

delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

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

“That in the proposed new article 312A, the word ‘provisional’, wherever it occurs be deleted”.

The amendment was adopted.

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

“That in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be ,deleted.”

The amendment was adopted.

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

“That in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of Parliament, direct’ be substituted.”

The amendment was negatived.

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

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

The motion was adopted.

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

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

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

The motion was adopted.

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

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

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

The motion was adopted.

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

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

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

The motion was adopted.

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

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

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

The motion was adopted.

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

---

### Articles 313

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

“That for article 313, the following be substituted :—

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

[The Honourable Dr. B. R. Ambedkar]

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

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

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

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

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

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

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

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

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

But if these powers which are going to be conferred on the President are to continue till the new Parliament comes into being and starts functioning, as appears obviously the case, then I consider that the powers are extraordinarily wide and the mere limitation of these orders being placed before the Parliament would not be quite enough. For even apart from the powers that we have conferred on the President so far as the withdrawing of any of the provisions of the Constitution is concerned, this is a provision which is contemplated to be made specifically for the removal of difficulties. But if these provisions are meant to solve the difficulties, why should it not be possible to say that the proposal should emanate either from Parliament, or from the Provincial Legislatures? If that safeguard is there, then there will be no difficulty in allowing the President, not only by way of adaptations to modify, but to add or even omit provisions from this Constitution. So in one of my amendments I have suggested that these modifications or additions or omissions should proceed only on the recommendation of Parliament or on the recommendation or suggestion of any Provincial Legislature.

It is obvious that the amendments I have proposed are in the alternative. There are two sets of amendments. If it is possible to provide that the orders in this connection of the President shall be limited to such matters as would be suggested by Parliament or the Provincial Legislatures, then there would be no

need of the other sets of amendments. But if that is not acceptable then it would be necessary to provide that not only should the orders be laid before Parliament but they should also seek the approval of Parliament.

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

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

**Prof. Shibban Lal Saksena :** Mr. President, Sir, this article is intended really to provide for any contingency which may arise during the transition from the Government of India Act, 1935, to the new Constitution. It is assumed that there might be some lacuna in the Constitution which we have drafted in regard to which the President should be empowered to make provisions during the transitional period. But I feel that the powers given to him in this article are very wide. It says “this Constitution shall.... have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient”. Therefore the President is empowered to alter the Constitution, to omit sections of the Constitution or to modify them on the plea that it is necessary for the transition from the Government of India Act to the New Constitution. Of course, that means that if the Constituent Assembly had foreseen that contingency it would have made provision for it. I suggest that

[Prof. Shibban Lal Saksena]

if the contingency should arise, which has not been foreseen and for which Dr. Ambedkar wants to empower the President with powers to modify, add or omit parts of the Constitution, this very House as Parliament should be able to do it. Why should not this very Parliament be then called upon to provide for the lacuna which may have been found.

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

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

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

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

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

Let me give one or two illustrations of the difficulties that are likely to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and the Centre. On the 26th January next, when the Constitution

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

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

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

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

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

The question is:

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

The amendment was adopted.

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

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

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

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

The amendment was negatived.

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

The question is:

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

The motion was adopted.

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