

are found essential. Now we are asked to take it in a form which we dislike and it is said that they will consider it later. There is no difficulty for the Drafting Committee to re-introduce the words if it is considered essential.

Mr. President : It is really a matter for the House to decide. I will put the two views separately.

The question is:

That for Part XVIII, the following Part be substituted:

PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

‘313. This Constitution may be called the Constitution of India’.

The amendment was adopted.

Mr. President : The question is:

“This article and articles 5, 5A, 5AA, 5B, 303, 311, 311A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution.”

The amendment was adopted

Article 315

Mr. President : The question is:

“That in proposed article 315 the words ‘in so far as its provisions are repugnant to this Constitution’ be deleted.”

The amendment was adopted.

Mr. President : Of course it is understood that it is subject to re-examination.

The Honourable Shri K. Santhanam : Yes, It is appreciated.

Shri H. V. Kamath: I leave my amendment in the printed list to the wisdom of the Drafting Committee. That need not be put to vote.

Mr. President : The question is :

“That proposed article 315, as amended, stand part of the Constitution”.

The motion was adopted.

Article 315, as amended, was added to the Constitution.

Article 306A

Mr. President : We go to 306A.

It is suggested that we had better begin the Preamble. It may be moved.

Shri T. T. Krishnamachari : It is not necessary to move it. The Preamble may be taken into consideration.

Mr. President : The Preamble is moved. I shall have to take up the various amendments to the Preamble now. I have a large number of amendments—many of them printed in the printed list.

Maulana Hasrat Mohani (United Provinces: Muslim): I understand that you have already decided that the Preamble will be taken up last. How is it that there are some articles remaining undiscussed and you pass to the Preamble?”

Mr. President : Not many articles left.

Maulana Hasrat Mohani: Even one article—unless you finish the articles, you cannot take up the Preamble.

Mr. President : Very well, let us take up 306A.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, are you taking up the Preamble?

Mr. President : No, Maulana Hasrat Mohani objects to the Preamble being taken up before all the other articles are finished.

There is one more article of which notice was given and it has been standing over, amendment No. 472 by Mr. Naziruddin Ahmad. And I understand it is the same as another article of which notice was given by Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: Sir, it was held over on the 3rd June, by your order.

Mr. President : Then shall we take it up now? Which of them shall we take up. Mr. Naziruddin Ahmad's or that of Pandit Thakur Das Bhargava?

Pandit Thakur Das Bhargava: Sir, I beg to move that.....

Shri R. K. Sidhwa: Sir, there are other articles also of which notice has been given by other Members.

Mr. President : There is no other amendment by the Drafting Committee.

Shri R. K. Sidhwa: But there may be other Members who may have amendments besides these two.

Mr. President : Amendments for the addition of new articles?

Shri R. K. Sidhwa: Yes.

Mr. President : I do not think they will arise now.

Pandit Thakur Das Bhargava: Sir, I understand Shri Gopalaswami Ayyangar has just come and so I may be allowed to move, after he has done.

Mr. President : There are so many articles of which notice was given and which are dropped now. We have dealt with the whole Constitution from every point of view and we cannot begin now taking up new articles. I know Pandit Thakur Das Bhargava's amendment was held over, but it has been covered by other amendments.

Pandit Thakur Das Bhargava: It is not covered, Sir.

Mr. President : Very well. We take up article 306A now. Mr. Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar (Madras : General): Sir, before I read out the motion. I would request your permission, Sir, not to move item 379, but to move item 451 instead.

Sir, I move:

“That with reference to Amendment No. 379 of List XV (Second Week), after article 306, the following new article be inserted:

‘306A. (1) Notwithstanding anything contained in this Constitution,

- (a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the State shall be limited to
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and

- (ii) such other matters in the said List as, with the concurrence of the Government of the state, the president may by order specify;

Explanation.—For the purposes of this article, the Government of the State the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers.”

I am making, Sir, with your permission, a change here. Instead of the word “appointed” I am substituting the words, “for the time being in office”—“under the Maharaja’s Proclamation, dated the fifth day of March, 1948.”

Pandit Hirday Nath Kunzru: We could not hear the honourable Member, correctly.

The Honourable Shri N. Gopalaswami Ayyangar:

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers, for the time being in office, under the Maharaja’s Proclamation, dated the fifth day of March, 1948.”

I have there substituted the words “for the time being in office,” for the word appointed”.

“(c) the provisions of article 1 of this Constitution shall apply in relation to the state.

- (d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

- (3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the state shall be necessary before the President issues such a notification.”

Sir, this matter, the matter of this particular motion, relates to the Jammu and Kashmir State. The House is fully aware of the fact that that State has acceded to the Dominion of India. The history of this accession is also well known. The accession took place on the 26th October, 1947. Since then, the State has had a chequered history. Conditions are not yet normal in the State. The meaning of this accession is that at present that State is a unit of a federal State namely, the Dominion of India. This Dominion is getting transformed into a Republic, which will be inaugurated on the 26th January, 1950. The Jammu and Kashmir State, therefore, has to become a unit of the new Republic of India.

As the House is aware, accession to the Dominion always took place by means of an instrument which had to be signed by the Ruler of the State and which had to be accepted by the Governor-General of India. That has taken place in this case. As the House is also aware, Instruments of Accession will be

[The Honourable Shri N. Gopalaswami Ayyangar]

a thing of the past in the new Constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of Accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself; and, in the case of practically all States other than the State of Jammu and Kashmir, their constitutions also have been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution provided.

Maulana Hasrat Mohani: Why this discrimination, please?

The Honourable Shri N. Gopalaswami Ayyangar: The discrimination is due to the special conditions of Kashmir. That particular State is not yet ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other States. (*Cheers*) At present it is not possible to achieve that integration. There are various reasons why this is not possible now. I shall refer again to this a little later.

In the case of the other Indian States or Unions of States there are two or three points which have got to be remembered. They have all accepted the Constitution framed for States in Part I of the new Constitution and those provisions have been adapted so as to suit conditions of Indian States and Unions of States. Secondly, the Centre, that is the Republican Federal Centre will have power to make laws applying in every such State or Union to all Union and Concurrent Subjects. Thirdly a uniformity of relationship has been established between those States and Unions and the Centre. Kashmir's conditions are, as I have said, special and require special treatment.

I do not want to take much of the time of the House, but I shall briefly indicate what the special conditions are. In the first place, there has been a war going on within the limits of Jammu and Kashmir State.

There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still unusual and abnormal. They have not settled down. It is therefore necessary that the administration of the State should be geared to these unusual conditions until, normal life is restored as in the case of the other States.

Part of the State is still in the hands of rebels and enemies.

We are entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement. That can take place only when the Kashmir problem is satisfactorily settled.

Again, the Government of India have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people, through the instrument of a constituent assembly, will determine the constitution of the State as well as the sphere of Union jurisdiction over the State.

At present, the legislature which was known as the Praja Sabha in the State is dead. Neither that legislature nor a constituent assembly can be convoked or can function until complete peace comes to prevail in that State. We have therefore to deal with the Government of the State which, as represented in its Council of Ministers, reflects the opinion of the largest political party in the State. Till a constituent assembly comes into being, only an interim arrangement is possible and not an arrangement which could at once be brought into line with the arrangement that exists in the case of the other States.

Now, if you remember the view points that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. Article 306A is an attempt to establish such a system.

I shall now proceed to take the House through the provisions of this article. As honourable Members will remember, the constitution of Indian States is mainly governed by article 211A of this Constitution which applies the Constitution to Indian States, subject to the modifications contained in Part VI-A read with the Schedule. So far as that provision is concerned, I have already indicated to you that the provisions regarding the Constitution of other States could not at present be applied to Jammu and Kashmir. Therefore, clause (1) (a) of this article says that the provisions of article 211A of this Constitution shall not apply to the State of Jammu and Kashmir.

The Second portion of this article relates to the legislative authority of Parliament over the Jammu and Kashmir State. This is governed primarily by the Instrument of Accession. Broadly speaking, that legislative power is confined to the three subjects of defence, foreign affairs and communications, but as a matter of fact these broad categories include a number of items which are listed in the Instrument of Accession. I believe they number some twenty to twenty-five. Now, these items have undergone a change in description, in numbering, in arrangement, as amongst themselves, in List I and List III of the new Constitution. It is therefore necessary that the items mentioned in the Instrument of Accession should be brought into line with the changed designations of entries in Lists I and III of the new Constitution. So, clause (1) (b) of article 306A says that this listing of the items as per the terms of the new Constitution should be done by the President in consultation with the Government of the State.

Clause (b)(ii) refers to possible additions to the List in the Instrument of Accession, and these additions could be made according to the provisions of this article with the concurrence of the Government of the State. The idea is that even before the Constituent Assembly meets, it may be necessary in the interests of both the Centre and the State that certain items which are not included in the Instrument of Accession would be appropriately added to the List in that Instrument so that administration, legislation and executive action might be furthered, and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State. That is provided for.

Then, there is the Explanation, which defines what the Government of the State means. The Government of the State is defined both in the Constitution which is now supposed to be in force in the Jammu and Kashmir State as well as in the 'Proclamation which the Maharaja issued on the 5th March 1948. The terms

[The Honourable Shri N. Gopalaswami Ayyangar]

of the Proclamation, to the extent that they are inconsistent with the provisions of the Constitution Act of the State, will prevail over that Constitution Act, and therefore it is that in this Explanation it is the Proclamation which is referred to. Under the terms of that Proclamation the Maharaja constituted an interim popular Government, and he said,

“I hereby ordain as follows:—

- (1) My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohd. Abdullah as the Prime Minister with effect from the 1st day of March 1948.”

He proceeds—

“The Prime Minister and other Ministers would function as a Cabinet and act on the principle of joint responsibility.”

Then there was no Legislature functioning, and so he instituted a kind of responsible Government with a Prime Minister and colleagues who would own collective responsibility for their acts and regard themselves as jointly responsible for all the acts of the Government. Now, that is brought out in this Explanation.

The Honourable Shri K. Santhanam: The Explanation says that the Maharaja will be recognised by the Union instead of by the President.

The Honourable Shri N. Gopalaswami Ayyangar: Perhaps we may leave it to the Third Reading. As you know the scheme of the Constitution Act is that the Rajpramukh must be recognised by the President. So, this also says that the Maharaja of Jammu and Kashmir should be a person recognised for the time being by the Union.

As regards the Council of Ministers, this Proclamation set up a system under which this Council was to be established, *viz.*, that the Maharaja first finds the Prime Minister and then on his advice appoints his colleagues, and the Explanation as now amended by me says that whatever Council of Ministers is in being at the time will, along with the Maharaja to whom they are responsible, give their concurrence or give their advice on such matters as are referred to them under this article.

Clauses (c) and (d) refer to the provisions of the Constitution other than the matters listed in Lists I and III. These various provisions have been divided into certain categories. The first according to this draft is that article 1 of the Constitution will automatically apply. As you know, it describes the territory of India and includes amongst these territories all the States mentioned in Part III, and Jammu and Kashmir is one of the States mentioned in Part III. With regard to the other provisions in the Constitution, these will apply to the Jammu and Kashmir State with such exceptions and modifications as may be decided on when the President issues an Order to that effect. That Order can be issued in regard to subjects mentioned in the Instrument of Accession only after consultation with the Government of the State. In regard to other matters, the concurrence, of that Government has to be taken.

Now, it is not the case, nor is it the intention of the members of the Kashmir Government whom I took the opportunity of consulting before this draft was finalised—it is not their intention that the other provisions of the Constitution are not to apply. That particular point of view is that these provisions should apply only in cases where they can suitably apply and only subject to such

modifications or exceptions as the particular conditions of the Jammu and Kashmir State may require. I wish to say no more about that particular point at the present moment.

Then we come to clause (2). You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the State for the purpose of framing its Constitution. In other words, what we are committed to is that these additions are matters for the determination of the Constituent Assembly of the State.

Now, you will recall that in some of the clauses of this article we have provided for the concurrence of the Government of the State. The Government of the State feel that in view of the commitments already entered into between the State and the Centre, they cannot be regarded as final authorities for the giving of this concurrence, though they are prepared to give it in the interim periods but if they do give this concurrence, this clause provides that that concurrence should be placed before the Constituent Assembly when it meets and the Constituent Assembly may take whatever decisions it likes on those matters.

The last clause refers to what may happen later on. We have said article 211A will not apply to the Jammu and Kashmir State. But that cannot be a permanent feature of the Constitution of the State, and hope it will not be. So the provision is made that when the Constituent Assembly of the State has met and taken its decision both on the Constitution for the State and on the range of federal jurisdiction over the State, the President may on the recommendation of that Constituent Assembly issue an order that this article 306A shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issues any order of that kind the recommendation of the Constituent Assembly will be a condition precedent. That explains the whole of this article.

The effect of this article is that the Jammu and Kashmir State which is now a part of India will continue to be a part of India, will be a unit of the future Federal Republic of India and the Union Legislature will get jurisdiction to enact laws on matters specified either in the Instrument of Accession or by later addition with the concurrence of the Government of the State. And steps have to be taken for the purpose of convening a Constituent Assembly in due course which will go into the matters I have already referred to. When it has come to a decision on the different matters it will make a recommendation to the President who will either abrogate article 306A or direct that it shall apply with such modifications and exceptions as the Constituent Assembly may recommend. That, Sir, is briefly a description of the effect of this article, and I hope the House will carry it.

(Amendments Nos. 459, 460 and 461 were not moved.)

Shri Mahavir Tyagi: (United Provinces: General) I am not in concurrence with the wording of the clauses, but I do not wish to move the amendments.

(Amendment No. 462 was, not moved.)

Mr. President : There is one more amendment of which notice was received this morning. That is by Shri Mahavir Tyagi to the effect "that in amendment No. 451 of List XX (Second Week), in the proviso to clause (3) of the proposed new article 306A" for the word "recommendation" the word "consultation" be substituted.

Shri Mahavir Tyagi: I am not moving that too.

Mr. President : The article is now open to discussion.

Maulana Hasrat Mohani: Sir, I want to make it clear at the very outset that I am neither opposed to all these concessions being granted to my Friend Sheikh Abdullah, nor am I opposed to the acceptance of the Maharaja as the ruler of Kashmir. And if the Maharaja of Kashmir gets further powers and concessions I will be very glad. But what I object to is this. Why do you make this discrimination about this Ruler? Mr. Ayyangar has himself admitted here that the administration of Kashmir State is not on a very good basis.....

The Honourable Shri N. Gopalaswami Ayyangar: That is a wrong statement. I never said so.

Maulana Hasrat Mohani : That it will assume independence afterwards. But may I ask a question? When you make all these concessions for Kashmir I most strongly object to your arbitrary act of compelling the Baroda State to be merged in Bombay. The administration of Baroda State is better than the administration of many other Indian Provinces. It is scandalous that you should compel the Maharaja of Baroda to have his raj merged in Bombay and himself pensioned off. Some people say that he himself voluntarily accepted this merger. I know it is an open secret that he was brought from England and compelled against his will.....

Mr. President : Maulana, we are not concerned with the Maharaja of Baroda here.

Maulana Hasrat Mohani: Well, I would not go into any detail. But I say that I object to this sort of thing. If you grant these concessions to the Maharaja of Kashmir you should also withdraw your decision about the merger of Baroda into Bombay and allow all these concessions and many more concessions to the Baroda ruler also.

Mr. President : The question is:

“That with reference to Amendment No. 379 of List XV (Second Week), after article 306. the following new article be inserted:-

‘306A. (1) Notwithstanding anything contained in this Constitution:

- (a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir.
- (b) the power of Parliament to make laws for the State shall be limited to
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India are the matters with respect to which the Dominion Legislature may make laws for the State; and
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify;

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers for the time being in office, under the Maharaja’s Proclamation, dated fifth day of March, 1948.

- (c) the provisions of article I of this Constitution shall apply in relation to the State;

- (d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

- (3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President Issues such a notification’.”

The motion was adopted.

Article 306A was added to the Constitution.

Mr. President: These are all the amendments that we have had from the Drafting Committee. There are certain amendments printed in the List of Amendments and probably some others in some one or other of the numerous lists subsequently circulated. The question is whether we take up any of those amendments. We have gone through the whole Constitution article by article and clause by clause at great length and I do not think we can reopen any of those things at this stage by bringing in fresh amendments. There is one amendment by Pandit Thakur Das Bhargava, No. 472, on which Mr. Naziruddin Ahmad has given notice of an amendment, and this was included in List I of Fifth Week. It was not by itself an amendment. It was a long article and it related only to one paragraph of that article. I think this very point has been covered by article 109 which we have passed. Article 109 confers original jurisdiction on the Supreme Court and Article 121 lays down that the Supreme Court will have its own rules of procedure, while article 25 deals with the remedies given to a party to have Fundamental Rights enforced in court. I think these three articles between themselves cover everything contained in the amendments of Mr. Naziruddin Ahmad and Pandit Bhargava. I therefore rule out of Pandit Bhargava’s amendment.

We shall now take up the Preamble.

Preamble

An Honourable Member: May I suggest that the Preamble be taken up when we meet again in November for the Third Reading? By that time, the Drafting Committee will also have submitted its final report to this House.

Maulana Hasrat Mohani: I object to that, because unless you get the Preamble passed today, how could you produce any report on the Second Reading?

Shri K. M. Munshi: Once in my life I support the Maulana Saheb!

Mr. President : I think we should get the Preamble also passed today. The Constitution as a whole has to be passed in its Second Reading and the Preamble forms part of the Constitution. Therefore, the Preamble cannot be postponed.