

an amendment to save the pay of existing Judges, irrespective of the fact that they were appointed before a certain date. But the loss of this amendment will not mean the loss of the other amendment. As to the suggestion of Dr. Bakhshi Tek Chand that I should move this as an amendment to amendment No. 11, I await your instructions in this matter.

**Mr. President :** I do not think that the passing of this clause as it is will in any way affect the Schedule. It will not come in the way of the Schedule. In any case, I shall not rule that out on that ground.

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

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

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

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

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

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

“That for article 310. the following be substituted;—

‘310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.	Provisions as to Judges of High Court
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(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, ‘unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional Judge.”

The motion was adopted.

Article 310 was added to the Constitution.

### Article 311

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

“That for article 311, the following article be substituted:—

‘311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.	Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof.
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*Explanation.*—For the purposes of this clause, the Constituent Assembly of the Dominion India includes—

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

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

(2) The President may by rules provide for—

- (a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,
- (b) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and
- (c) the qualifications to be possessed by such representatives.

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

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

Sir, I move:

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

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

Sir, I move:

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

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

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

The other provisions are merely ancillary.

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

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

Sir, I move:

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

Sir, I move :

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

Sir, I move:

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

I shall not move amendment No. 147.

Sir, I move:

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

Sir, I move:

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

Sir, I move:

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

Sir, I move:

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

If the amendments to clause (1), which appear in List 3, Second Week, are acceptable to the House, then this clause would read as follows:

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

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

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

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Assembly of India". So there is no justification or necessity for using the word "dominion" in this context and it may be very reasonably and wisely dropped entirely without detriment to the meaning that the clause is intended to convey.

Then, Sir, the next objection is to the cumbrous verbiage that appears in this clause: "body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution". I do not know why this has been introduced, changing the draft as it stood originally. If my honourable Colleagues turn to article 311, clause (1) as it stood originally, they will see that its description is "the Constituent Assembly of the Dominion of India". I have already stated that the word 'Dominion' should be dropped. Now, I say that this could be more simply described as the Constituent Assembly of India. If the Drafting Committee feels that just because a little more than a hundred seats are going to be declared vacant, this change in the description of the body is necessary, I feel that they are labouring under a misapprehension. So long as the body is not dissolved, it continues to be the Constituent Assembly of India. Even if a very large majority of the members resign from the Assembly and whether their places are filled up or not, it is the same old Assembly which has always been called the Constituent Assembly of India. So long as it is not dissolved, it continues to be called in constitutional parlance the Constituent Assembly of India. Therefore, if there is any misapprehension that on the score of the resignation of more than one hundred members, this body must be described in this fashion and not simply as the Constituent Assembly of India, that misapprehension is not at all justified, and we will not be describing the body wrongly if we refer to it merely as the Constituent Assembly of India. Whether a hundred members resign or even more do so, until the commencement of the Constitution, the body continues to be called the Constituent Assembly of India. Therefore by means of amendments 143, 144, and 145 which go together, I seek to simplify the wording and the expression employed in this article in clause (1), so that we will provide for the Constituent Assembly of India itself exercising all the powers and performing all the duties conferred by the provisions of this Constitution on Parliament. Once the Constitution comes into force, then, of course, under the Constitution, this Assembly will be called the provisional Parliament. Till then, it is not necessary to say "the body functioning as such and such". It is enough for our purposes to say "the Constituent Assembly of India". I hope those members of the Drafting Committee who are fond of using the word "dominion". and of using more words than are necessary for our purpose, will see the force of these amendments of mine and simplify the wording of this clause.

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

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

Clause (2) refers to certain rules which the President may make for representation in this provisional Parliament, that is to say, when this Assembly is converted into or reconstituted into our provisional Parliament. This clause provides for the representation in the provisional Parliament, of those States or other territories of India so far not represented. The House is aware that the representative from Bhopal has not yet taken his seat in this Assembly though the firman has gone forth that he should come here as soon as possible. We hope that he or she will be with us during the Third Reading of the Constitution. Hyderabad is still not represented. We do not know whether the steps that have far been taken will fructify so as to enable us to welcome

our friends from Hyderabad in this Assembly during the Third Reading. Of course, when this Assembly resolves itself or converts itself into the provisional Parliament, I am sure, the President by Rules will provide for the representation of Hyderabad also in this Assembly. So also, there is the Union of States called Vindhya Pradesh; still unrepresented in this Assembly. During the last session, you, Sir, were good enough to tell us that the Rajpramukh of Vindhya Pradesh and his Chief Minister or Regional Commissioner have been asked by the Secretariat of the Constituent Assembly to take necessary steps for the proper representation of Vindhya Pradesh in this Assembly. I do not know what progress that course of action has made so far as Vindhya Pradesh is concerned. We hope that they will be with us during the next session, the final session of this Assembly. At any rate, I am sure that they will take their places here when the provisional Parliament meets next year. So far, Sir, as regards the States not represented.

Now, this clause (2) provides for rule-making by the President. The House is very well aware that this Assembly has adopted certain rules with regard to the representation of States and other Units in this Assembly. I refer to rule 51 of the Rules of this Assembly which we have adopted, I believe, some time last year. Under Rule 51, we have also adopted a Schedule. That Schedule provides or lays down certain rules in regard to representation of States in this Assembly. My amendment No. 148 refers to the rules made by us and incorporated in this little booklet which has been supplied to all Members by the Secretariat,—the Rules of Procedure and Standing Orders. There are certain rules which have been made, as I said, for the representation of States in this Assembly. My amendment seeks to lay down that as far as possible, as far as practicable, the President's rules shall conform to the rules that this Assembly has already adopted during the last year. It may be, certain circumstances may arise in certain States which may stand in the way of the President conforming to the rules already adopted. 'That is why I have introduced the phrase 'as far as practicable!' I hope the Dr. Ambedkar the Drafting Committee and my honourable Colleagues in this House will see their way to accept this amendment because, after all, it pertains to a matter which has already been decided by the House, and I see no reason why, where it is practicable, the President should depart from the Rules which this Assembly has already adopted.

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

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

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

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

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

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

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

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

Any person holding office immediately before the commencement of this Constitution as Speaker of the Constituent Assembly when functioning as Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of the Provisional Parliament functioning under clause (3) of this article.”

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

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

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