures, to the Governor-General. In fact, it seeks to make the Governor-General the Czar of India in the interim Period before the Constitution is passed. There is nothing which he cannot do with this power vested in him. I submit that no occasion has arisen for giving such autocratic powers to the Governor-General and depriving the legislature of the power which was given to it by the Government of India Act. Now, what I ask is what are the reasons which have prompted the Government in bringing a measure of this autocratic nature. The objects and reasons are laconic; nor was the speech of the Honourable Mr. Gopalaswami Ayyangar, who is generally very lucid, very convincing to justify the passing of this autocratic measure. Why should all the legislative powers which vest in the provincial legislatures be vested in the Governor-General at present ? He has not stated any reason which justifies such a measure. He made a passing reference to West Bengal. We are all aware of the state of affairs in West Bengal and we do hope that the Government will with an iron hand put down such tendencies and retrieve all this havoc which is being done by the Communist Party there. If the Government manage things properly, they can control the situation and I do hope that they will control the situation in West Bengal and in any other part of India where it might arise, but no such crisis has arisen in any other part of the country. Now, the question is why should a measure like this be passed? Well, there is a saying in Malayalam which says—

“Elikku vendi Illum chuduka.”

which means, “Burn the house in order to destroy the rat”. The rat is doing mischief and therefore burn the house so that the rat also may be burnt. This is not wise and it is unbecoming of this Government to resort to a measure to like this. What I would ask is, has the Government considered the public opinion in this matter which purports to substitute an interim Constitution before the new Constitution is passed by this House, by making not merely any modification in the powers of the legislature but transferring the whole power from the legislature to the Governor-General, that is the executive. Is this justifiable ? Has the Government taken any steps to find out what the public opinion is on this matter ? Is this a matter in which the Government

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will be justified in acting in this autocratic manner ? As has already been pointed out by the previous speaker, it is not merely the powers mentioned in Section 291 that are conferred on the Governor-General but also the very constitution of the legislative chambers, as to whether it should be one or two, or how it should be constituted. Everything rests with the Governor-General. This is a step which the Government will not be justified in taking particularly without taking any steps to elicit public opinion. It is for that purpose that I gave the first part of my motion but you have ruled it out of order and I bow to your ruling. All the same I cannot but say that the Government is not in the least justified in bringing a measure like this without giving an opportunity to the public to express their opinion and that too in a sudden manner like this.

Of late I have noticed a particular attitude on the part of the Government. They forget that they are there to govern the people on democratic basis. They have thrown to the winds all democratic principles and they think that they can do as they like because for the present they have got the backing of a majority in the legislatures. This is a false idea that the Government is entertaining. The Government ought not to forget that they have to respect democratic principles and they should not behave in a manner which throws to the winds all democratic principles. They should take the public into their confidence and they should take the members of the legislature into their confidence before resorting to a measure like this. Therefore, Sir, I submit that there is no necessity, no justification for passing a measure like this, by which the powers of the provincial legislatures are bodily transferred to the Governor-General. This is absolutely uncalled for and autocratic.

As regards the second part of the motion, you know that a motion to that effect has already been made and therefore I do not wish to propose further names. I support that motion.

Shri H. V. Kamath : Mr. Vice-President, Sir, I have no hesitation whatever in saying that clauses 4 and 5(a) of the Bill before the House are a constitutional monstrosity. I repeat, Sir, bearing in mind all that is happening around us today and in spite of what is happening in the country today, that this part of the Bill is nothing short of a constitutional monstrosity. I would like to sound a note of warning, a note of caution to this Sovereign Assembly. It is with deep regret that I have to say so and the House will pardon me when I tell them and remind them that this sovereign body is being treated with scant regard by those in power. It is not at all pleasant for me to say so. I have noticed during the last few months the manner in which our Constitution, our Draft Constitution has been sought to be dealt with, sought to be revised and altered and in some places retrogressed. This Bill before the House today bears the very same impress, the impress of the man in power caring little or nothing at all for those that legislate, not merely legislate, for those that are called the founding fathers of a country. It is, Sir, a very poignant and regrettable day for me today to resist with all the power at my command, to resist with all the resources that I am capable of, the last two sections of the Bill, namely Sections 4 and 5(a) of the Bill moved by my honourable Friend, Mr. Gopalswami Ayyangar.

The House will bear with me when I remind them when I bring to their notice in what ways and in what manner this part of the Bill strikes a retrograde note, a reactionary note, even as compared with that piece of legislation the Government of India Act, 1935,—which was at that time and even later on, condemned, not merely by those leaders of ours today but by many others too in our country. My honourable Friend, Dr. Deshmukh has laid his finger

on Sections 61 and 291 of this Act. Even this reactionary Government of India Act—it was dubbed reactionary by most progressive thinkers, by most progressive leaders in our country—and even this Section 291 of this Act does not divest the Provincial Legislatures of any power with respect to those matters specified in that section.

Now Section 291 is sought to be amended by clause 4 of the Bill moved by Mr. Ayyangar. Clause 4 includes besides the matters mentioned in Section 291 the composition of the chambers of a legislature, and the crux of the matter is this. The vital point which honourable Members should note is that the men in power have no regard for the dignity of this House, they have, no regard for the sovereignty of this House. I would invite them to look closely on this aspect of the measure, before us : not merely have the Provincial Legislatures been divested of any right with regard to those matters mentioned in Section 291, not merely has this Constituent Assembly been divested of all power with regard to the above matters concerned in Section 291 of the Government of India Act, not merely that, we are going not one step backward, but perhaps one hundred steps backward and our men in power do not realise that they are going backward and that is what pains me. Mr. Ayyangar's speech was cold and lifeless.

The Honourable Shri N. Gopalaswami Ayyangar : I thought the honourable Member did not hear it.

Shri H. V. Kamath : The reason for it is that only the vibrations of a warmer body could have reached me. The cold vibrations were not powerful enough or were not long enough to reach me. I wish to state that I am labouring under a handicap because many of the precious things that he said were unheard by me, at any rate. Heard melodies are sweet, but what was unheard was perhaps sweeter than what was heard, and the speech that he made in while moving this Bill was absolutely unconvincing. There was not even a note of apology for what the Government of the day decide to do today, not even trying to excuse themselves on the score either of an emergency I or lack of time, and not even trying to excuse themselves for good or for ill—I believe more for ill than for good, they are trying, to go back and trying to enact a retrograde measure. Perhaps Mr. Ayyangar, who is in charge of the Bill is not aware in his heart, may be he is aware in his head, of the fierce movement that raged in this country against the Government of India Act; and it does not occur to him, to his heart, to at least sound a note of apology, to come before this House and say : “There is such and such a thing. We have no other go; I am sorry for this”. I however do not expect that, because he was one of those persons who was not immediately affected by the movements for freedom in this country.

Now let us pursue the Statement of Objects and Reasons. The paragraphs are unnumbered and therefore I cannot quote the number of the paragraph : it is perhaps just an omission or slip or an over-sight; I shall only refer to the paragraph which deals with this part of the Bill before us. The House will see that it speaks of a hypothetical case. From first to last, it is a hypothetical case laid before us. If you pursue the language of this paragraph which as I have already said is hypothetical you will see that these clauses are an insult to this House, are an insult to the sovereignty and dignity of this House. I do not want to mince my words; the language of even the Statement of Objects and Reasons is absolutely derogatory to the dignity and sovereignty of this Assembly. “Should it become necessary”, it may be perhaps, probably, etc. etc... Hardly, Sir, have I come across not merely in this country, but in other countries which have professed to be democratic, a Bill of this nature, a vital Bill of a fundamental character being rushed through the legislature in this

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fashion. It is a day of sadness for me, when we in this House are being trifled with in this fashion by the men in power. I hope better counsel will dawn upon the men in power and I hope wisdom will dawn even upon the wise men. I hope even now the so-called wise men will see better sense and mend their ways.

Coming to the other aspects of this Bill, I would only like to say that the men in power seek to convert or rather treat this House as a legislature whenever it suits their convenience; and whenever it is not needed for their purposes, they go in their own way. The other day, I had occasion to point out that an Ordinance which lapsed after six months, might have been easily brought before this House which was then sitting and enacted into law, and should not have been renewed. With great regret, I have to say, on many occasions the British observed better standards. I am sorry to say that we, Sir, with all our professions of democracy and this touches my heart most—profess to treat the Legislature as a sovereign Body and when it does not suit us, it is nothing at all. That is the worst part of it. That Ordinance was renewed without reference to us. The House was sitting then; it could have been converted into a legislature and we could have been asked to consider that and pass a law; it could have been done within an hour or so. But today, because there is some other purpose they have come before us with this Bill. It is a sad episode. I do not know how other Members feel about it; but I, Sir, feel very sad indeed.

Then, I think, Dr. Deshmukh has referred to the power being vested in the Governor-General, with regard to the altering of the composition of the Chamber or Chambers of any provincial legislature. Mr. Gopalaswami Ayyangar, if I heard him a right when he moved the Bill, referred to West Bengal, and to the things that are happening in West Bengal. The Statement of Objects and Reasons refers not merely to West Bengal, but to any other province. It is disgusting that such a language of a purely hypothetical or casual nature should be used in a Bill of this nature, in the Statement of Objects and Reasons. Are we not entitled to more regard from these men in power? If they do not want to give better regard and respect, I personally would like the Assembly to be wound up and the men in power take all the power into their own hands, the Governor-General or his Cabinet, whoever it is. I do not want this body to be mocked at. The men in power make a mockery of this body; this is what pains, angers us. But what avails anger? What can we do? The men in power are callous, impervious to our protest, to our indignation; there seems to be no way out. I am sorry that I have used strong language; but my heart has been deeply stirred and I cannot but use the language that I am using. The composition of the Chamber or Chambers which even Sir Samuel Hoare did not include in Section 291 and which was included in separate sections, Section 61 and the 5th schedule,—all that has been included in this jumble of powers that is sought to be vested in the Governor-General. I hope there is no ulterior motive behind it. I hope that the Governor-General or the Government is not seeking to pack or unpack the provincial legislatures to suit their own ends and their own requirements.

Then, Sir, I would have liked very much that every one of the matters that is referred to in this Section 291 might have been brought before the House for its approval. But that was not to be. Right from the franchise, the qualifications for election as a member, up to the apex, the composition of the Chamber or Chambers, powers are vested in the Governor-General. Government's intention may be very good in bringing this Bill before the House. I do not question the intention of Mr. Ayyangar. But, as the adage goes, the way to Hell is paved with good intentions : intention may be good, but if the intentions are not implemented in the proper spirit, I for one, cannot foresee what is in store

for our country. Slowly we are going down the slippery slope, whether to perdition, or perhaps disaster, or the sabotage of democracy, I cannot say. But, the way in which we are going stirs me deeply and I hope we in this House will be awake to the realities of the situation and stop the rot before it is too late. I would plead with Mr. Ayyangar and the men in power,—though of course in this House they are not Ministers and every one is a member in this House,—and the men in power . . .

An Honourable Member : Today.

Shri H. V. Kamath : Yes, today they are men in power here—to revise the Bill, to refer it to a Select Committee and to see that at least the powers vested in the Governor-General are not arbitrarily exercised, or at least as a safeguard that any changes made in the Government of India Act be, brought before this House for its approval. That at least would preserve the facade of democracy—that is I suppose the aim of our Government. The spirit, the kernel of democracy is being discarded leaving the empty shell behind, and I hope that Government will not continue in their ways and will be wise—they are today wise in their own conceit,—but I hope they will be wise before tragedy overtakes us and they will treat this House with greater dignity, regard and with due consideration for its sovereignty.

There is another point. The Governor-General has been invested with the power in regard to the delimitation of territorial constituencies for the purpose of election under this Act. The Parliament or this Assembly will have no control over whatever the Governor-General might do in this regard. I am very much concerned over these matters included in clause 4. It may be that today in a particular province you have some trouble and you have some difficulty, but what is happening today is not the only thing which a Constitution does contemplate. The Constitution lays down that the President may proclaim, before assuming extraordinary powers, an emergency. Now without a Proclamation of Emergency the Governor-General is assuming today various powers to himself which were not envisaged by the framers of the Government of India Act. There is no indication in the Bill that even the major alterations that might be made regarding these matters will be brought before this House for approval. If that were done it would have been something, because otherwise the the suspicion is natural in the minds of many if this were passed as it is, that Government might so alter the composition of the Chambers and so gerrymander the constituencies as to suit their own purpose. I for one look upon this with great anxiety, and the House will be seriously mistaken and will be failing in its duty if at least they do not register their protest at the passing of such a constitutional monstrosity. I refer only to clauses 4 and 5(a) of the Bill.

One last point and I have done. I hope that this House has got an eye on the welfare of our country. I hope we are acting or moving in this Assembly in that spirit, that we are representatives of the whole nation and considerations of party will not weigh so much with us. I do not know how other honourable Members feel about this, but at least I hope, and pray to God that we may be enabled to act in this spirit, that we stand for the nation and not for a party, and I hope the House will so move in this matter that the world outside—our own compatriots outside will say of us that none here was for a party but all were for the nation. I therefore appeal to the House, and to Mr. Ayyangar who is piloting this Bill to bestow more consideration on this measure, to have greater regard for the House and enact such legislation that we, who are framing the Constitution for a Sovereign Democratic Republic will not be falsified or will not go out with a lie in our soul and we may not be exposed to the contempt and mockery of our fellow-men.

I would only say in the end that the Preamble to the Constitution tells us definitely that the Constitution is for a Sovereign Democratic Republic, but the way I see things being done lately tells me that there is something wrong,

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somewhere, something rotting somewhere. Either we stick to the one or to the other. If We try to continue our profession of building a Sovereign Democratic India and also try to go in the way we are going today, I think that all will not be well with us, and our nation will not attain that prosperity, that dignity in the comity of nations which all of us here have at heart. I appeal finally to the House not to pass this measure in such a hasty manner and—if it is sought to be rushed—at least to register its protest against clauses 4 and 5(a) of the Bill.

Kazi Syed Karimuddin: Mr. Vice-President, the Bill is presented by Mr. Gopalaswami Ayyangar for whom I have the greatest respect, who is known for mathematical accuracy, sincerity of purpose and fairness. But in this Bill I find everything is indefinite, everything is vague and we do not know where we are going and for what purpose we are enacting the Bill. It is very surprising that this Bill has been presented by a man who is known for mathematical accuracy as I have said. In the Statement of Objects and Reasons it is stated that—

“Should it become necessary that a general election under the Government of India Act, 1935 in West Bengal or any other province has to be ordered at any time, special provision may have to be made for the extension of the franchise to those displaced persons from Pakistan who have settled or intend to settle permanently in India. It may be that these elections would have to be held on the basis of joint electorates with reservation of seats.”

On the preliminary speech made at the time of moving this motion and at the time of consideration of this motion the honourable Member did not state, at all why there is an occasion for holding election in West Bengal or where is the occasion for joint electorates with reservation of seats when this Assembly has already decided that there will be no reservation of seats except in the case of Scheduled Castes. I do not know why, if the Government thinks that this principle of reservation of seats is a pernicious principle, it wants to introduce this principle, especially when this Constituent Assembly has already decided that there shall not be any reservations for any community, except the Scheduled Castes. Further it is stated that no decision has been taken about an election in West Bengal. I know that crimes of violence and....

The Honourable Shri N. Gopalaswami Ayyangar : May I draw the attention of the honourable Member to what I said in the course of my speech, so far as that particular matter is concerned? I think it is too late in the day for him to say that the Government or myself have blessed this idea of joint electorates with reservations.

Kazi Syed Karimuddin : But in the Statement of Objects and Reasons, there is the mention. I will read it again . . .

The Honourable Shri N. Gopalaswami Ayyangar : May I say that there, is no need to read it ? I read it out and explained why it was put in there.

Kazi Syed Karimuddin : It is there said—“Should it be necessary to hold elections in West Bengal. . . .”. I know crimes of Violence and dastardly attacks are rampant in West Bengal. But is that the only reason for holding the election ? Is it because of these crimes that the elections are to be held ? Mr. Gopalaswami Ayyangar has not stated before us here is the occasion for investing these powers regarding elections, and for what purpose are the elections to be held. Now it should be stated on the floor of the House as to whether the Government of West Bengal is bungling and the elections are to be held for placing a new government in place of the present government, or whether the Government of India wants to test popular opinion there, to see whether it is faithful to the Congress party and the Congress Government or to any other

party. If the first proposition is correct, that it is only because of the crimes of violence and dastardly attacks which are being made on the peaceful citizens to Bengal, then the remedy is not the holding of elections, but to put down the anarchy that is prevailing. If, on the other hand the holding of elections is to test popular opinion in West Bengal, whether it has faith in the present system of government or not, then you have to introduce election based on adult franchise, and not . . .

The Honourable Shri N. Gopalaswami Ayyangar : May I rise to a point of order, Sir ? I do not think a debate on this Bill should be converted into a debate on the West Bengal political situation. After all, what is contained here is simply to take power for it, in case it became at any time necessary to hold general elections. I have clearly explained the position and it is premature for us to discuss that situation here.

Kazi Syed Karimuddin : There is a reference made in the Statement of Objects and Reasons, and it is very necessary to see if such powers should be invested in the Governor-General or not. So, my submission is that the taking of powers to hold elections in West Bengal is premature, unless the reasons are placed before this sovereign body. If you want to test popular opinion, why make hurry and hold the election on a limited basis, when the Government of India has assured us that general elections will take place in 1950 ? Holding the elections now is only to defeat the popular cry, and there can be no other possible reason why elections are to be rushed; unless, of course, it is admitted that the present government is bungling and it has to be removed, in Bengal.

The Honourable Shri N. Gopalaswami Ayyangar : I have never said that elections are to be held.

Kazi Syed Karimuddin : You say, “In case.....”

Now, the second thing is this: Section 291 gives such absolute powers to the Governor-General that even the emergency powers that you have given to the President are nothing compared to these. Under the Government of India Act, the Governor-General is only a constitutional head. It has been stated that there is no emergency, there is no crisis and there is no urgency. Then why, instead of enacting laws under Section 93 and the enactments regarding elections why all these powers are being given to the Governor-General, it is difficult to understand. The power to amend, to repeal, and modify any provision of this Act or any order passed under this Act is to be given to the Governor-General. I say such a provision is most undemocratic. Any Act of the Parliament will always be amendable by the Governor-General and any order passed in this House can be repealed, modified or amended by the Governor-General. In other words, it will mean that the Governor-General can over-ride any order and he can make any amendment. Therefore, my submission is that before clause 4 is accepted by this House, we should know why all these powers are assigned to the Governor-General.

Regarding clause 3 of this Bill, I have nothing to say. Displaced persons who have come from Pakistan have suffered terribly, and those who have left India cannot have it both ways, of living there and also deriving the benefits from the property left in India. But one defect of investing the executive Government with powers is exhibited in the recent Ordinance in the United Provinces. In twelve districts in the U.P. property of all Muslims is inalienable. There is a ban on the alienation of the property of those who have made India their home. This is one of the defects of authorising the executive to the extreme, and this is my main objection. When you authorise the executive to amend or repeal the laws made by Parliament, then what happens is seen in the U.P. Whatever laws you pass, whatever orders you make, whatever restrictions you lay on the property of those who have left India—and I hold no brief

[Kazi Syed Karimuddin]

for them—, but for those who have made India their home, are such laws to be passed as have been passed by the executive in the U.P. ? Can it be said that with regard to the attitude of Pakistan and in view of the property left by Muslims here, will you treat the Muslims here as a guarantee for the property left over there? The powers you want to invest the Governor-General which are of a very sweeping character, are unprecedented and undemocratic. Such powers should not be given and I am entirely opposed to this Bill, and I oppose it.

Mr. Vice-President : Mr. Biswanath Das.

Dr. P. S. Deshmukh: May I move my other amendment before Mr. Biswanath Das speaks ?

Mr. Vice-President : That will come up when the individual clauses are taken up.

Shri Biswanath Das (Orissa: General) : Sir, I am amazed and upset at the speeches and the way in which the discussion is being carried on, over this Hill. Sir, we have been told that the Bill is vague. I do not know how it is so. The Bill proposes to make provisions under two heads. The first relates to evacuee property, and the second to any anticipated election in West Bengal. On these questions, the provisions are clear, distinct and are quite normal. I do not see any abnormality in any of these provisions that are set out and that are sought to be amended, in the Government of India Act, 1935, as adapted. Sir, it specially pains me to hear from my honourable Friend Dr. Deshmukh that we are functioning as a single party. True it is mainly so. But is it a sin ? Is it a sin, after all to have a House mostly of one party ? That is the natural course of things in democracy and democratic institutions. The very fact that we ourselves are running the Government and playing the role of opposition goes to prove the highest democratic traditions maintained by the Congress. Sir, even a casual look into the proceedings of the Constituent Assembly, either in framing the Constitution, or on the parliamentary side, will prove beyond doubt the highest traditions of such democracy maintained by the Congress Party. The very fact that my honourable Friends Mr. Kamath and Dr. Deshmukh always raise their voice of protest, though Congress members, without being interfered or hindered by the party goes to prove the highest traditions of democracy maintained by the Congress and its official section who today run the Government. Under these circumstances, I do not see how my honourable Friends would be justified in speaking of one-party rule. At least this aspect of the criticisms comes with the least fairness to themselves and to the party to which they have the honour to belong.

Sir, my honourable Friend Mr. Kamath, for whom I have always have affection, speaks of the monstrosity of the provisions of the Bill. I pause to hear from him wherein lies the monstrosity of the proposals.

Shri H. V. Kamath: Clause 4; nothing else.

Shri Biswanath Das : I am thankful to him, if it is his view that the teeming millions of evacuees who have been uprooted and migrated from Pakistan should have no representation or franchise; if that is so, certainly it is a monstrosity! But I think the opposite holds true in this case.

I recollect what has been done in Pakistan. This change has already been done in Pakistan both in the Centre as well as in the West Punjab. Therefore, there is nothing to call it a monstrosity of the Constitution. I hope my honourable Friends will not hereafter use similar expression, because the very fact that we have declared, that our leaders have, thought of declaring themselves to abide by the wishes of the popular verdict goes to confirm the opinion, namely, that the Congress is the greatest democratic body and the greatest democratic institution that you have in the world.

Sir, much has been said about the elections in West Bengal. I do not agree with my honourable Friends' declaration that they would dissolve the Bengal Ministry and have fresh elections. I do not see any basis, much less any justification for the same. One single bye-election is not a test of the confidence or non-confidence of the people. If the confidence of the people in the Congress Organisation is the test, I think we have amply demonstrated it. In my own province we have, soon after the election in Bengal shown to the world that even today we carry the confidence of the rural masses, the millions and crores of rural masses who constitute the people, of India. Sir, not only in the Assembly bye-election.....

Dr. P. S. Deshmukh : Nobody ever questioned it.

Shri Biswanath Das: The general election in one district and bye-election in several district boards have demonstrated beyond any semblance of doubt that the Congress still carries the confidence of the masses.

Mr. Vice-President : I do not think these remarks are relevant in view of what the honourable Member has said—that no decision has been taken on that point.

Shri Biswanath Das: I am glad if no decision has been taken regarding Bengal bye-election, but the statement issued by the Honourable the Prime Minister soon after his visit to Calcutta goes to show that they are at least thinking loudly in terms of dissolving the Assembly and ordering elections. That is why it is a relevant point. I shall, however, be brief in my remarks in regard to that matter. Furthermore, the recent district board elections in Madras have proved to the hilt that even in the province of Madras Congressmen have not at all lost the confidence of the people. Under these circumstances, I do not at all agree with our leaders and I am very glad now to be assured that that decision is not final.

Sir, much has been said about democracy. I do not know wherein anything has been done in the course of the Bill to affect the democratic notions of the people, or the democratic notions as they are realised and understood by Congressmen. If composition of differences and leaving everything to the will of the people means democracy, both these are being satisfied in full within the four corners of the Bill.

Sir, regarding evacuee property the Government have been negotiating with the Pakistan Government. Sub-clause (1) of paragraph I reads: "Property has been left behind in either Dominion by those who have migrated to the other. This is being called evacuee property. It has to be taken over, managed and disposed of according to any agreement reached between the two Dominions". They propose to have further negotiations in this regard. There cannot, therefore, be any objection in this regard from any quarter. I for myself feel that strong measures in this regard are necessary to ensure rehabilitation of evacuees who have migrated from Pakistan. To me it seems that the Bill is a necessity and that it should be passed without much discussion, and the sooner you do it the better for all.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. Vice-President, Sir, this House has been treated to a number of shocks, but this is the rudest shock that I have so far experienced. This Bill has raised all this controversy because it has mixed up two independent points—one good and the other thoroughly bad. So far as evacuee property clauses are concerned, nothing need be said. So clause 3 and the second part of clause 5 may be accepted.

Now we come to clause 4 and the consequential part of clause 5. Clause 4 seeks to give extraordinary powers to the Governor-General, in support of which unusual reasons were given by the honourable Member in Charge. I

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thought urgency alone would call for haphazard and vacant clause like this. But we are now told that there is no urgency and there is no election in contemplation. If so, clause 4 and the consequential provision in clause 5 can wait. The Honourable the Prime Minister went to West Bengal and later made a declaration that there will be an election in West Bengal, a declaration which was accepted with mixed feelings in different parts of the country. The Ministers in Bengal thought they would have a chance of rehabilitating themselves, but I hear there is an attempt in West Bengal to postpone the election by hook or by crook. I submit that the passing of 'this clause here in this undigested and incomplete form will lead to considerable speculation and suspicion about the motives of Government. Admittedly there is no urgency and hence no immediate need for this clause 4. As pointed out by Dr. Deshmukh this clause which seeks to replace Section 291 of the Government of India Act goes directly against Section 61 of that Act under which 'the constituencies in the various Provinces should be as laid down in the Sixth Schedule whereas under the new proposed Section 291 the entire structure may be broken up. I do not know why on the threshold of democracy it should be thought necessary to arm the Governor-General with these extraordinary powers when there is no urgency. The best thing would be for Government to find out what is needed in West Bengal or elsewhere as regards delimitation of constituencies, preparation of voters' lists, adult franchise, etc. These should be clearly ascertained and concrete proposals placed before the House.

As it is, the House is asked to sign a blank cheque on the understanding that the Governor-General will do the needful. If we could utilise the Governor-General like this the Legislatures and the Constituent Assembly would be useless. I submit that the name of the Governor-General should not be introduced like this to lend weight to an absurdity. The House has the greatest respect for the intellectual and moral qualities of the Governor General. 'But he will act on the decision and advice of his Ministry which may ultimately mean the advice of a Departmental Secretary. When we consider the tremendous constitutional implications of the drastic powers which are sought to be conferred on the Governor-General we should shudder at giving these powers to him. I think he will have to enact a new Government of India Act for interim elections: in fact he will have to think of a new definition of citizenship, whether refugees are citizens and should be given votes, etc. All this would take time, and in the meantime mischief-makers will be inclined to argue that this is one way of shelving the election which was announced by the Prime Minister after so much deliberation.

If there is to be election in West Bengal I think it should be held without delay. This is not a general election but an interim one. If the Ministry has lost public confidence the best thing is to let them go to the electorate and stay or quit according to the result. As this would be, an emergency election, it should be carried on with the existing voters' lists in the usual manner. if any changes are thought necessary or desirable the House should be told in what way they are necessary and should be given an indication about electoral rolls, joint or separate electorates, reservation of seats, whether there should be fresh voters' lists, etc. There is no harm in allowing this matter to wait till the House is given something concrete so as to enable it to come to a proper and correct decision in the matter.

The powers asked for are of a very revolutionary character. I do not wish any more to take up the time of the House over this but I should think that this procedure of asking for powers without any necessity would create a very bad impression and would supply some amount of justification for adverse criticism of the government. The best way to establish democracy is to allow people to make mistakes and to learn from experience.

In those circumstances, as is now admitted there is no urgency about clause 4. This clause—the most debated one—should be withdrawn. It has received Opposition from different sections of the House and I believe even those honourable Members who are not taking part in the debate are mentally not satisfied with the justice or propriety of this clause. In view of the fact, that there is no urgency, I believe no action is contemplated. Everything is in the air and this clause also should be left in the air. I submit that there is plenty of feeling outside the House that all is not well in the House and therefore in order to allay their fears, which may not be fully justified, we should be allowed to proceed in a systematic and constitutional manner and not be asked to say ditto.

The Honourable Shri Satyanarayan Sinha (Bihar: General) : Sir, the question may now be put.

Dr. P. S. Deshmukh : Sir, on a point of order, may I point out that the amendments have not yet been moved.

Mr. Vice-President : The amendments are for the clauses. The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, during the debate on this motion several honourable Members have concentrated their attention on clauses 4 and 5 of the Bill, and even in respect of clause 5 the brunt of their opposition is to item (a) of that clause. The main charge levelled against the provisions contained in these clauses is that an ostensibly democratic government has adopted the most undemocratic method for trying to get legislation through this House, which really confers autocratic powers on some individual. That is not the way in which this particular Bill should be viewed. These clauses provide for a state of things which may emerge and which may justify the dissolution of an existing provincial legislature and the ordering of a fresh election to get new members into that legislature to take the place of those that are now there. Now what will be the justification for the dissolution of that particular legislature ?

Honourable Members have so often referred to West Bengal in the course of their speeches that I would only refer to one particular circumstances which perhaps more than any other might justify the dissolution of that provincial legislature, and that is that that legislature is not functioning in an honest democratic way perhaps. This is only the kind of thing that could be said by those who are in favour of the dissolution. That democratic legislature is broken into groups which are warning with each other and the administration of the province has been endangered by the fact that it is not functioning in the proper democratic way. Let us suppose that dissolution is ordered. The motive for that dissolution can only be that in the place of a legislature, which is not functioning in a proper democratic way, we want to get together a legislature which will be less undemocratic or perhaps more democratic than the present one. The only way in which such a new democratic legislature can be constituted is to base it on the votes of the electors. This electorate has undergone several changes after the Government of India Act, 1935, as adapted, came into operation. If we are going to hold a general election it is necessary that certain changes will have to be made in particular matters connected with the holding of elections. Such matters may even relate to the composition of the legislature. Let me draw the attention of the House to the fact that after the Government of India Act, 1935, was enacted, and elections were held and legislatures came into being, we have changed the composition for instance, of the West Bengal Legislature. That was done by the power that was vested in the Governor-General of the time for adapting the Government of India

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Act, 1935. That was the first attempt at changing what was put into the constitution in a Schedule. Now after having made that change power was given to the Governor-General to make modifications or amendments even in what was put into the adapted Act.

Let me also refer to the fact that before the Act was adapted there was a provision in the original Act of 1935 which vested power in His Majesty by orders in Council to make modifications in these various schedules relating to the composition, franchise, holding of elections, etc., in the schedules to the Act what are we doing now ? We have got now a legislature which has got to function until, say, the 26th January next, and you will remember that in the Draft Constitution there is a provision that the provincial legislature in being at the time of the commencement of the new Constitution will continue to function as the provincial legislature during the transitory period between the coming into force of the Constitution and the holding of regular elections under the new Constitution. We must have a legislature if we want to act in a democratic way in the coming year, even in West Bengal, by the time we, for instance, bring the new Constitution into force. That has got to be done somewhere between the date on which the dissolution is ordered and 26th January next.

If changes have to be made in the Schedule for the purpose of holding the elections, there ought to be power in the hands of somebody to make the changes. We are vesting the power in the hands of the Governor-General. This is not a new thing. Under the Government of India Act this sort of thing is being done. It is only following what we put into the Act when it was adapted and what we have been acquiescing in all these months. What is there after all wrong in putting these powers into the hands of the Governor-General ? The Governor-General has to act on advice. All Members are aware of that fact. If that advice has to be given, it is preferable in the circumstances which exist in West Bengal or which may come to exist in other provinces that that advice is given to the Governor-General by the Centre and not by the provincial Ministers to their Governor, the legislature which has got to be dissolved. Therefore it is, I think, justifiable that these powers should be vested in the Governor-General rather than in anybody else.

I was rather struck by the strong language which my honourable Friend Mr. Kamath allowed himself to use I can understand the strength of that language. But I am afraid he was rather inclined to look at the thing from a level which had no relation to existing facts or facts as they will exist between now and the 26th January. I would be at once with him if we were going to make this the normal feature of the Constitution. It will be a very wicked thing to do so. But we have got to recognise the fact that, if elections have to be held, these changes have to be made and it is not easy to convoke the Assembly again in its constitution-making aspect for the purpose of making these amendments in time to allow of electoral rolls being prepared on the basis of these amendments and elections being held.

Shri H. V. Kamath: May I know, Sir, what is the difficulty in bringing such amendments before the Assembly for the consideration of the Governor-General ? We can sit for some time longer to consider them.

The Honourable Shri N. Gopalaswami Ayyangar : The honourable Member is perhaps not aware as to how things are done. We cannot put amendments before the House unless we consult responsible people in West Bengal as to what should be done. That is the democratic way of doing things.

Shri H.V. Kamath : You may take your own time.

The Honourable Shri N. Gopalaswami Ayyangar : It the honourable Member wishes me to put a series of amendments before him out of my own brain, that will not be democratic.

Shri H. V. Kamath : I am sorry I have been misunderstood. I did not mean that. I wanted to ask him what difficulty there is in the way of bringing up this measure for consideration of the House at a later date when the matter has been finalized.

The Honourable Shri N. Gopalaswami Ayyangar : The only difficulty as that this House is a constitution-making body. If the programme we have all in view is carried out, we will cease functioning for constitution-making, purposes practically finally within the next fortnight and we shall be meeting again only for the purpose of passing the third reading. I cannot say whether this will be in October or even in January. We cannot afford to take the risk of its not meeting for the purpose of holding an election which may, on political grounds, be absolutely necessary to hold in time for the purpose of creating a legislature which will be in existence on 26th January. That is the reason why we have come to this meeting for the purpose of getting the power to do so. That is the real answer to Mr. Naziruddin Ahmad.

There were points which Dr. Deshmukh made for which I have the greatest respect. His main point was that there is a fundamental proposition embodied in Section 61 of the Government of India Act and that under this Bill we are taking power to do something which might enable the Governor-General to over-ride the provision of that section. Now let me point this out : Section 61, when it was enacted in 1935, referred to the composition of each provincial legislature, in Schedule V. That composition had to be changed when Partition took place. The method that was then adopted was that the Governor-General adapted Schedule V. This involved very substantial changes and the altered Schedule came to be identified with the provisions of Section 61. There was a change in Section 61 as originally enacted in the then Constitution. Now what are we proposing to do ? It may be that it will become necessary for us to change that composition once again. We are giving power to the Governor-General to make such changes as may be necessary in the Constitution by an amendment of Section 61 and Schedule V if he is advised that that is the proper course to take. There is nothing in it which can justify its being characterised as a constitutional monstrosity—language which my honourable Friend Mr. Kamath too often indulges in. There is nothing unconstitutional about it. We want a change. We adopt the best method, the proper method, the method in the circumstances which would be fully justified if we vest this power in the Governor-General.

Now, the other point that he mentioned was : What is to become of the Schedules? When the Governor-General issues these orders he will take the provisions of the existing Section 61 and of the Schedules into consideration and see what changes are necessary in them. Those changes could be brought about merely by amending them. If they are to be brought about by repealing them or portions of them, we will repeal them and substitute other things. It is only a question of how the thing will be drafted in order to make the changes that may be necessary.

The other point he made was that in certain cases where the composition of this Assembly has to be changed, power has been taken to nominate persons instead of providing for elections. I suppose he also meant that this kind of thing has been done in regard to the Bombay legislature also. That may be so. The point for consideration so far as we are concerned is this: We give power to the Governor-General to amend the rules and regulations

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relating to elections, to constituencies, to the method of election, to the franchise and so on. There is nothing, which dictates to the Governor General that he should not do this or that. If you have any confidence in your own Government then you ought to see to it that they do not adopt methods which are not acceptable to you. If they do adopt such methods you must adopt such measures as will make them do what you really want them to do in such circumstances.

That is no argument against vesting these powers in the Governor-General. There is no direction that he should nominate persons to the legislature. There is no direction either way. As a matter of fact, nomination is not mentioned in this clause. It refers mostly to elections. The only thing it does is it puts it in the power of the Governor-General to determine the composition of the legislature.

Now, I think I have answered the main points, but there is one thing which I am afraid, honourable Members are a little touchy about and it is this: they do not want the Governor-General, advised by the Executive, to do this without reference to the legislature at all, and I think I agree with them that whatever is done under the powers that are now being taken should be placed before the legislature so that it may have an opportunity of seeing whether these powers have been properly exercised, and from this point of view I am willing to accept Dr. Deshmukh's other amendment, if it is slightly modified in this form:

"Every Order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature."

If this is acceptable to Dr. Deshmukh, I am prepared, if he moves it, to accept it. I think that in the circumstances the House will not insist on this Bill—which is a simple Bill—being sent to a Select Committee and more time of this Honourable House being unnecessarily spent on this, time which could probably be better devoted to our dealing with the main Constitution.

Dr. P. S. Deshmukh : I would beg leave to withdraw my motion.

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

Mr. Vice-President : The question is

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

The motion was adopted.

Mr. Vice-President : Now we will consider the Bill clause by clause.

The question is :

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause I was added to the Bill.

Mr. Vice-President : The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. Vice-President : The question is

"That clause 3 stand part of the Bill."

Prof. Shibban Lal Seksena (United Provinces: General): I want to on clause 3.

An. Honourable Member : The question has already been put. He cannot speak now.

Pandit Hirday Nath Kunzru (United Provinces: General): It is only fair that you should allow Mr. Shibban Lal Saksena to speak. He got up in his seat before the question was put.

Mr. Vice-President : I am sorry, I did not notice the Member. I shall be very glad to permit him to speak.

Prof. Shibban Lal Saksena : I thank you very much for having given me an opportunity to speak on this clause. Sir, this clause makes provision.....

Shri S. Nagappa: How can the honourable Member speak when you have put the question and the motion has been adopted by the House ? If he wants, he can speak at the third reading stage.

Mr. Vice-President : I gave him permission to speak.

Prof. Shibban Lal Saksena: This clause makes an amendment to the Government of India Act to provide for the solution of the Refugee problem which is a consequence of the Partition. Everyone knows that the most explosive problem, before the country, is the relief and rehabilitation of the refugees and the restoration of or compensation for the property left by them in Pakistan which is known as evacuee property there. I am glad that this amendment has come even at this late hour. In fact it ought to have come at the very beginning after the Partition was effected. Still, I am glad that the amendment has come. I wish to point out, Sir, that so far as the problem of the refugees is concerned, the problem is still unsolved and is practically where it was. Although crores of rupees have been spent and are still being spent for its solution, anybody who goes out in this city or anywhere in the country will be sorry to see that the problem of the refugees has not been tackled properly. I do not mean that any one particular person is responsible for it. The problem is a huge one. I only want to say that we have not succeeded in solving it. These two new amendments will in fact bring the problem into the Concurrent list. Last year we impressed upon the Ministry for Relief and Rehabilitation the need for empowering the Central Government to carry out their schemes according to their plans. They always complained that whatever plans they made they were not able to carry out because the provinces were unwilling to carry out their suggestions. The provinces tried to put a limit on the numbers of refugees they would take and so on and so forth, with the result that this most explosive problem is still not on the way to solution.

I therefore think, Sir, that now that we have taken powers for the Central Government in this regard and have put it in the Concurrent List, the Centre will evolve some plans by which they can tackle this problem, so that this will very soon become a problem of the past. The refugees have no shelter; nor have they employment. Eighty lakhs of people uprooted from their homes and coming to this land of hope and promise have raised a big problem. It requires effort which is commensurate with it. I only hope that this problem will now be tackled with a determination to solve it in the shortest possible time. Let us make a plan according to which this problem will be solved in six months or nine months. I think that this provision in the Bill is a very welcome provision. I do hope that no provincial government will stand in the way and that this problem will very soon become a problem of the past.

Then, Sir, I come to clause 3 of the Bill dealing with the Evacuee property. This is a most difficult problem and a problem also of great delicacy. I wish our Government had taken a stronger attitude in the matter. I do not want to repeat all that has appeared in the Press about what is called

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the weakness of our Government in this matter, but I wish to voice the sentiments of the millions of people in this country and they are not satisfied with the manner in which the problem is being tackled. According to available figures, while about two hundred crores worth of property has been left by people who have gone to Pakistan, about fourteen hundred crores worth of property has been left by our nationals on the other side in Pakistan and yet we do not know how we are going to get back that property. I am glad that this item is going to be included in the Concurrent List which I treat as an assurance that Government will make some plans by which it will be possible for us to get back the property. But that inclusion is not sufficient. I hope when the Parliament meets, we shall see some Bill which shall be in fulfilment of the promise and hope which this amendment in the Constitution raises among the minds of the people. I hope that this will only be a prelude to the solution of the problem. I have always held the view that we have been trying to appease Pakistan a little too much and we have even sacrificed the interests of our people who have come from there and we have not done what we ought to have done for them up to now. I know that our refugee friends have become destitute in these two years and they have spent the last penny which they had brought with them and if we do not go about trying to settle this question of the property left by them in Pakistan seriously, it will become a problem which will become almost insoluble. I hope these amendments in the Constitution which are already very late in coming, will fulfil the hopes raised in the public mind. I only hope that the honourable Minister who is in-charge of this Bill with the help of the honourable Member in-charge of this Department will see to it that this big problem is solved without further avoidable delay.

(Shri Mahavir Tyagi rose to speak.)

Prof. N. G. Ranga: (Madras: General): How long is this to be prolonged?

Shri Mahavir Tyagi (United Provinces: General) : I will not take long Mr. Ranga need not be afraid of me. I agree with the main clauses of the Bill. Sir, I only want to emphasise that while these subjects are being centralised and powers are now being taken by the Centre, it was time that the Honourable Minister had thrown some light as to what the scheme was. In fact I only want to bring on record that there is a feeling in the country, which I think is quite justified, that all those persons who have come from Pakistan, they have not come of their own choice or of their own free-will. They are here because as a result of freedom and partition and were subjected to all sorts of hardships. The politicians here on this side of the country had agreed for liability moral and legal of the people residing here in this part of the country, that they must make good the losses of those who had to come from Pakistan. Now it is no use taking to the Centre the work of rehabilitation or relief unless you come out with some plans of rehabilitation, and say whether you are going to give them only the loafer's bread or give them daily dole or give them a fair compensation. If the Centre fails to realize the values of the property left in Pakistan, it is a failure of the Government and not of the individual. I would suggest, even though in the present financial circumstances of the Government the suggestion may look ridiculous—but often times truth looks ridiculous, but all the same it remains a truth—I feel that even if 50 per cent. of the losses were made good by the Government, if they take the liability upon themselves to make good the

losses of the refugees or displaced persons who have come here, the Government would have done their duty. In cases of war, Governments have undergone heavier debts. Why should this Government not bear this debt both moral, human and legal? This debt is the price of freedom; and should the refugees or the displaced persons be made to pay the price of India's freedom, or should India pay the price? The refugees have dearly paid the price of India's freedom in the shape of their property. In the beginning the leaders raised slogans in this very House and appealed to the displaced hordes: "Do not kill. Do not create a riot. Do not create disturbances; let the matter be decided on the higher level, the ministerial level, on Governmental level; we, promise to take up the issue for you". But, now when peace has been established all promises seem to be going into a drift. No result has come so far. I do not accuse the Central Government for that. May be that the Pakistan Government did not keep its word or there are other reasons which we do not know. Pakistan obviously does not intend to fulfil any promise and even if they make further promises, they will not fulfil them. It is their plan and policy; then, why should we subject ourselves to their policy? I therefore wish to bring on record the demand of the people that the properties of those refugees or displaced persons who have come to India must be estimated and the Government must give their word or the Constituent Assembly must give its verdict that the Nation will shoulder the liability to make good the losses. If not to the fullest extent at least to the extent of 50 per cent. of their losses immediate payment should be made either in cash or in bonds. This is the demand of the people who are displaced and I think morally it is a right demand and absolutely a justified demand. Whatever the financial condition of the Government may be, as the subjects relating to evacuee properties and rehabilitation are now being centralized, let the Centre give, an assurance that they intend to make good all the assets left in Pakistan. It is for this Government to realise the value of these assets from Pakistan, and settle the accounts with them. The Pakistan could take from us as heavy a sum as fifty-five crores of rupees even during their fight with us in Kashmere. In the same manner we must shoulder this liability which is ours and ours alone. I think this is very justified and when the Centre is taking over the subject, they must, finally decide as to whether they are prepared to take over the liability. We cannot depend on the promises made by Pakistan.

My honourable Friend Mr. Gopalaswami Ayyangar is universally respected for his sincerity and his truthfulness here in this House though I know that he is a diplomat of the biggest diplomats and he would never give full expression to what he feels or what he is really doing, but we have full trust in his negotiations. He could never let us down. What could he do? The other party is cleverer still. I do not want to attribute any motive to Mr. Ayyangar. The Government have probably done their best; but no rents are forthcoming. We, from this side, have been sending rents on the properties, even of their Premier every month or year. We did it because we want to show off to the world that we are honest and that we will keep our promises. It is all quite right. But, even then, in spite of all our profession and practice the world knows us to be dishonest, because Pakistan's propaganda has dominated, and our truth has been over shadowed by their untruth. This is the position today.

That apart, Sir, I wish to once again repeat and emphasize that the Government must come forward and fulfil their moral duty by these displaced persons, must share their losses and must make them good either in cash or in bonds to these people who have left their properties in Pakistan, and must realise from Pakistan either through force of negotiations, or through

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force of sword or bullet. If the neighbour goes dishonest, it is not for us to look blank and say; "you are dishonest". Our Flag could be pulled down by them; they might commit any kind of excesses or any breaches of faith with us, we are always behaving like international gentlemen. We do not want to be international gentlemen; we are better as ordinary men at home. My submission is having all these things in view, we must now make it clear. The whole situation will be eased if the Honourable Minister for Relief and Rehabilitation now says that the Government takes all property, over, and it will later on make it good from Pakistan when their trade balance is adjusted. If that is the position, I wholeheartedly support Mr. Ayyangar.

Mr. Vice-President : The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Vice-President : The motion is:

"That clause 4 form part of the Bill."

Amendment No. 1 of Mr. K. Hanumanthaiya is ruled out as a negative amendment. I call amendment No. 2 by Mr. S. V. Krishnamurthy Rao.

(Amendment No. 2 was not moved.)

Kazi Karimuddin : Mr. Vice-President, I move:

"That in clause 4, in the proposed Section 291, after the words 'any of the following matters' the words 'subject to confirmation by the Parliament within two months of the date of addition, modification or repeal referred to above' be inserted."

Sir, I have no desire to repeat the arguments which I had advanced at the time of the consideration of the Bill. I have only to say that the arguments advanced by the Honourable the Minister Mr. Gopalaswami Ayyangar in regard to investing the powers on the Viceroy, are not very convincing. After these powers are given to His Excellency the Governor-General, is there anything in the Bill by virtue of which he is responsible to the legislature or to the people? Clause 4 does not lay down, if he uses these powers rightly or wrongly or in case any abuse, is made, what is the remedy upon to Parliament or to anybody. By this amendment, I have to submit, the Governor-General has to report for confirmation to Parliament when Parliament meets after these powers are used. Therefore, I submit, Sir, that this amendment be accepted.

Dr. P. S. Deshmukh: Mr. Vice-President, Sir, I do not propose to move amendment No. 4; but I will move amendment No. 5. The amendment of which I had given notice stands as follows :

"That in clause 4, in the proposed Section 291, the following be added at the end:-

'All orders issued by the Governor-General under this Section shall be placed before the Constituent Assembly of India (Legislative) in due course.'"

I would beg your permission, Sir, to alter it so as to read as follows..... It is only a verbal alteration and I hope you will kindly permit it.....

"That in clause 4, the proposed Section 291 be regarded as sub-section (1) of section 291, and after sub-section (1) as so re-numbered, the following be added :—

'(2) Every order made under sub-section (1) of this section shall be as soon as may after it is made, be laid before the Dominion Legislature.'"

I am very glad that the Honourable Mr. Gopalaswami Ayyangar has at least been pleased to accept this amendment. This will at least give an opportunity to the legislature to review it and to express its views on whatever orders are passed by the Governor-General in respect of the matters that have been mentioned in Section 291 as now proposed. The criticism, as he (Shri Gopalaswami Ayyangar) has admitted, is quite relevant and correct that the powers are certainly most extensive. It may be that there is no intention probably of utilising them. But, it is quite possible for instance, for the Governor-General to say on any fine morning that all the provincial legislatures shall hereafter be composed of only nominated members. There is nothing to stop him from issuing an order like this which will have the effect of abolishing all the chambers of legislature in the provinces, and of removing all the elected members from their seats and from their positions and substituting in their places any people that the Governor-General, or anybody to whom he may delegate these powers, may choose. The Deputy Commissioner of a District may be asked to nominate the representatives who will sit as members, of the legislature. Anything could be done. The power is so wide; it is tantamount to saying that all the powers under the Government of India Act are handed over to the Governor-General so that there will be no necessity for any debate to take place, or for any legislature to exist. If some Members of this House are angry about it, I think that anger is not absolutely unjustifiable. I do not want to take the time of the House on this any longer as the whole position is clear to every Member of the House. I move this amendment and since I have already been given an assurance by the Honourable Mr. Ayyangar, that he approves of it, I hope the House will also accept it.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, I am glad that the Honourable Mr. Ayyangar has agreed to accept the amendment of Dr. Deshmukh. But, I do not think that it satisfies all the objections that have been raised in this House.

First of all, I am not quite clear as to what is the meaning of laying before the Parliament. Will the Parliament be able to discuss those orders, amend them or to revise them in any manner ? That is the main problem. Secondly, what will happen if they disapprove of them ?

Then, Sir, in his reply to the objection raised, by my honourable Friend, Mr. Kamath, and others why he could not bring forward a Bill at a later stage, after having a conference with the Ministers of West Bengal and other province, incorporating only those amendments to the Constitution as are necessary, he said that this Assembly will finish the second reading of the Constitution in September, and it may not meet till January for the third reading. Even if that be so, I am sure the Assembly will meet as Parliament sometime in November and there is no reason why it cannot be converted for a day in the beginning, or in the middle of the session, into the Constituent Assembly to amend the Government of India Act. My only objection is this. I know the Government can get through this House any Bill that they bring forward; but, that would at least remove the criticism against them that it has not been discussed by the House.

By giving the Governor-General these powers which are almost dictatorial, he can alter the composition of the chambers, he can delimit the constituencies, he can disqualify persons and alter election rules in some manner. Such powers should not be given to any individual as a matter of principle even though it may be expedient at the present moment. This will be a bad precedent. Besides, we as Members of the Constituent Assembly are thereby depriving ourselves of the fundamental powers which the nation has reposed in

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us. I know there might not be any great difference between the Governor General's actions and ours, but it creates a bad precedent. I have never heard such a Bill being presented before any House, and I therefore think that this is something which must be resisted. Still if the honourable Minister tells us that Dr. Deshmukh's amendment, means that this House will be empowered to discuss, to vary and amend the, orders passed by the Governor-General as they are laid before the House, then I think that will be something at least to take the sting out of it; but if even that is not done, then I think I must oppose this clause and I would wish that this does not form part of the Constitution.

Prof. K. T. Shah (Bihar: General) : Mr. Vice-President, Sir, I feel it necessary to raise my voice in strong protest against this clause. The honourable the Mover has taken exception to the description of this clause as a "constitutional monstrosity." I bow to his great mastery of the mysteries of English etymology, and therefore accept what he has said may be justified in his own knowledge. Speaking for myself Sir, I would like to characterise this clause as a constitutional absurdity an intellectual dishonesty, and a moral inequity. For every word of this clause, and every item and sub-items enumerated below amount only to this : that the constitutional rights and authority of the Legislature are to be destroyed, and in their place the authority of the Governor General who, as I said, is only a facade is to be put up. The Governor-General is only for, the sake of the name. There would be somebody else,—perhaps his Advises,—presumably the Prime Minister, or the colleagues of the Prime Minister, or perhaps some secretary of any of these exalted gentlemen, who will draft the actual Order, even if the policy underlying it be that of the Government. The Governor-General according to this section will take the place of the entire Legislative body in reference to the items mentioned in this article. He may at any time pass any such order. I do not know what is meant by the term 'at any time'. If by 'at any time' is meant the intervening period between now and the date when this Constitution comes into operation—and I would be charitable and assume that there is no intention of denying the operation of the Constitution, or precluding its coming into operation—why is it not stated explicitly? I want to know what is meant by the term 'at any time'. If you wish to restrict it to the interval or the transition period under which we are at present and the date when this Constitution will formally come into operation, why do you not state so in this article a clear limitation of the time during which only such an order can take place ?

Because you have omitted to give any clear limitation, I feel it necessary to give the characterisation I have given of this article. There seems to be a certain mental reservation about the operation of this article, which cannot but be regarded as lacking in intellectual honesty.

The Honourable Shri N. Gopalaswami Ayyangar : May I say one word? I think as the honourable Member has thrown doubts on the intellectual honesty of the persons responsible for this measure, it is necessary that I should say a word of personal explanation. That is the only way in which I can intervene so that this thing might be scotched immediately. What is the mental reservation that anybody could have about the use of the words 'at any time.' Mr. K. T. Shah knows as well as I do that the Government of India Act, 1935, will be repealed by the new Constitution, and if that new Constitution is going to come into force on the 26th January next or it may be earlier or a few days later, the fact will remain that this 1935 Act could not continue in force after the new Constitution comes into force unless the House by a vote, keeps it in force—that is a different matter. But the Government cannot keep it in

force. So for the words “at any time” in this particular Bill, the outside limit for it is the 26th January next or some date on which the new Constitution comes into force. What mental reservation could there be and how dare he attack the intellectual honesty of the authors ?

Shri Jaspal Roy Kapoor (United Provinces : General) : Professor Shah never sees the, obvious!

Prof. K. T. Shah : Yes, Mr. Shah is physically short-sighted, but he is able to see meanings which are not visible to others.

I accept the explanation the honourable Mover has given with regard to the date. But I still maintain that in that case it would have been much more clear if it had been stated ‘pending the coming into operation of this Constitution’; and to that extent then we would be quite aware that this is only for the transitional period, and would be judged by its transitional character. That not being stated I feel it necessary to point out an omission that there is something improper. The Constitution itself has said in more than one place ‘either on the date this Constitution comes into force’, or some such phrase which makes the time-factor perfectly clear. We would then be fully aware of the time as to when that particular provision will come into operation.

I now go on further to give illustration of my argument, of my general thesis in connection with this article, and show how the article is likely to operate—perhaps unintentionally and inadvertently—in a manner that may not have been intended by the authors and sponsors of this proposition.

The first item on which the Governor-General may make any order in relation to any legislature of any province seems to me to suggest, for instance, that all that we are trying to do by this Constitution to evolve a common pattern of the Constitution may be broken. Let it be even for the transitional period; but even so the uniformity, the unity even of the constitutional Organisation of this country may be impeded and interrupted. If it is for the transitional period the evil will be during that period but it will be still evil all the same.

Then it goes on to say that the order may relate to the “composition of the chamber or chambers of the legislatures.” I do not understand what is meant by the composition of the Chambers. Do you mean by composition, the various representative capacity of the members of the Chambers ?

An Honourable Member : Their strength.

Prof. K. T. Shah : Well, if it is the strength, then I am afraid it would go much farther than may be intended by the authors of this clause. If “everything” is to be included in composition, even strength of the legislature, it may even amount to the denying of the representative fullness of the population of that province, or of those provinces to which the order may relate. And if that be the intention, then I urge in all humility that it cannot be constitutionally proper.

Then supposing that it relates only to the, various ways in which the present provincial legislatures have been constituted, the various interests that are represented therein, the various sections of the population which are almost cross-represented there, if these are to be meant, and if any order is to relate to the altering of that composition, then, I am afraid some fundamental alteration will be made by order of the Government, and not by the legislature. This in itself is objectionable to me. This fundamental change may be, for instance, that the composition may become class composition and not popular composition. The basic principle as I have understood it, of the present Constitution that we are drafting in this body is that there should be as far as

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possible, one vote for one man and that there should be uniform popular representation, at least in the lower chamber. If that is the principle, and if this order can go to the extent of altering that position, so that the entire body can be made only representative of certain interests and certain elements and not all the population, then I think it would be taking away the very basic idea of the new Constitution we are drafting, and even if that is confined only to the transitional period—though that is not clear in this legislation—even then it would be, at the time the Constitution is being completed, almost on the eve of the Constitution coming into operation, it may deny the very basic idea of the Constitution, and to that extent, it seems to me that it is an absurd proposition to put forward at this meeting in this House. It seems to me constitutionally highly absurd to make any such change at this time of the day.

It may also affect the qualifications of the voters and of the candidates. What action is meant therein, I fail to understand. Is it proposed that even the existing very limited franchise should be altered by the order of the Governor-General ? Is it intended that the ten or twenty per cent. that are at present enfranchised amongst the adult population to vote would be denied the right to vote, by a simple executive order of the Governor-General, an order which is neither considered by the Legislature nor approved by it, and certainly not with the authority of the people behind it ? I consider the language of this sub-clause to be much too sweeping, I consider the implications of this sub-clause much too widespread and too far-reaching for us to pass it light-heartedly, as if it means nothing more than a change in qualification of residence or location or something of that kind. Unless this sub-clause, is clarified by an explanatory, paragraph being added to it, there seems to be the possibility of mischief which I trust the authors of this clause will seek in time to avoid.

It has been said, Sir, that the new Constitution we are drafting is likely to prove a paradise for lawyers. Here is another illustration of it. Even in the transitional period to which alone we are assured on such high authority it relates, even during this period, there are going to be provisions which will provide ample occupation and fortune to lawyers. I hope it is not the intention of the Drafting Committee to put in language which may be twisted and changed and made to mean something which they themselves did not mean at the time that they drafted the clause.

There is also suggestion that the order may relate to the qualifications of the candidates. What is meant by that, I do not know. This again is very wide and very general and as such I hesitate to accept it. I very strongly apprehend that any order of this character even during the transitional period may quite possibly go far beyond the intentions of the Draftsmen. I know that one need not reduce it to such absurdities as to suggest that by laying down qualifications of the candidates, the Governor-General by order may refuse permission or a candidate to stand. I take it is not the intention to enable orders to be passed imposing new restrictions, new conditions and qualifications which are not in accordance with the basic idea of the Constitution we are now drafting. I trust it is not also the intention of the authors to make provisions even for the transitional period which may run fundamentally counter to the basic ideals of this new Constitution; for the basic ideal of this Constitution is the ideal of equality and that the new governmental machinery and the various constitutional organs will be founded on what is called adult franchise. If that is so, then any attempt by the back-door so to speak, by the order of the Governor-General or the Governor even during the transitional period to restrict the qualifications or in any way touch the qualifications of the voters and of the candidates is not proper. If you wish to indicate any

particular qualifications, if you wish, for instance to abolish the separate communal electorates, why not say so quite openly? Why not make it perfectly clear, that what is intended is not anything that would reduce the scope of representation, not to put any limitation on the voting public, but to remove a particular evil which has caused so much misery and which has cost so dearly to this country, that it shall be eliminated even during the transitional period by order of this character. I repeat that the expression used should be such as would convey the intentions quite clearly.

Amendments have been suggested, that the order should be placed before Parliament for approval or for some kind of postmortem examination. I do not feel satisfied with such attempts at bringing in Parliament. It is the basic and inherent right of Parliament to pass legislation and Parliament should never abdicate this right in favour of the Governor-General or anybody else. I do not think a fundamental provision of this character should, at this day when we are all sitting to draft a liberal Constitution be accepted, because it denies the authority of the legislature and makes the executive sacrosanct and gives it powers which may even touch the life of the legislature. I mention this point particularly because although we are assured on very high authority that this is only for the transitional period, still it may be quite possible that the very life of the new legislature in any province might also come under restriction of this order. Provisions of this character empowering the executive will be an abdication of the authority of the legislature of the country. As I said the whole plan of uniformity, the pattern of standardisation and unity of the country may be imperilled by legislation of this kind and our apprehensions cannot be removed by the plea that it is only a temporary measure. The whole idea, to my mind, is inimical to the fundamental ideals and concept of the Constitution.

I know these are remarks which may not be very palatable; these are points I know which have been made, from one angle or another, time and again in this House and have not met with the approval of this House. Therefore, even if it is a cry in the wilderness, I think it my duty to raise my voice of protest against this Bill.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particular clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by clause 4.

In order to put the House in a proper frame of mind—if I may say so without meaning any offence—I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

In so far as provision with respect to matters hereinafter mentioned is not made by this Act His Majesty in Council (and I want to emphasise these words His Majesty in Council) may from time to time make provision with respect to those matters or any of them etc., etc.”

The first thing that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (i) are exactly the matters which are enumerated in the old Section 291. Therefore it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Section 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in

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Council. (An Honourable Member: No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgment, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read section as adapted. This is how it reads :

“In so far as Provision with respect to matters herein mentioned is not made in this Act in relation to any Provincial Legislature, Provision may be made by Act of that Legislature with respect to those matters or any of them, etc., etc.”

It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those powers under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature. What we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Member of the Assembly that there was some kind of a deep-laid game in order to upset the constitution for political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words “the composition of the Chamber or Chambers of the legislature.” I quite agree.....

Dr. P. S. Deshmukh : May I ask one question, Sir ? Does not the alteration of the words “in so far as provision with respect to matters hereinafter mentioned is not made by this Act”, the omission of these words and making of these provisions applicable to.....

The Honourable Dr. B. R. Ambedkar : That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provision with regard to the composition of the Legislature. I admit that that is a change.

Dr. P. S. Deshmukh : Which includes schedules 5 and 6.

The Honourable Dr. B. R. Ambedkar : Oh, yes; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming

and going. On the 1st April the population numbered so much, six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is therefore in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules which deal with the composition of the legislature.

I hope my honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

Dr. P. S. Deshmukh : You had two full years to rectify this position.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a *bona fide* purpose. Therefore having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947. I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal; and I think that was again somehow a slip which ought not to have place. Members of the House have picked up that particular wording of that particular clause where a pointed reference has been made to West Bengal in order to charge the Government with *malafide*, with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general; they may be used if a situation arises which calls for their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appears. Therefore from that unfortunate statement if I may say so—no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

Shri Suresh Chandra Majumdar (West Bengal: General) : Is it not possible to drop the words “West Bengal” ?

The Honourable Dr. B. R. Ambedkar : I have been telling my honourable Friends that the Statement of Objects and Reasons is not a part of the Act and therefore there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown

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into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the Government of India Act, 1935, in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

An Honourable Member : Sir, I move that the question be now put.

Shri H. V. Kamath: Sir, on a point of order, Dr. Ambedkar has raised fresh points which we wish to discuss, and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

Dr. P. S. Deshmukh : But Dr. Ambedkar is not the Minister in charge.

Mr. Vice-President : Yes, that is so; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is :

“That the question be now put.”

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I do not think I need make any elaborate reply to the debate on this particular clause. Dr. Ambedkar has very fully explained the wording of this particular clause *vis-a-vis* the terms of Section 291 of the Government of India Act, 1935, as unadapted, as well as with the terms of Section 291 of the Act as adapted. So far as that particular matter is concerned, if we look at the old Government of India Act, His Majesty in Council under Section 308 was also given the power to make amendments of the same nature as are contemplated in this new Section 291. It is unnecessary for me at this late stage to elaborate this particular point. The fact that remains is that an unduly excited view has been taken of the danger to democratic principles that this particular clause is supposed to involve. I am afraid that all the fears that have been expressed are absolutely and unduly exaggerated.

As for the mention of West Bengal I quite agree that we might have omitted the reference to West Bengal. But if West Bengal has been referred to in the Statement of Objects and Reasons it is only by way of illustration. I think in one place it is said “Should an election be ordered in West Bengal Legislature or any other province” and in another place it is said that if something is done in connection with, for example, West Bengal and so forth. But it is perfectly clear even from the Statement of Objects and Reasons, apart from the terms of the Bill itself, that the Bill does not apply to West Bengal in particular. It is a Bill which, both by the Statement of Objects and Reasons and the terms of the Bill itself, refers to provinces in general. Wherever in any province conditions develop which require the holding of general elections these power will come into play and I do not see why the conditions of West Bengal whether today or as they may develop in the near future should be taken as being specifically referred to by this particular Bill and that this Bill is intended to apply to West Bengal and no other province.

So far as the amendment of Dr. Deshmukh is concerned that every order made under this particular clause should be laid before the legislature, I have already accepted it in the altered terms in which he has moved it.

I only wish to say one word as regards another edition of this amendment which was moved by my Friend Kazi Karimuddin. He said that any order passed under this section should get the affirmative approval of the legislature within two months before it can become operative. If we accept that amendment we might as well give up this Bill, because what is intended is a provision for a period which is not likely to exceed five or five and a half months and if we are going to place an order which the Governor-General may pass two months hence and wait for another two months to get the affirmative approval of the legislature before it becomes operative, then practically there will be no time either for the preparation of electoral rolls, much less for the holding of any election before the new Constitution comes into force. Sir, I would ask my honourable Friend who moved that amendment not to press it. I think the purpose is served by my acceptance of Dr. Deshmukh's amendment.

As to how the legislature can make its own views known or effective the only thing that I can say in reply is that when an order of that kind is placed before the legislature it is open to any member of the legislature to make a motion or move a resolution as regards the content of that order and the House is at liberty to express whatever it considers its views to be. That the only thing that could be done in the circumstances of the present situation. We may take it that after an order is passed by the Governor-General, say in September or October, if it ever comes to be passed at all, then it will be placed before the legislature during the November session and if it happens to be passed later, it would come before the January session. I think that is the utmost that could be done for the purpose of satisfying that particular principle.

Shri Mahavir Tyagi : Sir, may I put one question ? How do they intend to apply the law to one province or another ? How does Bengal come in ? What fault has it committed so as to have been brought into this Bill ?

The Honourable Shri N. Gopalaswami Ayyangar : Bengal is not mentioned in the Bill at all.

Mr. Vice-President : The question is:

“That in clause 4, in the proposed Section 291, after the words ‘any of the following matters’ the words ‘subject to confirmation by the Parliament within two months of the date of addition, modification or repeal referred to above’ be inserted.”

The amendment was negatived.

Mr. Vice-President : The question is :

“That in clause 4, the Proposed Section 291 be re-numbered as sub-section (1) of Section 291, and after sub-section (1) as so renumbered, the following be added:—

‘Every order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature.’ ”

The amendment was adopted.

Mr. Vice-President : The question is:

“That clause 4, as amended, stand part of the Bill.”

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5, was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I move:

“That the Bill, as amended, be passed.”

Shri H. V. Kamath : Sir, on a point of Order, I invite your attention and that of the House to rule 38 (S) sub-rule (2) of the Constituent Assembly Rules as amended on the 31st May 1949. That sub-rule provides that if any amendment to the Bill is made any Member may object to any motion being made on the same day “that the Bill be passed.” Under this rule I object to the motion (*interruption*) unless the President of course allows the motion to be moved.

Mr. Vice-President : The amendment adopted is a very formal one. I allow the motion to be placed before the House as made by the Mover.

Shri H. V. Kamath: Sir, the speech of my honourable Friend Mr. Gopalaswami Ayyangar in reply to the debate has left me completely unrepentant and unconvinced. The amendment that has been adopted by the House mellowed, to a very infinitesimal extent, the monstrosity of this part of the measure, namely Section 4 of the Bill before the House. Dr. Ambedkar has come to the rescue of his colleague Mr. Ayyangar as, I am sure, he is in honour and duty bound to do. After all our Government is a united team. One Minister must help another in weal or woe, and in joy or sorrow. But Dr. Ambedkar's defence of the measure has raised fresh difficulties and doubts in my mind. Referring to Section 291, the unamended 291, he pleaded before us that we have merely restored the *status quo ante* of this provision. That is to say, instead of His Majesty's Government which obtained before the adaptation of the Government of India Act, we have now got the Governor-General, with of course the Cabinet or the executive. But I wonder whether Dr. Ambedkar with his eye for details and nuances overlooked a certain portion of Section 291. We have been told that it was a slip. With the reputed efficiency of the Law Department it has taken two years for them to detect this slip, and only when the West Bengal problem came to the fore and they were worried as to what is to be done in this contingency. Anyway there has been one slip another slip and still another slip; and I am confirmed in my view that we are standing on a slippery slope.

Now coming to this, Section 291 I would invite Dr. Ambedkar's vigilant attention to its wording as it stood before the adaptation and to Section 4 which we have adopted today.

Shri M. Ananthasayanam Ayyanagar (Madras: General) : Sir, on a point of order, may I know if it is open at the third reading to go into the merits of a particular section? And the honourable Member is repeating what he said at the second reading.

Shri H. V. Kamath: I am sorry Mr. Ayyangar did not listen to me when I was speaking on the second reading. Otherwise I dare say he would not have said that I am repeating my arguments.

Shri M. Ananthasayanam Ayyanagar: He ought not to repeat the arguments of others also.

Shri H. V. Kamath: I would only tell Mr. Ayyangar, ‘Physician, heal thyself.’ Dr. Ambedkar mentioned that this is on a par with the adapted Section 291. But Section 291 specifically stated : ‘In so far as with respect to..... So the provision there is, ‘so far as provision is not made..... His Majesty can by order in Council do.....’ But this new clause gives unfettered power to the Governor-General. “The Governor-General may at any time by order make such amendments as he considers necessary by or under

the provisions of this Act.” There is nothing in it which says “In so far as provision is not made.....” This is a very serious omission. I do not know how one can defend that slip. The other slip was with reference to West Bengal in the Statement of Objects and Reasons. I am sure the Bill, before it came before the House, must have been scrutinized by the Law Ministry. I wonder whether Dr. Ambedkar scrutinized it or some Under Secretary did so. Anyway the responsibility is that of the Law Minister. The argument adopted by him with regard to Section 291 and with regard to the Statement of Objects and Reasons, has no meaning. It is not an argument which should weigh with the House. He has put that argument forward to give succour to his colleague. Government does not seem to be working as a team. Somebody drafts a Bill and when it comes before the House, but not earlier, Dr. Ambedkar puts forward a laboured defence. This is not the way a Cabinet should function. They must work like a team. Otherwise they will have no face to show to the world. I hope in future they will put up a better show in this House so that the world may think better of them.

The last thing I would like to say is that the amendment moved by Dr. Deshmukh and accepted by the House provides that the Orders made by the Governor-General shall be laid before the Legislature as soon as may be. Mr. Ayyangar in his reply to the debate said that the difficulty is because we cannot get the Assembly to meet often or long enough to consider the orders of the Governor-General. That is a very lame argument. The other day, when a particular article relating to the summoning of the Assembly in the future set-up was being discussed, Dr. Ambedkar gave the assurance, when we, raised the objection regarding the interval of not more than six months that should elapse between the sessions—that six months was too long an interval and then the maximum laid down might become the minimum, Dr. Ambedkar gave the assurance that the Assembly in future would meet more often. If that could be done I see no reason why, soon after the second reading, we cannot convert ourselves into a legislature and by that time the Law Department could get busy with the Governor-General’s orders, etc. Unless there is some sort of cussedness or refractory attitude on the part of some people towards the House, this could easily be arranged.

Lastly, I urge that whatever comes before the Dominion legislature under this Act in due course, I hope the Assembly will have the power not merely to say Okay to a *fait accompli* but also to consider and approve and amend or reject whatever orders have made by the Governor-General. If this Parliament is going to be divested of that power, I for one will not be a party to, such a wicked transaction. I hope this will be borne in mind. The amendment is silent on that point. It says : The amendment will be placed before Parliament. For what purpose, God alone knows. I hope Parliament will have full power to consider the whole matter at every stage and accept or reject it as it likes. I feel that this Bill has been rushed through, and Section 4 adopted after only a slight modification. It mellows the monstrosity somewhat but it does not remove the odious nature of the provision. I hope that when the matter comes up before the House in a month or two, this Assembly will have full power to scrutinise all the Orders made by the Governor-General under this Act, and amend or reject them.

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

Mr. Vice-President : Does Mr. Gopalaswami Ayyangar wish to say anything ?

The Honourable Shri N. Gopalaswami Ayyangar : I do not think I have anything to say.

Mr. Vice-President : The question is:

“That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed.”

The motion was adopted.

The Bill, as settled by the Assembly, was passed.

Mr. Vice-President : The House will now adjourn till 9 o'clock tomorrow morning.

The Constituent Assembly then adjourned till Nine of the Clock on Friday, the 19th August 1949.
