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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 17th October 1949

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

MOTION—*RE*. ALLOWANCES OF MEMBERS

Mr. President : We shall first take up the motion standing in the name of Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : (Madras : General) : Mr. President, with your permission, I beg to move :

“That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India:—

- ‘(1) That in rule (D), relating to daily allowances , in paragraph 4 of the Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Hand book, for the figure, brackets and words ‘Rs. 45 (Rupees forty five)’, the figure, and words ‘Rs. 40 (Rupees forty)’ be substituted.
- (2) That exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for members, be deleted.”

Sir, this motion has been brought before the House for certain reasons. Everyone of the members of this august Assembly knows the present general economic condition in India and also the prevailing financial stringency. There has been a cry throughout this country that some savings must be made here and there to help the Government. This motion I have moved shows that the Members who are entitled to Rs. 45 per day by way of daily allowance shall forego 11 per cent. of it which makes it Rs. 40. I know as a matter of fact that this is a small sacrifice. This august Body has to give a lead to the country to improve the economic conditions that prevail today.

Sir, this sum of Rs. 40 to which we propose to reduce our daily allowance does not represent our salary. This matter was before the Staff and Finance Committee and the Members thereof felt that this should be placed before the Constituent Assembly. The Members are offering to cut down their daily allowance by 11 per cent. voluntarily. I contacted many Members of this August Assembly and found that they are all unanimously of the opinion that a five rupee cut in the daily allowance will not be a hardship. In the circumstances I hope the House will give its consent to reduce the daily allowance of Members from Rs. 45 to Rs. 40.

The second part of my amendment is that exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for Members be deleted. As one coming from Madras I know as a matter of fact that there is arrangement for running a restaurant car from Delhi to Balharshah and also from Balharshah to Delhi in the train service. This arrangement gives some convenience to Members for their meals and other things. At one time there was a feeling that this restaurant car was not meeting the demands mostly of the western style. But the present arrangement which is mostly of the Indian type caters both to vegetarians and non-vegetarians. The arrangements made in this respect from Delhi to Madras and back are in my opinion satisfactory. Of course, from Balharshah to Madras, the arrangement is not completely satisfactory, because the restaurant car is

[Shri V. I. Muniswamy Pillay]

detached at Balharshah. But there are first class refreshment rooms and there are caterers who wait on the passengers at every important station and take orders and supply dinner and other things either in the train itself or at the halting places.

These two changes in the rules are therefore necessary and I hope the Members will vote unanimously for this motion.

Mr. President : There is notice of an amendment to this motion by Shri Shankarrao Deo.

Shri Shankarrao Deo (Bombay : General) : I am not moving my amendment, Sir.

Shri H. J. Khandekar (C. P. & Berar: General) : *[Mr. President, Sir I beg to move: my amendment which I have tabled in respect of the motion under discussion which has been moved by Shri Muniswamy Pillay proposing that the present amount of daily allowances to the Members of the Constituent Assembly should be reduced from rupees forty-five to forty only.

The amendment reads:

“That in the amendments to Rule(D), and to paragraph 8, for the proposed figure, brackets and words ‘Rs. 40 (Rupees forty)’ the figure, brackets and words ‘Rs. 20 (Rupees twenty)’ be substituted.”

In my amendment I propose that Members should draw only rupees twenty for their daily allowance. There is a reason, Sir, for my suggesting this amendment and it is this. While we were fighting for freedom, every one of us, and I may say millions of our countrymen made every possible sacrifice that was needed to make our country free. After the country had made a lot of sacrifices through the efforts and kindness of Mahatmaji we achieved Swarajaya and made our country free. But after independence, I am sorry to say, Sir, such an atmosphere has grown in the country that everyone who took part in the freedom struggle wants now to earn more and to lead a pleasant and prosperous life. We are, no doubt, free now; but to retain our freedom it is necessary for every one of our countrymen to make sacrifices, for if we do not make sacrifice for the security of our freedom, and the conditions that are obtaining at present in the country continue further, I am afraid, we may be overtaken by chaos and our freedom may turn out to be a short-lived one. The financial position of the Government of the country is getting worse and worse and we should, therefore, make all possible sacrifices to improve it.

From the very start ours has been an organisation of selfless people. There was an amendment in the name of Shri Shankarrao Deo which he has not moved; I wish he had moved his amendment. The amendment he has sent in is not be fitting a person of his standing who in his renouncing spirit has discarded even Kurta and Topi and does not put on Dhoti of the usual length of nine cubits. An amendment from him should have said that the Members should not take even a pie for their allowance.

He is a bachelor, I mean to say he is unmarried. Secondly, he has no family; and thirdly, his dress is much simpler than ours. I say he is a great and selfless person, nay I should say he is a sage or *sanyasin*. It was not proper for a great and selfless sage like him to have sent in an amendment like the one he has tabled.

*[]Translation of Hindustani speech begins.

Shri M. Satyanarayana (Madras: General) : May I ask if it is proper for us to speak in this strain about any person ?

Shri H. J. Khandekar : I am not speaking anything against him, rather I am expressing admiration for him; I consider him a selfless person and a sage and this is what I have said about him. I do not think that there can be any objection against the terms I have used about him. I only mean to say that an amendment from a leader like him should have been to the effect that the Members should not take even a pie as allowance.

Sir, I am a family man; I have my family and children, whom I have to provide for. I require clothes and house for them. It is, therefore, natural that I may take some amount as allowance. But at the same time I do wish to make some sacrifice. So, maintaining a balance between our requirements and the sense of sacrifice, I have moved my amendment and every Member of the House who is at least of my status and not that of Shri Shankarrao Deo, should accept a minimum allowance of rupees twenty a day. My amendment, Sir, is quite reasonable. Every Member who has so far been making sacrifices should continue to make sacrifice in future also. I believe for a selfless person, my amendment alone is right and every selfless person should accept it.

Outside this House we hear every one exhorting for sacrifice. We hear talks for making sacrifice from the Members of this House and from the Congress platform. Our leaders are also making constant requests to all to make all possible sacrifice for the country. If we, therefore, accept the amendment of Shri Muniswamy Pillay which lays down a nominal sacrifice of rupees five only, it would not be decent and proper for the honourable Members of this House. This sacrifice is not in conformity with the dignity of the Members of the House. If you go to villages and say that you have sacrificed rupees five a day from your income, the people will laugh at you.

Shri Shankarrao Deo: Is there any discussion necessary on this point ?

Shri H. J. Khandekar : I am about to conclude my observations now, So in view of what I have said, Sir, my amendment is very proper and I hope the House will accept it.]

(Shri R. K. Sidhwa rose to speak.)

Mr. President : Is there any discussion necessary ?

Honourable Members : The question may now be put.

Shri R. K. Sidhwa : (C. P. & Berar : General) : Sir, I wholeheartedly support the motion moved by...

Mr. President : What is the use of this discussion ?

Shri R. K. Sidhwa : Sir, the only point that I want to make is that the cut should be voluntary. The Ministers are also having a cut voluntarily. We can unanimously make a declaration in the House that we shall also forego Rs. 5 a day. That will be more graceful than amending the rules and making it compulsory. Nothing else.

Mr. President : Mr. Sidhwa's point is that instead of amending the rules, let it be in the form of a resolution which every Member will undertake to follow. His point is that instead of making it compulsory by an amendment of the rules, let it be in the form of, a resolution which every Member will accept.

*[Translation of Hindustani speech ends.

Shri V. I. Muniswamy Pillay: May I say a few words about the amendment moved by Mr. Khandekar. So far as Mr. Sidhwa's point is concerned, a resolution practically comes to the same thing.

Mr. President : How will the office prepare the bills ?

Shri R. K. Sidhwa: On the basis of the resolution.

Mr. President : No, the office cannot prepare the bills on the basis of a voluntary resolution, unless the Member concerned gives it in writing. Can you do that for every Member here? Every Member will have to do it individually.

Shri R. K. Sidhwa: The salary of the Ministers is regulated by in Act. The act is not amended. Yet the cut has been only voluntary. In this case also similar procedure should be adopted.

Mr. President : The Ministers are so few in numbers and all of them can give it in writing. But we are here more than three hundred. All of us are not present here.

Seth Govind Dass (C. P. & Berar : General) : For one thing, most of our Members are not here. Therefore, let the Assembly decide this question.

Shri V. I. Muniswamy Pillay: Sir, these rules were made by this Assembly and I think it is only proper that a motion should be moved and carried. Mr., Khandekar was referring to the question whether Members were having any extra expenses. I do think that is relevant. When we accepted the original motion in this House, no personalities were concerned or mentioned. There were some members here having their families and servants. Thus having two establishments entailing heavy expenses. At the time the rules were made the Assembly came to the unanimous conclusion by fixing the allowances at Rs. 45. Now, this motion seeks to reduce it by Rs. 5 and make it Rs. 40 and instead of the *circutous* route *via* Bombay and paying more money from the Government, we are providing for the shortest route and paying the amount which is actually due.

Mr. President : I will first put Mr. Khandekar's amendment to the vote. The question is :—

“That in the amendments to Rule (D) and to paragraph 8, for the proposed figure, brackets and words ‘Rs. 40 (Rupees forty)’ the figure, brackets and words ‘Rs. 20 (Rupees twenty)’ be substituted.”

Mr. President : The question is:

“That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :—

- ‘(1) That in rule (D), relating to daily allowance, in paragraph 4 of the Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Handbook for the figure, brackets and words ‘Rs. 45 (Rupees forty- five)’ the figure, brackets, and words ‘Rs. 40 (Rupees forty)’ be substituted.
- (2) That exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for Members, be deleted’.”

The motion was adopted.

DRAFT CONSTITUTION—(contd.)

Article 59

Mr. President : Then we will take up the consideration of the articles on the Order Paper. Article 59, amendment No. 445.

The Honourable Shri K. Santhanam (Madras: General): May I suggest that we take up the articles for which amendments were circulated earlier. These amendments were given to us only this morning.

Mr. President : They were distributed to Members yesterday evening when we were sitting in the House.

Shri T. T. Krishnamachari : (Madras: General): Mr. President, Sir, the amendments to articles 59, 62, 141, 175 and 13 would mean reopening the articles already passed. May I suggest that the permission of the House be taken ?

Mr. President : Does the House give leave to reopen these articles ?

Honourable Members : Yes.

Shri T. T. Krishnamachari : Sir, I move:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :—

‘(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which executive power of the Union extends’.”

Sub-clause (b) of the original article 59, which relates to the powers of the President to grant pardons, reads thus :—

“(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws.”

This means that the concurrent field would be left in a very nebulous position. In article 60 it is provided that in matters where Parliament so decides the executive power of the Union will extend to the States in respect of subjects falling within the concurrent field. This position will be left nebulous. Therefore the amendment seeks to remedy that defect, making the power of the President to grant pardon to extend to all matters to which the executive power of the Union extends.

There will have to be a consequential amendment in regard to article 141 where the power of pardon is given to the President, which I shall move presently if this amendment is approved by the House.

The Honourable Shri K. Santhanam : Sir, I have tabled an amendment to this. I could not send it earlier.

I move :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law’ the words ‘made by Parliament’ be inserted.”

I understand the purpose of amendment No. 445, but it goes much wider than its intention, because the executive power of the Union extends not only to laws made by Parliament but also to some of the laws made by the legislature of a State. For instance, in articles 234 and 234A which deal with the giving of directions, the executive power of the Union extends to some laws made by the Legislature of a State. Yesterday, in the matter of financial, emergency, we have provided that the executive power of the Union extends to matters relating to money Bills and financial matters. We do not want that in the case of offences under laws made by a State Legislature the right of pardon should accrue to the President. Therefore I want to limit it to offences under any law by Parliament. The point is when Parliament makes any law under the Concurrent List and gives executive power to the Union Executive then the power of pardon should be with

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the President. But we do not want to give the power of pardon to the President even when the executive power extends to laws made by a State legislature. Therefore I think the amendment is too wide and I want to limit it to laws made by Parliament.

I am afraid the Drafting Committee who are naturally very tired are trying to introduce amendments drafted in haste. They have had a time to scrutinise them and we have had no time either to scrutinise them.

Shri T. T. Krishnamachari : May I on a point of order say that the honourable Member is perfectly right to speak about himself. If he has had no time, we agree. But I do not think he ought to cast any aspersions on the Drafting Committee as not having had any time to scrutinise them. I would like to say that we have scrutinised every amendment. If we did not have the time to scrutinise these amendments we would not have tabled them.

Shri B. M. Gupte: (Bombay: General): Saying that they had no time is not casting any aspersions on the Drafting Committee.

The Honourable Shri K. Santhanam: I am not disputing their intension or ability, but I am saying that they are hurried which is a matter of fact.

Mr. President : Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam: But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words “made by Parliament” are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the Concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

The Honourable Shri K. Santhanam: The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this: that the executive power of the Centre extends not only to matters enumerated in List I but may also extend to matters enumerated in List III. And the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam’s amendment is absolutely unnecessary and out of place because article 60 covers the point.

Mr. President : The question is :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law ‘ the words ‘made by Parliament’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

- (b) in all cases where the punishment or sentence is for an offence under any law relating to matter to which the executive power of the Union extends;’

The amendment was adopted.

Article 62

Shri T. T. Krishnamachari: Sir, I move:

“That in clause (5) of article 62, for the words ‘who from the date of his appointment is. for a period of six consecutive months, not a member’, the words ‘who for any period of six consecutive months is not a member ‘ be substituted.”

This is a purely verbal alteration in regard to the qualification, or rather the disqualification, of Ministers. If my memory is correct, I think this wording was pointed out to us as being more suitable by my honourable Friend Mr. Gupte at the time we passed this article. And I think Dr. Ambedkar had in mind examining the position. We feel this is the more appropriate wording and therefore we have suggested this amendment.

Incidentally I might mention that there is an amendment tabled by my honourable Friend Mr. Santhanam which may be quite correct, but it is only a matter of variation again of the language. Really the amendment is not a matter of substance but putting the thing in the precise form so as to avoid any mistaken interpretation that may arise in the future.

The Honourable Shri K. Santhanam: It is quite correct as my Friend Mr. Krishnamachari has said that my amendment is only to make matters clear because, as the official amendment stands, there is no clear indication where to begin the period of six months and how to count it. It may also be construed—though it may not appear a very correct interpretation—that the period may be counted even before he became a Minister, because it may be said that if a person is not a member of Parliament he cannot be appointed a Minister. Our object is that a person who is not a member of Parliament may be appointed Minister, but after that appointment he must become a member within six months and must continue to be a member afterwards. Therefore my amendment is:

“That in amendment No. 446 of List XX, in clause (5) of article 62, for the proposed words ‘who for any period of six consecutive months is not a member’ the words ‘who, after the date of his appointment, is for any period of six consecutive months not a member’, be substituted.”

When we changed from the wording of the Government of India Act 1935, I remember this was discussed by us and we put the words “from the date of appointment” as the beginning of the period. But in interpretation it may mean that afterwards he may cease to be a member after six months and such a case may not be covered. So I agree that the amendment is desirable. But if the words “after the date of appointment” are put in it will become much more precise.

Shri H. V. Kamath: (C. P. & Berar: General): May I suggest that for the word “after” which Mr. Santhanam suggests, the word “from” would be more appropriate? “After” is not correct.

The Honourable Shri K. Santhanam: “From” may mean that for the first six months he should be member and afterwards if he ceases to be member he may continue to be minister. That is the lacuna which we are trying to fill up.

Shri T. T. Krishnamachari : There is only one point I would like to mention in respect of Mr. Santhanam’s amendment. His amendment is practically the same, except for a minor difference, namely, in a position where a person is a Minister who after having been elected duly and later on during four or five months after the original election some irregularity is found in the election and the election is set aside. Mr. Santhanam’s amendment would not cover such a case. So I would suggest that we should err on the safe side and that the House should accept the amendment moved by me.

The Honourable Shri K. Santhanam: I do not press my amendment.

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

Mr. President : Then I put No. 446. The question is :

“That in clause (5) of article 62, for the words ‘who from the date of his appointment is, for a period of six consecutive months, not a member’ the words ‘who for any period of six consecutive months is not a member be substituted.’”

The amendment was adopted.

Article 147

Shri T. T. Krishnamachari: I move No. 447, which reads thus:

“That in article 141, for the words ‘with respect to which the Legislature of the State has power to make laws.’ the words ‘to which the executive power of the State extends’ be substituted.”

I have already explained the position while moving amendment No. 445 which the House was good enough to accept. This merely seeks to remedy the position so far as the Governor’s powers of granting pardon are concerned.

Mr. President : The question is ;

“That in article 141, for the words ‘with respect to which the Legislature of the State has power to make laws’ the words ‘to which’ executive power of the State extends’ be substituted.”

The motion was adopted.

Article 175

Shri T. T. Krishnamachari : Sir, I move:

“That to article 175 the following proviso be added—

‘Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it law, to derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill’.”

The reason why we have to bring in this amendment at this stage is this. An amendment had been tabled by Dr. Ambedkar—No. 3406 of Volume II of amendments to amendments—seeking to recast the 4th Schedule, which the House has now decided to drop. and therefore Dr. Ambedkar could not move it. In that amendment. in clause (7) provision had been made in regard to the substance of the proviso which I have now moved. If the 4th Schedule had been there, this amendment would not have been necessary. At the time we considered article 175 we were not quite sure whether the 4th Schedule will be a part of the Constitution or not. That is my explanation for bringing forward this amendment.

On the merits, the House will recognise that the High Courts happen to be, so far as appointment had jurisdiction and all that is concerned, a matter exclusively of Central competence. But there are matters in which the Provinces also can interfere and this proviso is intended to protect any hasty action by a province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President. The matter is by itself very simple and follows a principle accepted in the body of the Constitution. I think there can be no serious objection to this amendment.

Shri H. V. Kamath: Mr. President, I would request my Friend Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced which might endanger the position. First of all, of such Bills were going to be introduced would it not be ultra vires of the legislature at its very inception, *ab initio*? Will not the introduction of the Bill be prevented by the Constitution? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbersome. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position ... and all that, will it not be enough to say so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the article clearly. I do not see any necessity for this cumbersome verbiage towards the end of the amendment.

The Honourable Dr. B. R. Ambedkar : The clause moved by my Friend Mr. Krishnamachari is of old standing. It occurs in the Instrument of Instructions, issued to the Governor of the provinces under the Government of India Act. 1935.

Paragraph 17 of the Instrument of Instructions says:

"Without prejudice to the generality of his powers as to reservation of Bills, our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*

- (b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act. designed to fulfil."

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Court are placed under the Centre as well as the Provinces. So far as the Organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Provinces have no power either to alter the organisation of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be

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entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath: What about my suggestion to simplify the language?

The Honorable Dr. B. R. Ambedkar: I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath: All right : Do it later on.

Mr. President : I will now put it to vote.

The question is :

“That to article 175 the following proviso be added:

‘Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill’.”

The amendment was adopted.

Article 13

Mr. President : There is a previous amendment of which notice has been given—amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

“That in clause (2) of article 13, after the word ‘defamation’ the word ‘contempt of court’ be inserted.”

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a

number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee, and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words “public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *subjudice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) of article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this House will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any matter which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

Mr. President : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it?

Prof. Shibban Lal Saksena: (United Provinces: General) For “contempt of court” read “or contempt of court”. That has been omitted by inadvertence.

Shri T. T. Krishnamachari : ‘Contempt of court or any matter’: That comes later. Technically, Sir, there ought to be a comma after “defamation.,’

Pandit Thakur Das Bhargava (East Punjab: General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415, but this amendment has not been moved. My amendment seeks to substitute for the words ‘any law’ the words “any reasonable law. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T. T. Krishnamachari has moved an amendment adding the words ‘contempt of court’ after the word ‘defamation’ instead of the words “morality, public order or the administration of justice”; and when I gave the amendment it was in view of the words ‘public order or the administration of justice’. All the same my amendment does not lose its value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move:

“That for the words ‘any law’ the words ‘any reasonable law’ be substituted.”

An Honourable Member: Law is always reasonable.

Pandit Thakur Das Bhargava: The law has been defined only as a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are

[Pandit Thakur Das Bhargava]

reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned, I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T. T. Krishnamachari he wants that the words “contempt of court” be added after the word “defamation” in article 13(2) and the clause would read thus :

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, contempt of court, or any other matter which offends against decency or morality or undermines the security of or tends to overthrow the State.”

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; sections 178, 179-and 180 relate to the refusal to reply to question put by the Court or refusal to take an oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalised and not speech by itself. The courts are empowered to take cognizance of the act of contempt and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression.

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned, it is already covered by law and the Supreme Court is perfectly entitled to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that if the legislature passes any such law, it must be subject to the scrutiny of the courts.

As far ‘defamation’, under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very

intricate one. In so far as civil defamation is concerned truth is absolute defence but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the Court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words "reasonable restrictions". But in clause (2) there are no such words "reasonable restrictions", which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word "reasonable" might have been omitted. Even then so far as the question of "sedition" was concerned when the original article was before us we amended this law and we saw that the word "sedition" did not cover cases which it ought not to have dealt with. Therefore we changed the words thus: "which undermines the security of or tends to overthrow the States", and because these words were changed, the words, "reasonable" was not put in clause(2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the legislature in so far as, if we introduce the word "reasonable" before the word 'law' then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends against decency or morality. All these matters will be rationalised to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties, and I therefore suggest that instead of the words 'any law' the words 'any reasonable law' may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, viz. whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this, most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislature, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion-against the authority of the courts when you yourself are, giving the legislature the power of arming the courts to hold persons guilty of contempt

[Pandit Thakur Das Bhargava]

or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts another way. Therefore, I submit that this amendment of mine should be accepted by the House.

Shri R. K. Sidhwa: Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr. T. T. Krishnamachari wants that the words “contempt of court” should be inserted after the word ‘defamation’.

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges have condemned many a time. I would also like to state that the High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In cases of contempt of court, the High Court Judge is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B. G. Horniman, the Editor of “Sentinel” and Mr. Devadas Gandhi, Editor, of the “Hindustan Times”. The Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends here are very lenient to the Judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them ? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it ?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting “contempt of court”. In contempt of court, we know when certain extraordinary things happen, High Court Judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court Judges. Even there, I say the High Court Judges are not infallible: they have also committed so many mistakes. They do not want any comment to be made against a High Court Judge when comment was necessary in the interest of the public life

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words “contempt of court” which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. A. Alladi Krishnaswami Ayyar will guide whether in any constitution

in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

Mr. President : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

Shri R. K. Sidhwa : It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which may be libel, slander, defamation or contempt of court. A judgement may have been passed by a court.....

Mr. President : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

Shri R. K. Sidhwa: I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that Contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by even the smallest magistrates. Mr. Sidhwa described him as the Fourth Class Magistrate; there is no such thing at all, If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are many other serious kinds of contempt which could be punished only by the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be, overlapping. If there is overlapping that would not be very much of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

[Mr. Naziruddin Ahmad]

With regard to Pandit Thakur Das Bhargava's amendment that the words 'any law' should be substituted by the words 'any reasonable law', it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be, reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word 'reasonable' cannot be a condition. That condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it "reasonable law", it will have no binding force on the Legislature. The word 'reasonable' would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word 'reasonable' would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

Shri B. Das: (Orissa: General): Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity—I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee? On the 15th we received amendments to article 13 by the same two gentlemen—the Honourable Dr. Ambedkar and Mr. T. T. Krishnamachari—and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this House to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution it says :

"An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting etc."

When Dr. Ambedkar himself as Chairman had provided in Part XVI—Amendment of the Constitution—with such solemnity, how does the change take place overnight?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other Court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partiality overnight to give certain more powers to these magistrates and judges were not called for. It will, be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the alien Raj by the 'contempt of court' and the chicken-hearted lawyers got frightened at them.

Mr. President : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting aspersions on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

Shri B. Das : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights, at this fag end of the session when we are dispersing and we will soon come to the Third Reading of this Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month ? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

Shri Krishna Chandra Sharma : (United Provinces: General): Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy Judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the words 'existing law' and there is a provision in Cr. P. C. Section 480, which deals with contempt of court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another Contempt of Court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions—and I think they are sufficient to deal with the situation—no more protection is necessary. This addition is therefore unnecessary and undesirable.

The Honourable Shri K. Santhanam : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court, I think the position, especially of newspapers, will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words "contempt of court"

[The Honourable Shri K. Santhanam]

here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

Mr. President : Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of State, etc., are matters placed in the Concurrent List so that if there was any very great variation among the Laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam: But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will put them separately. First I Put Mr. Krishnamachari's amendment to vote.

The question is:

"That in clause (2) of article 13, after the word 'defamation' the words 'contempt of court', be inserted."

The amendment was adopted.

Mr. President : Then I will put the amendment of Pandit Thakur Das Bhargava.
The question is:

“That at the end of the amendment No. 415 of list XVIII (second Week), the following be added :

‘That for the words ‘any law’ the words ‘any reasonable law’ be substituted.’ ”

The amendment was negatived.

Mr. President : Then we take up the new article 302AAA, i.e., amendment No. 450. Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed, “Contempt of Court” must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

The Honourable Dr. B. R. Ambedkar : I will move an amendment straightaway, Sir, I move::

“That after entry 15 in the concurrent List, the following entry be added: ‘

‘15A. contempt of court.’ ”

Mr. President : I do not think there can be any objection to that.

Mr. Naziruddin Ahmad : There may be many more such things.

Mr. President : May be, but they will come up in time.

So, I will put this to vote.

The question is

“That after entry 15 in the Concurrent list, the following entry be added:—

‘15A, Contempt of Court.’”

The amendment was adopted.

Entry 15A was added to the Concurrent List.

New Article 302AAA

Mr. President : Then we take up amendment No. 450.

Shri T. T. Krishnamachari : Sir, I beg to move:

“That after article 302AA, the following new article be inserted:-

‘302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification:-

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

- (a) ‘major port’ means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
- (b) ‘aerodrome’ means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.’ ”

[Shri T.T. Krishnamachari]

Sir, the reason for moving this article is that certain difficulties have been experienced in regard to what are called international aerodromes, in trying to fit in transit passengers—internationals—who come in there, but who may not ordinarily for the time being, come within the scope of the particular laws of the province in which the aerodrome is situated. The idea, I understand, is that Santa Cruz Aerodrome in Bombay and Dum Dum in Calcutta, are now to be treated as international aerodromes. It is possible that other aerodromes will also be treated as coming under the same category, before long. For instance, if there is absolute prohibition law in regard to liquor in any province, the moment the passenger lands and if he has some liquor with him, he would be coming within the scope of this law of the province, whereas it is, only proper that he should come within the scope of the law of the State only when he goes out of the aerodrome into the area covered by the State. Again, there are certain specified security regulations that may be necessary in the aerodromes, but which may not fit in with the scheme of security regulation current in the State. For instance, in military aerodromes the security regulations are very strict because the entire aerodrome is under military control. In the case of civil aerodromes the position is a little different. The Central Government which controls them will have to depend largely on local laws so far as security arrangements and other similar matters are concerned and it may be necessary, not merely to have a preventive staff whom the Central Government is empowered to have by fiscal legislation but also have a special police with special powers for the purpose of dealing with international traffic and those who interfere with it.

The same contingency will apply to major ports also, particularly to new ports that come into being in areas which were formerly called Indian States. There are some difficulties experienced in the case of such ports already and there may be more difficulties in future. This is merely enabling provisions to permit the President the limited power to get over the difficulties that might arise which would not necessitate the provinces to alter their laws to suit the special circumstances of a port or aerodrome. It will help the provinces to make a law irrespective of the fact that there is a major port or aerodrome situated in the State and it helps the Centre to control those areas if it desires to do so by passing laws in addition to those existing in the provinces or modifying those laws to suit the special circumstances of the case. Instances might be quoted against the utility of an article of this nature but their validity is limited. There are possibilities of more instances of a different nature arising in the future. I repeat that this is an enabling provision which does not seek to interfere with the powers of the provinces at all. Major ports and aerodromes are admittedly under Central control for an purposes and the Centre is also empowered to have additional legislative control by means of Presidential action.

The purpose of the amendment is simple one and I am told which is very necessary in regard to the administration of the aerodromes and major ports concerned with international traffic. I hope the House will accept it.

Mr. Naziruddin Ahmad: Will there be no changes necessary in the Seventh Schedule ?

Shri T. T. Krishnamachari : No. Major ports and aerodromes are Central subjects.

Mr. President : Prof. Shibbanlal Saksena has given notice of an amendment. He is not in his place and therefore it is not moved.

Shri R. K. Sidhwa: Sir, I cannot understand how this article is described as a simple one and merely a consequential change is sought to be made.

Mr. President : It was not stated that it is a consequential change.

Shri R. K. Sidhwa: The Mover said that it is a simple article concerned with international traffic and should be approved by the House.

Sir, the preamble does not state why the President should be empowered with extraordinary powers and over rule any law which Parliament may make regarding aerodromes and major ports. These come within the Union List, I do not see why clause (a) provides "any law made by Parliament or by the Legislature of a State". I do not think any State is empowered to make laws regarding aerodromes and major ports.

Sir, if this article is meant for emergencies such as war and so on. I can understand it. During the last two World Wars, entry to the aerodromes and major ports was prohibited to the public and many restrictions were imposed regarding traffic therein. I can understand that. But I cannot understand why when Parliament in the ordinary course make laws, such laws should be superseded by the President. What are the reasons for empowering the President to do so ? No case has been made out for this. Today, in the international airports if any passenger comes from foreign countries he is subjected to search. His luggage and even his person are searched. There are both men and women inspectors at the Custom House for this purpose. All these restrictions are there now and so I do not think there is any need to give the President this power. As I said, I can understand the need for this power in an emergency. But, why, when laws enacted by Parliament are there for the purpose ordinarily, should the President have power to overrule those laws? In emergencies the position will be different, I agree, I have personal experience of it. Even relatives of persons embarking or disembarking at ports are not allowed access. Such restrictions are there and have been there in times of emergencies. I do not see any necessity for vesting this power in the President. Instead of this, however, I would suggest the following provision :- "Notwithstanding anything contained in this Constitution, the President may by public notification direct as from such date as may be specified any law may be made in the event of an emergency or war." If these lines are added this article would get a different meaning and may be necessary. Otherwise it will mean you want to deprive Parliament of the power of making laws. I want an explanation as to why the words "Legislature of State" are put in. Has any State power to make laws concerning aerodromes ?

The Honourable Dr. B. R. Ambedkar : Sir, I think my Friend Mr. Sidhwa has entirely misunderstood the position. If he will refer to List 11, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organisation of air traffic. The power given under 35 is for the purpose delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned it is part of the territory of the province and consequently

[The Honourable Dr. B. R. Ambedkar]

any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. Therefore the proposal in this article is this that while it retains the areas covered by the aerodromes and by the ports as part of the area of the provinces—it does not exclude them—it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc., a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is no invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

Mr. President : I shall now put amendment No. 450 to the vote. The question is :

“That after article 302AA. the following new article be inserted:

‘302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

Special provisions as to major ports and aerodromes

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article

- (a) ‘major port’ means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
- (b) ‘aerodrome’ means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.’ ”

The motion was adopted.

Article 302AAA was added to the Constitution.

Mr. President : Then we go to the next item, article 306A.

Shri T. T. Krishnamachari : May I suggest that we pass over the next item for the time being and take up Schedule III-A ?

Mr. President : Yes we may take that up.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:
That after Schedule III, the following Schedule be inserted:

[ARTICLES 4(1) & 67(1a)]

To each State or States specified in the first column of the table of seats appended to Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that state or States, as the case may be.

THE COUNCIL OF STATES

States								Total Seats
1								2
1. Assam	6
2. Bengali	14
3. Bihar	21
4. Bombay	17
5. Koshal-Vidarbh	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. United Provinces	30
TOTAL							..	144

States and Groups of States								Total Seats
1								2
1.	Ajmer	}	1
2.	Coorg							
3.	Bhopal	1
4.	Bilaspur	}	1
5.	Himachal Pradesh							
6.	Cooch-Bihar	1
7.	Delhi	1
8.	Kutch	1
9.	Manipur	}	1
10.	Tripura							
11.	Rampur	1
TOTAL								8

[Shri T. T. Krishnamachari]

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED
IN PART III OF THE FIRST SCHEDULE

States	Total Seats
1	2
1. Hyderabad	11
2. Jammu & Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan.. .. .	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL SEATS	205

Sir, these are three tables, one relating to the States specified In Part I, the second relates to States specified in Part II and the third relates to States specified in Part III, and the total number of seats allotted happens to be 205. I would explain, Sir, that the relative article in the Constitution happens to be 67, clauses (1), (2), (3) and (4) , and, as honourable Members will realise, that under clause (1) the maximum has been fixed at 250, out of which twelve members, shall be nominated by the President and the rest will be representatives of the States. The basis of the scheme envisaged in these tables is the decision of the Union Constitution Committee at a meeting held on the 1st December 1948 at which the following Members of this House were present:

The Honourable Shri Jawaharlal Nehru.

The Honourable Shri Jagjivan Ram.

The Honourable Dr. B. R. Ambedkar

Shri K. M. Munshi. Prof. K. T. Shah.

Shri T. T. Krishnamachari, and

Mr. B. H. Zaidi

If I may be permitted, I will read the relevant portion of the Committee's report.

"The Committee did not go into the details of the revised scheme of a location of seats in the Council of States prepared by office, as owing to mergers of various types the position of the Indian States is still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The Committee while reiterating their previous decision that the representation of units in the Council of States shall be on the scale of one representative for every million of the population up to five millions of the population plus one representative for every additional two millions of the population there-after, considered it unnecessary to adhere to the other decision that the maximum number of representatives from anyone unit shall be limited to twenty five. It was found that only two States, namely Madras and United Provinces would be affected by the imposition of such a limitation and that an abrogation of this limit while securing uniformity would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67(1) of the Draft Constitution"

Sir, it is on the basis of this report made by the Union Constitution Committee that one seat should be allotted to every million up to five millions and thereafter one seat for every additional two millions, that this total has been worked out, and, as honourable Members will see, the total number comes to 205 plus twelve to be nominated by the President, *i.e.* 217. We still have thirty-three seats in hand before reaching the maximum number mentioned in article 67(1).

I would like to say why this is necessary because we could have adopted a different scheme even though it may be in contravention of the recommendations of the Union Constitution Committee. It may be, as honourable Members of the House will understand, that there is a further splitting up of the Units in Part I. If that will be the case, the number will naturally be increased because by every splitting up of the Units, the commitments will increase by at least five. These reallocations by reason of action taken by future Governments under article 3 of this Constitution may necessitate the raising of this number 217 to a still higher figure, and therefore provision has been made by following the system indicated by the Union Constitution Committee's report, *viz.* one seat for every millions up to five million and one seat for every additional two millions thereafter, which, I think, is a very fair arrangement and will allow freedom of action so far as the future is concerned. I would not claim any infallibility so far as these, figures are concerned. May be that the thing might be arranged in some other manner. For instance, regrouping in regard to States in Part II may be taken exception to. It is a matter of opinion.

I think on the whole the scheme is fair, but should honourable Members of this House or people outside have any objection, of course those objections will be examined and those objections will be placed before you and if you will permit me, the necessary amendments will be moved at a later stage, but I do not think that in the face of the arrangement placed before the House any serious alteration would become necessary between now and the Third Reading stage.

I would like to mention another factor that by reason of making this amendment, I would also have to make three consequential amendments, because of certain variations that have occurred. For one thing, article 67(1a) refers to Schedule III-B. An amendment will be necessary in regard to this particular sub-clause in the article. An amendment would also be necessary in article 4 because while taking into consideration article 4 we had omitted to mention along with the First Schedule the Schedule relating to the Table of Seats in the Council of States. Article 4 reads thus :

“Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.”

Any alteration of the First Schedule will entail the alteration of Schedule III. The First Schedule and the Third Schedule have got to be taken together. I will move an amendment later for putting in Schedule III-A in article 4. These amendments will be moved subsequently if the amendment that I have now moved for the incorporation of Schedule III-A containing the Tables of Seats in the Council of States is accepted by the House.

Shri H. V. Kamath: I do not know why my esteemed friend once again referred to my honourable Colleagues as “pepeople inside the House”.

Mr. President : He said “honourable Members and people outside”.

The question is :

“That after Schedule III, the following schedule be inserted

SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of states appended to this Schedule there shall be allotted the number of states specified in the second column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

States 1	Total Seats 2
1. Assam	6
2. Bengal	14
3. Bihar	21
4. Bombay	17
5. Koshal-Vidarbha	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. United Provinces	30
TOTAL	144

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

1. Ajmer }	1
2. Coorg }	1
3. Bhopal	1
4. Bilaspur	1
5. Himachal Pradesh }	1
6. Cooch-Bihar	1
7. Delhi	1
8. Kutch	1
9. Manipur }	1
10. Tripura }	1
11. Rampur	1
TOTAL	8

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

1. Hyderabad	11
2. Jammu & Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL STATES	205.”

The motion was adopted.
Schedule III-A was added to the Constitution.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

“That in clause (1a) of article 67, for the word, figure and letter ‘Schedule III-B the word, figure and letter ‘Schedule III-A’ be substituted.”

I have already explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is merely consequential. The question is:

“That in clause (1a) of article 67, for the word, figure and letter ‘Schedule III-B’ the word, figure and letter ‘Schedule III-A’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That in clause (1) of article 4, after the words ‘First Schedule’ the words, figure and letter ‘and Schedule III-A’ be inserted.”

I have also explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is also consequential. The question is:

“That in clause (1) of article 4, after the words ‘First Schedule’ the words figure and letter ‘and Schedule III-A’ be inserted.”

The amendment was adopted.

Shri T. T. Krishnamachari: Mr. President, I move:

“That in clause (1) of article, 4, for the words ‘incidental and consequential provisions’ the words and brackets ‘supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State’ or States to be affected by such law)’ be substituted.”

This is a modification of the words which we now seek to supplant. There is nothing intrinsic in this amendment which seeks to vary a principle which has been incorporated in article 4.

Mr. Naziruddin Ahmad: Does it enlarge the scope of the original text?

Shri T. T. Krishnamachari : Only to the extent that article 4 is an operative clause, in regard to article 3, and the enlargement is restricted only to the extent that is absolutely necessary.

Mr. President : The question is:

“That in clause (1) of article 4, for the words ‘incidental and consequential provisions the words and brackets ‘supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States to be affected by such law)’ be substituted.”

The amendment was adopted.

PART XVIII

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

“That for Part XVIII the following Part be substituted:

PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

Short title.

313A. This Consitution may be called the Constitution of India.”

Shri B. Das: You have to say “of India, that is Bharat”.

Shri T. T. Krishnamachari : We have used the word India as we have used it in other places in the Constitution.”

314. This article and articles 5, 5A, 5AA, 5B, 303, 311, 331 A 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.

Commencement.

315. The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and, all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect :

Repeal.

Provided that nothing in this article shall affect the provisions of the Abolition of Privy Council Jurisdiction Act, 1949.”

Sir, the first clause 313A is a formal one. The second clause relates to clause 314 which in the draft Constitution has been left more or less blank after the words “This Constitution shall come into force on..... This clause puts in articles 5, 5A, 5AA and 5B relating to Citizenship, article 303 (Definitions) and articles 311, 311A and 312F which are transitory provisions. 311 relates to the election of the provisional Parliament, 311A to the provisional President, and 312F relates to the provisional Parliament so as to determine the method to be followed for the by- elections and the rules to be followed for that purpose. These have been put in as the articles will have to come into force immediately. The remaining articles will come into force on the appointed day, which is the 26th of January 1950.

So far as 315 is concerned, this more or less follows the scheme in the draft Constitution with this exception that we have found it necessary to provide that the operation of the Privy Council Jurisdiction Act passed by this House shall not be affected by this repeal. I do not think there is any need to explain the purport of these articles as they are self-explanatory.

The Honourable Shri K. Santhanam : What about the appointment of a Commission for the delimitation of constituencies ?

Shri T. T. Krishnamachari : That we have not put in, I would like to add this. There may be, for instance, the question of delimitation of constituencies under article 290. This must be preceded by a legislation by the provisional Parliament. I do not think anything could be done in that regard between now and the 26th of January, 1950. I will mention here another matter, if I may do so with your permission. These are the articles that to us now appear as being necessary to be. put in article 314. The position will be examined at greater length. Actually I understand the Law Ministry attached to the Government of India is going through the whole matter and is carefully scanning the provisions of the Constitution that will have to come into force before the appointed date. Should we feel that anything should be added to these articles we shall seek your permission and the permission of the House to incorporate them at a later stage. At the moment these are the only articles affected as far as we can see by going through the articles and scrutinising the meaning of those articles. But other consequential matters might arise, and if they should arise on a scrutiny and examination of the articles by us we shall certainly bring fresh proposals before the House with your permission.

Mr. President : There are certain amendments relating to the original article, I shall take them up if the Members want them, and if they fit in with the amendment as now put in. There are three here. One is by Dr. Deshmukh He is

not here; so it is not moved. The next one is by Mr. Brajeshwar Prasad. He too is not here. So it is also not moved. Then there is again an amendment relating to 315 by Dr. Deshmukh. So it is not also moved. Are there any others ?

Shri H. V. Kamath: I have certain amendments in Vol. II of the printed list.

Mr. President : You may move them, but I think we may take these from the beginning. First 314. There are certain amendments. One is by Mr. N. Ahmad regarding numbering of the Chapter. It is verbal and need not be moved. Mr. Prakasam is not here. Mr. Lari is no longer a member. There is no other amendment to 314. To 315 there is one by Mr. Kamath-3325. He may move it.

Shri H. V. Kamath: Mr. President, I refer to amendments 3325 and 3327 of Printed List, Vol. II. I do not propose to move 3325 because the article as now moved by my honourable Friend Mr. Krishnamachari has made an alteration in 314 regarding the date on which the Constitution will come into force. My amendment which refers to the date of commencement of the Constitution has therefore no validity now. Amendment 3327 is a verbal or formal one. The House will see that the marginal heading of article 315 is "Repeals" and in conformity with that, I thought it would be more correct to state at the end of this article instead of the words "shall cease to have effect"—"shall stand repealed". Of course, I am not a lawyer or an authority on matters of constitutional terminology and phraseology. I shall be content with leaving this matter to the collective wisdom of the Drafting Committee.

But, Sir, I would like to make a few observations in regard to the amendment just now moved by my honourable Friend Mr. Krishnamachari, No. 463. The first point is with regard to article 315 as moved by him. This refers to the Indian Independence Act, 1947. If the House will compare this with the original draft of this article, they will see that the words "insofar as its provisions are repugnant to this Constitution" are a fresh insertion. The original draft was silent on this point. I would like to know what exactly is the significance of these words. Do we not state categorically, clearly and unambiguously that with effect from the date of commencement of this Constitution the Indian Independence Act stands repealed, and of course the Government of India Act and what not? When this Constitution comes into force, then all other laws that were in force till that date automatically become null and void. Therefore, these words "insofar as its provisions are repugnant to this Constitution"—are wholly unnecessary and should be deleted. I am sorry I had no time to give notice of an amendment.

As regards article 314, it refers to the date of commencement of this Constitution. Certain articles have got—and quite rightly so,—to come into force at once. I have nothing to say on that point. But about the second part of this article which says that the rest of the Constitution shall come into force on the 26th January 1950. I made a suggestion some time ago that, granting with all my heart that the 26th of January has got a sanctity all its own in our national calendar, we might still have another day, and it might very aptly and in the fitness of things signify, the advent of our complete freedom and republican status. We may christen it the "Republic Day" The 26th January would still be regarded as "Independence Day", the day on which we took the famous pledge of independence, But in all humility I suggest that we might have a—"Republic Day" which we may observe like other days in our national calendar. I have no objection if the "Independence Day" and the "Republic Day"

[Shri H. V. Kamath]

synchronise, but I think it would add more importance to our national calendar if we had “Independence Day” on the 26th January and another day in January or December as “Republic Day”. As a matter of fact, if it were possible, we might have December 9th, 1949, as the Republic Day, because we began this historic Assembly on the 9th December. But perhaps it is not quite possible to get all these things ready by then, so I would suggest a day in January and have it as “Republic Day” to be celebrated like “Independence Day” or “Gandhi Jayanti” or other national days. I would request the House to, consider this little submission of mine to the effect that we might as well state that the remaining provisions of this article shall come into force on the midnight of the 25/26th January 1950. Just as in August 1947 we celebrated or we welcomed the advent of freedom on the night of 14/15th August 1947, it would be in the fitness of things if we state here definitely that the remaining provisions thereof shall come into force on the midnight of 25/26th January 1950, and if that were adopted today, it would have the way for the celebration of another historic ceremony.

I do not know what the astrologers will have to say about this matter, because last time when they were consulted, there was a conflict of opinion about the auspiciousness of the date.

Mr. President : They offered their opinion without being consulted.

Shri H. V. Kamath: They were consulted by friends outside and they were not quite agreed whether it was wholly auspicious. I do not think we are always bound by the opinions of astrologers, but other things being equal, we might as well celebrate it on the midnight of 25/26th January 1950.

I hope Mr. T. T. Krishnamachari has been listening to me and that he will try his best to answer the suggestions that I have made.

Mr. Naziruddin Ahmad: I am not moving my amendment, but with regard to the amendment that has been moved by Mr. T. T. Krishnamachari, I have some difficulty about the proposed article 315. Article 315 tries to state that the Indian Independence Act, insofar as it is repugnant to this Constitution, shall cease to have effect. I however think that this should be covered by the old article 307. I do not know what has become of it: whether it is proposed to move it or not. But article 307 in the Draft Constitution.....

Shri T. T. Krishnamachari : Another article 307 has been moved and accepted and is part of the Constitution.

Mr. Naziruddin Ahmad: This article 307 would cover 315. I am referring to the old article, and I suppose that the new article 307 is substantially of the same effect.

Shri T. T. Krishnamachari: Except clause (2)

Mr. Naziruddin Ahmad: Clause (1) says: “Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until.....”

So, “all laws in force in the territory of India” would also include the Indian Independence Act 1947.

Shri T. T. Krishnamachari : It is expressly mentioned.

Mr. Naziruddin Ahmad: It is not necessary: otherwise you should mention all the other existing Acts which would be covered. The Indian Independence Act is completely in the hands of the Indian Legislature. That Act states that from the appointed date, all laws relating to the Indian administration and all British laws applicable to India, should no longer be affected or modified or dealt with in any way by the British Parliament but this should be dealt with specifically by the Indian Legislature. If that is so, I fail to see how the Indian Independence Act is an Act which requires a special mention. That is certainly within our competence. The British Parliament has no longer any jurisdiction over that. They have enacted a self-denying ordinance and that is certainly a law in force in the territory of India. Those laws which are now existing will have to be adopted under article 307. I do not know how far the office has proceeded with it, because on the 26th January we expect a complete Adaptation Order, fully ready, to be applicable on that date. On and from that date all laws, inconsistent with the present Constitution should be clearly adapted to suit the Constitution.

I think the word "Repeal" in the marginal note is inapplicable because we are not repealing the Independence Act: we are merely trying to say that insofar as it is inconsistent with the present Constitution it shall cease to have effect. We really modify the Act or adapt it to suit the present Constitution and that purpose would certainly be served by article 307. I therefore oppose article 315. All that we want is not the repeal but really an adaptation.

With regard to article 314, there is one expression which is coming up before the House repeatedly, namely, "the date of the commencement of this Constitution". Sometimes we say, "the commencement of the Constitution". On other occasions we say "the date of the commencement of this Constitution". I think the words 'the date of', are absolutely unnecessary and tautological. We mention here the "26th day of January 1950", which date is referred to in this, article as the "date of the commencement of this Constitution. The 26th day of January 1950 is certainly a "date", and if that is referred to as the commencement of this Constitution the words 'date or are absolute unnecessary. The use of this expression has been rather indiscriminate in many places that they occur and in many places they do not occur. I should think these words should be deleted by the Drafting Committee so as to make the expression absolutely neat and clear and yet complete.

I would like to know what progress has been made in the adaptation of the of the existing laws because this is extremely important and things should be ready on the 26th January. This will affect courts, offices and various other persons. We should have a completely adapted series of Acts, as was done in the case of the Government of India Act, all the Acts were adapted and an Adaptation Order was printed and circulated before time so as to be ready on the date that the Constitution came into effect, that is, on the 1st April 1937.

I should like to know what progress has been made already, because if that is not taken in hand, there may be an impasse and confusion. So this requires clarification and if we have taken that in hand, then article 315 will be absolutely unnecessary.

The Honourable Shri K. Santhanam: Sir, I have just two points to make with reference to amendment No. 463. I think before any other article is brought into Operation, it is desirable to have at least the Preamble and article I also to be brought into operation because all the other clauses refer to India and so before article I comes into operation, I do not think it is quite right that

[The Honourable Shri K. Santhanam]

other articles should be brought into operation. I suggest that the Preamble and article I also may be added. These articles should be brought into immediate operation while the rest may come into operation on the 26th of January.

Mr. Naziruddin Ahmad: The difficulty would be that the Preamble has not yet been accepted by the House.

The Honourable Shri K. Santhanam: It will have to be accepted before the Constitution is complete. I am only suggesting this.

Shri R. K. Sidhwa: May I know why you want the Preamble to be made applicable immediately ?

The Honourable Shri K. Santhanam: Preliminary to bringing the whole Constitution into force, we are bringing some provisions of the Constitution into force and the object of the Constitution and the name of the country must be there before any part of the Constitution can be brought into force. You may consider that suggestion for what it is worth.

In proposed article 315 there are provisions what are hardly consistent with the dignity of the new Constitution. It says: "The Indian Independence Act, 1947, insofar as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946, and all other enactment amending or supplementing the Government of India Act, 1935, shall cease to have effect." The Independence Act to the extent it is not repugnant to the provisions will continue in existence and be in force. I think the entire Independence Act must be repealed. The only fundamental law must be the Constitution. The validity of all other laws must be derived from the Constitution. When the Government of India Act, 1935 was passed, all the previous Acts were completely repealed. I do not think we should leave the Indian Independence Act as if it is continued together with the Constitution as a fundamental law of the country so that it can be argued in the Supreme Court that a certain provision of the Indian Independence Act, because it is not repugnant to the provisions of the Constitution will continue in force. Our Supreme Court should not derive any authority from the Indian Independence Act; it should derive its authority only from the Constitution. I think this is an elementary principle which is necessary for the dignity of the whole Constitution. We should not say that our Constitution consists of the Constitutions which we have enacted and the Indian Independence Act to the extent it is not repugnant to the provisions of the Constitution. So I think this is a matter of importance and I suggest that Mr. Alladi and others should put their heads together and see that we do not enact a clause which is likely to be detrimental to the dignity of the Constitution we are making.

Shri B. Das: Mr. President, Sir, in article 314 it says: "This article 311 will come into force at once." When the article 311 was passed I understood that those members of provincial legislatures that are Members of this House will continue till the 26th of January, 1950. I wish it should be made clear that all members of provincial legislatures, that our comrades and colleagues here will remain with us until the 26th of January 1950 when the Republic will be declared. I hope no mistake will be made on that quarter if we accept the present article 314 (Interruption). I respectfully request you to examine article 311 and I want to know whether our colleagues here from the provincial legislatures will continue to remain with us till the 26th January, 1950 when the Republic will be declared. Otherwise if that is not Contemplated, I oppose inclusion of article 311 here.

Shri R. K. Sidhwa: It is clear.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, I just want to say a word or two in regard to the first objection of my Honourable Friend Mr. Santhanam. I might point out that in the Draft Constitution, article 315, there is no reference to the retention of any revision of the Dominion Act after our Constitution comes into force. I would read the language of the said original article. "The Indian Independence Act, 1947 and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect." On a careful consideration I am inclined to agree with Mr. Santhanam, namely, that there is no question of the retention of any of the provisions of the earlier Act after our new Constitution comes into force. No doubt we might give a fresh lease of life to certain laws which were passed under the old Constitution and adopt them, so to speak, as the law under our Constitution. That is necessary and that provision has been made. I might also point out we were particularly anxious that the Constitution which we are making or passing must not be traceable to section 7 of the Independence Act and we took the view that there is no necessity of even the Governor General's assent being required for the new Constitution. The new Constitution will not be a constitution passed under or in pursuance of the wide and comprehensive powers given under section 7 or 8 of the Indian Independence Act. Therefore, when once we pass a Constitution, use our own free will, independent of and without reference to any earlier Act, there is no need of mentioning that the Independence Act will continue to be in force to any extent whatever. I might mention that even when an Act like the Government of India Act of 1935 was passed it was in pursuance of an Act of Parliament and the earlier Government of India Act was treated as repealed, excepting in so far as the provisions of the earlier Government of India Act were in terms adopted and continued by particular sections of the Government of India Act. Under those circumstances there is force in the suggestion of Mr. Santhanam, but they are in the nature of a drafting amendment. If permission is given that might be dropped at a later stage. The reason why I am mentioning this is that having emerged from the Drafting Committee, it is only fair that it should be amended again by the Drafting Committee. There will be no difficulty whatever in regard to that point.

Then some technical point was raised by my honourable Friend, Mr. Kamath, with regard to the words 'cease to have effect'; for the very reason for which he has been fighting we advisedly put in the express words "cease to have effect". On the point as to repeal, we are to remember we are an independent body. The Independence Act emanated from another Parliament. There is no question of our repealing another Act. That is why advisedly the draft Constitution contained the express provision "cease to have effect." Therefore, consistent with the ideas of my honourable Friend Mr. Kamath, who always stands for the independence of this country, for the Constitution not having reference to anything emanating from the British Parliament, it is appropriate and fitting that the expression 'cease' should be there instead of the word 'repealed'.

Then, Sir, lastly the point mentioned by Mr. Santhanam : one, regarding the coming into force of the Preamble and secondly, that India shall be a Union. I think, if I may say with respect to my honourable Friend who is always careful about his points, there is no force in that objection. So far as the Preamble is concerned, though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the Preamble in a Constitutional statute, there is no such thing as the Preamble immediately coming

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into force. The Preamble will come into force in all its plenitude when the Constitution comes into force. There is no reason to say that the Preamble will come into force earlier than when the Constitution comes into force.

Secondly, I do not think we can bring into force the article that India shall be a Union because India does not immediately become a Union of States as it is understood throughout the Constitution. A Union must be understood with the entire constitutional mechanism that has been created under the Constitution which we are passing. We cannot conceive of a body or soul without limbs. If the limbs do not begin to operate how can a Union come into existence. So far as that point is concerned, even Homer nods and there is no force in the objection raised by Mr. Santhanam that the article must come into force immediately.

Mr. President : There was one point raised by Mr. Das with regard to article 311.

Shri T. T. Krishnamachari : That is very clear, Sir,

Shri Alladi Krishnaswami Ayyar: I have not caught the point.

Shri Kuladhar Chaliha (Assam: General): Sir, I want to understand from the Drafting Committee how you can reconcile article 311(3) with article 314 article 314 says that it shall come into force at once. These Member, will have to vacate immediately I think. I want to have an answer from Mr. Krishnamachari. If that is the consequence, we cannot support this.

The Honourable Shri K. Santhanam: This will come into effect when the Third Reading is passed.

Mr. President : That is exactly the point raised by Mr. B. Das also.

Shri T. T. Krishnamachari : Sir, in regard to the point raised by Mr. B. Das and Mr. Kuladhar Chaliha, I would like to say this. Article 311(3) says:

“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 then, as from the date of commencement of this Constitution the seat of such member shall unless he has ceased to be a member of that Assembly earlier, become vacant.”

Here, article 314 says that the date of the commencement of the Constitution is 26th of January 1950. Even though these articles are to come into force immediately, the date of the commencement of the Constitution will be the operating factor. I do not think there is any doubt about that. I can tell honourable Members this. The idea is that Members who have double member-ship remain Members until the 25th of January. (Interruption). Honourable Members will please bear me patiently. We will have to examine the position again, if instead of the words ‘date of commencement of the Constitution’ the words ‘appointed date’ would suit better. Because, the appointed day happens to be the 26th of January. The position will be examined by Dr. Ambedkar and the Drafting Committee and if it is felt that the position of the Members will in any way be prejudicially affected, I will give this assurance to this House, that we will try to safeguard it by a suitable amendment and I think honourable Members need have no fear in that matter.

Dr. B. Pattabhi Sitaramayya (Madras : General): I should like to know what was the object with which this was included. The date of commencement of the Constitution being evident and the tenure continuing till that date, what

was the object of including this article mentioning the articles which are immediately coming into force? Probably it is to bring the elections into operation. If so, can you have an implied purpose and a declared purpose which are different from each other. This must be re-examined.

Shri T. T. Krishnamachari : The honourable Doctor has really put his finger on the point. The point is that, notwithstanding the fact that the vacancies have not occurred until the 25th of January, elections will have to be held so that the new Members will be enabled to take their seats on the 26th of January, on which date the vacancies will definitely occur. The idea is to enable the President of the Constituent Assembly to hold these elections notwithstanding the fact the actual vacancies will occur later. The wording of article 311 is clear. Both articles 311 and 312F permit the President of the Constituent Assembly to make appropriate rules for the purpose of enabling elections to be held on the supposition that the seats will become vacant on the 25th of January. The position as the Doctor has understood is correct and the position is also perfectly clear. I do not think any Member will be prejudicially affected by the fact that these articles are being brought into effect immediately from the time the Constitution is finally passed, or the Third Reading has been passed. If we do not do it, the President of the Constituent Assembly will not be empowered to take any action under articles 311 and 312 F.

With regard to the wording of article 315, I must bow to the superior wisdom of my honourable Colleague Mr. Alladi Krishnaswami Ayyar. If he now feels that the wording is not as it should be, I suppose the matter has definitely to be reconsidered. I would only say this, When experts differ, the layman is literally at sea. The reason why we made this change in the draft article is because of the advice that has been given to us by the Constitutional Adviser of this honourable House which is in these terms. “—This article provides without any qualification that the Indian Independence Act, 1947 and certain other Parliamentary enactments shall cease to have effect. There are, however, certain provisions of the Indian Independence Act which would not cease to have effect. For example, there is no reason why the provision of that Act stating that His Majesty’s Government in the United Kingdom have no longer any responsibility as respects the government of any of the territories which immediately before August 1947 were included in British India, that the suzerainty of His Majesty over the Indian States lapses, etc., should not continue to remain in force. There is nothing in this provision that is repugnant to the new Constitution. Hence the proposed amendment.” My honourable Friend Mr. Alladi Krishnaswami Ayyar holds the view that as this Constitution is completely independent in character, it acts on its own volition and therefore all the other enactments that preceded it must automatically cease to have effect. I quite agree. But, this is the opinion that was given to us by the Constitutional Adviser and it is only on the lines of this opinion that we put in these words “in so far as its provisions are repugnant to this Constitution.

I had originally thought of suggesting that we might, in order to make the meaning of this particular article clear, split it up into two and call it 315 (1) with the following words: “The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution”. Then put the figure (2) and put the following words after it. “The Government of India Act, 1935 including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act”. And thereafter, put these words below, which shall apply to both (1) and (2): shall cease to have effect”. In view of the position taken up by my honourable Friend Mr. Alladi Krishnaswami Ayyar, I would suggest with your permission, that the House do pass this article in this form and we will have the position re-examined.

[Shri T. T. Krishnamachari]

My honourable Colleague, the Chairman of the Drafting Committee is not here. We shall have the position re-examined and if necessary, at the Third Reading Stage, when we are convinced that these words “in so far as its provisions are repugnant to this Constitution” should be eliminated, we shall eliminate them at the Third Reading Stage.

I therefore suggest that we shall pass this article in the present form and if any change is necessary, we shall take adequate legal advice and the eminent lawyer members of the Drafting Committee will examine it. We will ‘put my honourable colleague Mr. Alladi Krishnaswami Ayyar against Dr. Ambedkar and Mr. Munshi and we will probably be able to arrive at a settlement so far as the wording is concerned. I do hope that....

The Honourable Shri K. Santhanam: Would it not be better that the opposite course is adopted?

Shri T. T. Krishnamachari : I have suggested one course. My honourable Friend Mr. Santhanam takes the opposite view. It is for the House to decide whether my view is proper or the opposite view. I would also suggest that before we finalise the wording of the article, we shall have the benefit of the views of Sir B. N. Rau about this matter. We shall immediately write to him about this matter and ask him if he would revise his view in the light of the expression of opposite views in the House. Therefore, I suggest that this article be accepted by the House in its present form, subject to this condition that the whole thing will be re-examined and if on examination we find that the objections mentioned by my honourable Friend Mr. Santhanam and supported by my honourable Colleague have any validity, the article will come before the House in a revised form.

So far as the objection to the wording “cease to have effect” is concerned, which my honourable Friend Mr. Kamath wants to be supplanted by the word “repealed”, I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar has answered him adequately. The House need, therefore, have no qualms in accepting the wording ‘cease to have effect.’

Shri H. V. Kamath: What about the two suggestions that I made in regard to a separate Republic day and also about the Midnight ceremony ?

Shri T. T. Krishnamachari : That is a matter for the appropriate authorities and not for the Drafting Committee.

Mr. Naziruddin Ahmed: Is it proper to accept this subject to reconsideration? If these controversial matters are left over for the Third Reading, other matters will have no time. I suggest it should be dropped. It is included in 307.

Mr. President : That again is a controversial matter. In some form it has to be passed today so that the Second Reading may be completed. If any question arises for revision, that may be done at the Third Reading stage, and as Mr. Krishnamachari said they will have the matter re-examined and if we find that any amendment is necessary, we shall take that up at that stage. If we leave it also, then we could not bring anything new at that stage.

The Honourable Shri K. Santhanam: If the words ‘In so far as its provisions are repugnant to this Constitution, are omitted, it will have unanimous acceptance and there is nothing to prevent them in re-introducing those words if they

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

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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

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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.

[Mr. President]

If necessary, we shall sit in the afternoon and dispose of it, unless we can do it within fifteen minutes that remain before one o'clock.

I find there are quite a good number of amendments to the Preamble in Vol. I of the Printed List. Many of them bring in certain matters really not germane to the Preamble but by way of introduction of the Preamble. But I find that Maulana Hasrat Mohani's amendment is one of substance and seeks to bring in altogether new ideas. Therefore, I would ask him if he wishes to move his amendment first.

Maulana Hasrat Mohani: I have three amendments. I want to move them separately, not in one bundle.

Mr. President : Which one do you want to move first?

Maulana Hasrat Mohani: I wish to move 453 first. It runs thus:

"That for amendment No. 8 of the List of Amendments (Volume 1), the following be substituted:—

"That in the Preamble, for the words "We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic" the following be substituted:—

"We, the People of India having solemnly resolved to constitute India into a Sovereign Federal Republic"."

or alternatively

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic".

I shall just now give my reasons for proposing these amendments. In view of the proverbial shortness of public memory, I want first to remind the Members about a very fundamental fact that has been brought into the present Constitution and in the Draft prepared by Dr. Ambedkar. I refer to Volume IV No. 6 of the official report of the proceedings of this Assembly—list 738, Part I: Federal territory and jurisdiction. Under "name of territory and federation" it is said that the Federation hereby established shall be a sovereign independent republic known as India. So it is clearly laid down that we will have only a Federation and it will be a federation of Indian republics. But my friend, Dr. Ambedkar has cleverly, I suppose, dropped the word "federal" altogether and the word "independent" also has been dropped and he has said "democratic State". I objected to that when I spoke the other day.

Shri Deshbandhu Gupta: (Delhi): On a point of order: the effect of these amendments if passed would be that the whole Constitution will have to be recast.

Maulana Hasrat Mohani: Who will be responsible for that?

Shri Deshbandhu Gupta: To move such an amendment at this stage is out of order and it should therefore be disallowed.

Maulana Hasrat Mohani: I should submit that I tried my best in the very beginning to stop you. I said that when you are going to decide the fate of India you should first make up your mind to find out and declare what kind of constitution you are going to frame. But I was ruled out. Of course I said if you do not accept my suggestion then you should not grumble, when the Preamble is presented; should I not raise any objection? Then I will not listen to you if you say because we have passed such and such a things

Shri Deshbandhu Gupta : May I have your ruling?

Maulana Hasrat Mohani : I say that you are responsible for preventing me from getting this thing discussed in the very beginning and therefore if you have to redraft the whole Constitution it does not matter. I shall insist on it. I have every right to propose any amendment in the Preamble, and if you find you have already passed something quite different, let me tell you that the Preamble will not be subject to your erroneous decisions and you will have to correct those decisions and it may take a year or two. But it does not matter. But unless and until you conform to the accepted principles prevalent all over the world, I think it will be ridiculous to pass this so perfunctorily.

Shri Deshbandhu Gupta : May I draw the attention of the Chair to the point of order moved by me? I am serious about it.

Mr. President : He is moving amendment No. 453 which runs thus:

“That in the Preamble for the words

‘We, the People of India, having solemnly solved to constitute India into a Sovereign Democratic Republic’ the following be substituted:—

We, the People of India, having solemnly resolved to constitute India into a Sovereign Federal Republic.’ ”

Or

‘We, the people of India having solemnly resolved to constitute India into a Sovereign Independent Republic.’ ”

So far as this amendment is concerned, I do not see anything in it that is out of order.

You are taking only this one, Maulana Sahib?

Maulana Hasrat Mohani: No, no. I will propose the other one when the time comes.

Mr. President : At present you are moving this one?

Maulana Hasrat Mohani: Yes. But I am not giving up the other amendment.

Mr. President : You are not taking up any other at the present moment. You have moved amendment No. 453.

Maulana Hasrat Mohani: Yes—this and the other one.

Mr. President : Which other one? We have only one amendment.

Maulana Hasrat Mohani: The alternative!

Mr. President : That does not make any difference.

Dr. B. Pattabhi Sitaramayya: You said before that if there are alternative amendments and one of them is moved, the other one would be blocked.

Mr. President : I do not see much difference between the two amendments. They are more or less the same. Therefore whether the one or the other is accepted does not matter.

Dr. B. Pattabhi Sitaramayya: So, if they are the same, only one can be accepted.

Mr. President : Whichever he moves, that I will put to the House.

Maulana Hasrat Mohani: So I have read out the official report. I refer to volume IV

Mr. President : The object of putting the Preamble last was that the Preamble may be in conformity with the Bill as accepted.

Maulana Hasrat Mohani: When I wanted the Preamble discussed at the very beginning you said we will not allow you to discuss it. I therefore pointed out that I was suspicious that when you had passed all the other articles according to your wishes, if any one else proposed anything about the Preamble you would say that it was not possible to go back on what we had passed it is now a settled fact and you will then rule me out of order. You gave me a promise that you would not do that and I have that in the printed report.

Dr. B. Pattabhi Sitaramayya: Well, you have been good enough to disallow the point of order but he admits the point of order and therefore he must be ruled out now.

Maulana Hasrat Mohani: What is the point of order?

Mr. President : Maulana Sahib, you are referring to something that I promised. I just want to have that.

Maulana Hasrat Mohani: I will read out to you what you said on a previous occasion. I have here also an admission on the part of Dr. Ambedkar himself. I refer you to the printed report, volume 7, No. 6, page 418 where he says that he will not object to any amendment being proposed at this stage.

With regard to yourself, I refer you to volume 4, No. 6 on page 733. That was the occasion when the report on the proposed Union Constitution was presented by Pandit Jawaharlal Nehru. I raised an objection at that time and you said that "you need not obstruct him just now". You said I could raise this objection afterwards. "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order." Then you said "More than this I cannot say anything at this stage." "I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report." I objected and said that I would not allow this report to be considered and then you said that I can raise my objection afterwards and for the present I may, allow Pandit Jawaharlal Nehru to proceed with; this report and it was on that understanding that I refrained from saying all these things at that time.

Mr. President : Far from giving a promise I definitely refused to give a promise. I read the relevant portion of the debate: "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any Member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage."

Maulana Hasrat Mohani: I have been given some sort of promise. Very well, Sir. According to that report the Committee appointed for framing the constitution was given a clear directive that the Constitution should be framed in accordance with the Objectives Resolution passed by this Assembly. It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes. He wants the Objectives Resolution to be in conformity with his erroneous decision. He has reversed the order and this is what I object to most because it has changed the character of the Constitution. As I pointed out here, what was the object of the Objectives Resolution and the

report. They said that it will be a Federation of sovereign Independent Republics. Mark this plural form "Republics". Now he has reversed the whole thing. He has dropped the word 'Federation'; he has dropped the word Republic and he has dropped also the word, 'independent' for some ulterior motive which I am not going to disclose at this moment. I reserve it for a future occasion when I win throw is in his face when the time comes. For the present I say that according to the Objectives Resolution and according to the instructions given by Pandit Jawaharlal Nehru they should at least change this article in this way, that the spirit of what he suggested may be included in the article proposed by Dr. Ambedkar. He in fact, accepted this thing; he drops the word 'independent'. For the word 'independent' I want to put the word 'Federal' that is, a sovereign federal Republic; it does not matter if it is not a Republic. When I say a Sovereign Federal Republic, it means a Republic and the State units of that will also be Republics or it will be a federation, at least not what he wants. Instead of having a Republic or any Federation, he wants only a Union of States and the 'Union' also in the sense of a Federation. I say 'No'. He takes that word only because it implies also a sort of a unitary system, and whatever he wants he has reversed and changed the whole character of this Constitution. We mean and the Objectives Resolution means that India will be made a Federation of Independent Republics and he now says "No". India will be transformed and in the place of the British Empire you will create an Indian Empire which will consist only of States which will have got no power and in the States you have also included and brought down the Provinces also. Formerly, I thought that the States will get the benefit of this inclusion but you have brought down the provinces also and you have deprived them of everything and even the sort of provincial autonomy has been taken away and in fact you have allowed nothing for the Provinces. You decided that you win have elected governors for the provinces. I objected to the word 'governors' in the very beginning and when Pandit Jawaharlal Nehru said "I cannot satisfy the Maulana; he is a very deep man. He is afraid of this word 'Governor', I suggested that instead of the word 'Governor' we may put the word "President" also in regard to the provinces. They said that they need not do that. I did not press that matter at that time but now I find on hearing the explanations given by Dr. Ambedkar that he has reversed the whole picture and he has let the cat out of the bag. He has clearly said: "What will be India that is Bharat? It will be a Union of States." What does this mean? You have discarded the word 'Republic'; you have discarded the word "Federation"; you have discarded the word "Independent", and my honourable Friend, Dr. Ambedkar says: "Well, what does it matter? It does not matter when we say Republic. It is immaterial whether you call it independent or not". I say if this is immaterial why is he so anxious to change that word 'independent' into 'democratic'? There is something secretly going behind the scenes and I pointed out on a previous occasion that when Pandit Jawaharlal Nehru changed his mind and went to England to have some sort of connection with the British Commonwealth, then he thought that we will have a Republic and also 'independent'. So he wanted to create a loop-hole for himself because he can now say. "We are already a Republic". We are not an independent Republic. What sort of a Republic are we? Some sort of Republic that these European countries, these Imperialists, who are past-masters in this jugglery of words, have coined new phrases; and what are these new phrases? Holland has invented a phrase a Republican Dominion and France has coined a new word for Vietnam which says that it will be a colonial Republic. We admit that Vietnam is a Republic and Holland says that they have accepted Indonesia as a Republic but it says it is a Republican Dominion. Instead of the Dominion it will be included in an imperial regime and that fraud was brought about by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here?

[Maulana Hasrat Mohani]

You said that we have got the word Republic. You have dropped the word Federation. You will also say that of course Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth because they accept we are independent. But, what sort of independence? It will be a republican dominion. Because if it is a real republic and not a republican dominion, you should have nothing to do with any King or Emperor directly or indirectly in any manner. When once Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth, I think he has forfeited his right to call India as a Republic. It is not a republic. If it is a republic, it is a republican dominion, as I said just now.

So, my alternative proposal is this. Either introduce the word 'Federal' instead of the word "Democratic". It will make something clear. If you do not want to introduce this word 'federation', if you are afraid of it, I will grant a concession to Dr. Ambedkar and you stick to the original wording of the Objectives Resolution which is given here. It will be "Independent Sovereign Republic." I say, drop this word 'democratic' and keep to the actual words used in the Objectives Resolution. If you use the words "Independent Republic" my object will be served. I come forward and say that whatever has been done by Pandit Jawaharlal Nehru is absolutely a false policy.

Mr. President : Does any one else wish to say anything about this amendment? I will put it to the vote. First alternative.

The question is:

"That in the Preamble for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:—

'We, the people of India, having solemnly resolved to constitute India into a Sovereign Federal Republic.' "

The amendment was negatived.

Mr. President : I shall put the second alternative.

The question is:

"That in the Preamble, for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:—

'We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic.' "

The amendment was negatived.

Mr. President : We shall take up the other things when we meet at six o'clock.

The Assembly then adjourned for Lunch till Six p.m.

The Assembly reassembled after Lunch at 6 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We have to take up the other amendment now. There is one in the name of Maulana Hasrat Mohani, No. 9.

Maulana Hasrat Mohani: Mr. President, I move:

“That in the Preamble, for the words ‘We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the words ‘We, The People of India, having solemnly resolved to constitute India into a Union of Indians socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R.’ be substituted.”

Shri Deshbandhu Gupta: May I now raise the point of order again and submit that it is out of order because it goes counter to the Constitution we have passed?

Mr. President : A point of order has been raised that the whole Constitution that has been framed and accepted by this House is inconsistent with this amendment of the Preamble and therefore it should be ruled out of order.

Maulana Hasrat Mohani: It was for this very point I requested you to save me from this sort of manoeuvring. I am not going to repeat the same things. The other day I proposed this very thing in connection with article 1. What I am going to propose today is on a different basis. If you find me repeating the same argument, you can declare me out of order but if I say something quite new which has nothing to do with my amendment to the First article of the Constitution, I think I am entitled to some indulgence on your part. As I showed in my statement earlier, you gave a sort of promise that you will not rule me out abruptly, or without any consideration. Of course if you still think that I have nothing new to say and you find me repeating, you can rule me out; but if it is something, quite different from what I said in connection with article 1, then of course I do not see any reason why my amendment should be ruled out of order.

Dr. B. Pattabhi Sitaramayya: May I know whether the vote that was taken this morning was a vote to reject Maulana’s amendment? There was no positive vote on the wording of the Preamble?

Mr. President : I did not take any.

Dr. B. Pattabhi Sitaramayya: Therefore all that was done was to reject this amendment to substitute ‘independent’ or ‘Federal’ for the word ‘Democratic’.

Mr. President : Maulana, what I have to decide is not whether you are going to repeat or not. The point is whether this is in order or not. The objection is that it is inconsistent with the whole Constitution we have passed. What have you to say about that?

Maulana Hasrat Mohani: I do not know how it is inconsistent. Because the words in the Preamble are ‘Sovereign Democratic Republic’. I say that instead of these you can say ‘Union of independent Republics’. Where is the inconsistency? I do not find any inconsistency in that.

Mr. President : Do you really suggest that the Constitution we have passed is on the lines of U.S.S.R.?

Maulana Hasrat Mohani : I am not going to say anything of the kind I do not say we should go and merge in the U.S.S.R. or that you should adopt the same Constitution; but what I want to say is that we should work out our Constitution along the lines and on the pattern of Soviet Russia. It is a special pattern and also republican pattern and also it is of a centrifugal pattern.

Shri Jainarain Vyas (Rajasthan): May I enquire if the honourable Member is making a speech or replying to the point of order?

Mr. President: He is replying to the point of order.

Maulana Hasrat Mohani: When I propose this that we are not going to merge ourselves with Russia or we are not going to adopt the Constitution of U.S.S.R., I am only suggesting that the Constitution and the Preamble we are adopting here in this Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is any thing inconsistent in that. What are those considerations? What are the Fundamental principles of the U.S.S.R.? They are three. First that it will be federal constitution. Secondly that it will be a centrifugal federation, and at the same time, the Centre, after getting some central powers, it again delegated those powers to their constituent units, declaring that they.....

Mr. President : I think it will save time if I allowed Maulana Sahib to move his amendment, without giving any ruling. So you had better finish your speech.

Maulana Hasrat Mohani : Some of my friends here, whenever they hear the word "Soviet", say, "He is an agent of the Soviet Government, and he is in the pay of the Soviet Government." I do not think anybody in this world can accuse me of that kind of thing.

Mr. President : Nobody has said that in this House.

Maulana Hasrat Mohani: They are the henchmen of the Soviet, they carry out the orders they receive from the Soviet Government. I have no connection with them. I have got no connection with the Communist Party of India even, because I refused to join them on the ground that once they made the mistake of saying that we have got a common ground with England because we are both fighting Nazism. I said then, and I say it now, "Anybody who helps any foreign Government, especially the British Government, under any terms or for any motive, I say that he is wrong."

Mr. President : Maulana Sahib, let me remind you that we are not concerned with biographical details. You will please speak on your amendment.

Maulana Hasrat Mohani: I am not going to say anything to which anyone can take objection. I have nothing to do with the Soviet Government or the Soviet Constitution. I want only our Constitution and our Preamble to follow the lines adopted by the Soviet Government, and those are the three lines which I have mentioned. That is to say, our Constitution must be federal, and also along with being federal, it must be centrifugal, that the constituent States or Republics should willingly hand over certain central powers to the Centre. And after that, to obtain the goodwill of the constituent units, they again, I mean the Soviet Government again, gave freedom to their constituent units or republics. They said, "If you find at any time that the Centre is deciding something against your interest, you are at liberty to differ from the Centre." And therefore, they gave them the simultaneous right, and if they found anything going wrong, any proposal of the Centre, they could at once go. out and they said that even when the war was raging. They said to all those Muslim republics of the U.S.S.R., "If you like, you can go and fight on whichever site you want. If you do not like to fight for us, we do not press you. What was the result? The U.S.S.R. took them into its confidence and the result was not a single Muslim went against the Soviet Republic. Everyone fought, whole heartedly with the Soviet Government. What was the reason for this? They did so, because they found they had been taken into the confidence of the U.S.S.R. They were not made to leave the Soviet group. Why should they leave them? They were also cautious. They, would

never propose anything which might obviously go against the interest of their Constituent units.

So by adopting this conciliatory attitude they have attained that kind of from and that kind of success that has never been known in the world before. I say, Sir, that we should also follow the same policy, and we should also adopt the same attitude. We should also take out minorities into our confidence. Instead of doing that, you are going to out caste the altogether. You are passing anything you like, without the slightest consideration for the interests of even your political minorities. You do not care a fig about us, You see, your Bengal Government and your Madras Government have declared the Communist Party to be unlawful, on the ground that the Communists have adopted some unlawful means, that they are fighting, killing, murdering and looting. Well, I say that the same thing can be said by the Communists. They can say, "You do not allow us any scope, you do not allow us to take an independent and constitutional attitude, and you....."

Mr. President: May I remind you, that we are not in the Legislative Assembly, but we are here in the Constituent Assembly, and we are not concerned with what is happening in the country at the present moment.

Maulana Hasrat Mohani: Very well, Sir, I have only a few sentences more to speak in this connection and I am not going to take very long over them.

Supposing you say that the Communists can fight a free election in the next election, with joint electorates and all that, and without any restriction. But how are they going to do that? Supposing the Communist Party wants to adopt this constitutional means, will you allow them to issue their manifesto, which must certainly be against your principles? Will you allow them to have their agents for the elections? Will you allow them to have their own workers who will approach every voter? You will not do anything of that kind. Once they issue their manifesto, you will at once send them to the prison. So it is a question of whether the hen came first or the egg came first. You imprison them because they adopt violent means, and they say, "We are forced to resort to violent means because you do not leave us any scope for constitutional means."

Mr. President : Maulana Sahib, you are not speaking on your amendment.

Maulana Hasrat Mohani: Very well. I have only to request Dr. Ambedkar and this House to adopt the same conciliatory attitude to all political minorities and to adopt the same principles as have been adopted by the Soviet Union. I am not going to ask you to join the Soviet Union or to adopt their Constitution. With these few words, I propose my amendment and request Dr. Ambedkar to accept it.

Mr. President : Does anyone wish to say anything about this amendment?

Honourable Members: No.

Mr. President : Then I will put it to vote.

The question is:

"That in the Preamble for the words 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic 'Republic' the words 'We The people of India, having solemnly resolved to constitute India into a Union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R., be substituted."

The amendment was negatived.

Mr. President : Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this Preamble. In some others, the name of Mahatma Gandhi 'is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in, or both together. Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor Mahatma Gandhi admits of a discussion in this House. (Hear, hear).

Shri H. V. Kamath: Mr. President, may I move my amendment No. 430?

Mr. President : If it is moved it may have to be voted upon.

Shri Deshbandhu Gupta: Sir, before Mr. Kamath moves his amendment, may I draw the attention of the House to the fact that when the Assembly passed the Objectives Resolution solemnly, all Members- standing, the Prime Minister at that time had made an appeal in these words:

yet,

“It is a Resolution and it is something much more than a resolution. It is a declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication..... and I wish this House, if I may say so respectfully, consider this Resolution not in a spirit of narrow legal wording, but rather look as the spirit behind that Resolution.”

The Preamble is no less important and the Prime Minister's remarks are equally applicable to same. I therefore appeal to Mr. Kamath that this may be borne in mind.

Mr. President : May I just point out to Mr. Kamath one thing? In the Schedule III which we have passed an oath or affirmation is prescribed for Ministers and others who have to take office. We have put the thing in the alternative form, such as 'Swear in the name of God' or, 'Solemnly affirm' so as to give freedom of choice to the believers and the non-believers to take the oath or the affirmation. Now here, would you like this thing also to be in the alternative form?

Shri H. V. Kamath: Here we are not individuals. Here we are all the people of India. There is much difference between the two.

Mr. President : The people of India includes individuals. If you insist upon moving your amendment I cannot prevent you. But I would suggest to you not to insist upon it.

Shri H. V. Kamath: Mr. President, I move.....

Shrimati Purnima Banerji (United Provinces: General). Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. Let us not try to invoke His name in vain. It should not be brought up in this form and the Members compelled to vote one way or the other. The flame of God is invoked by every nation upon earth and God is an Impartial Entity and He should be allowed to remain so. With these words, I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God.

Shri H. V. Kamath: I regret I cannot accept the appeal. I shall move amendment No. 430 standing in my name. Sir, I move:

“That in amendment No. 2 of the List of Amendments (Volume I), the following be substituted for, the proposed preamble:-

‘In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizen

Justice, social economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity. assuring the dignity of the individual and the unity of the nation;

in our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution.’

Dr. B. Pattabhi Sitaramayya: ‘The amendment is only in the first line, you see, Sir?’

Mr. President : It is exactly the same as the Preamble except that it begins with ‘In the name of God’.

Honorable Members: No speech, please.

The Honourable Shri K. Santhanam: I rise to a point of order. The amendment moved must have a meaning.

Mr. President : It is not a point of order really.

Shri H. V. Kamath: I can reply to Mr. Santhanam. My amendment means, in the name of God we do this and that. No long speech is needed to commend this motion. Besides invoking the name of God, I have taken a little liberty with only one word, and that is, I have changed the word ‘Its’ citizens to ‘her’ citizens.

Shri A. Thanu Pillai: (Travancore and Cochin State): May I rise to a point of order, Sir? If Mr. Kamath’s amendment is accepted, -of course I am a believer in God-would not that amount to compulsion in the matter of faith? Is it not out of order to move a motion like that? It affects the fundamental right of freedom of faith. A man has a right to believe in God or not, according to the Constitution. In that view this amendment should be ruled out, though I am myself a staunch believer in God.

Shri. H. V. Kamath: My reply to Mr. Thanu Pillai is that we are passing this in the name and on behalf of the people of India. All that we have done, here in this Assembly has been in the name and on behalf of the people of India.

Shri Rohini Kumar Chaudhury (Assam: General): May I move an amendment to that of Shri Kamath that, instead of ‘In the name of God’, would he be pleased to accept ‘In the name of Goddess’? (laughter).

Shri H. V. Kamath: Mr. President, all that we have done in this House has been done on behalf of and for the people of India, and all decisions have been taken here by the vote of the House. Whether this becomes a matter for the vote of the House or not, I am sure in their heart of hearts the people of India for whom we have been working and toiling here for the last three years would endorse this amendment in toto. That is so far as the point raised by Mr. Pillai is concerned.

I have taken only a slight liberty with the text of the Preamble. As I have pointed out, I am sticking to the wording of the Objectives Resolution moved

[Shri H. V. Kamath]

by Pandit Jawaharlal Nehru in December 1946. In the first part of it, the future with reference to the governance of the country the words used are “her future governance”, her being apt for the motherland. That being so, we should say ‘her’ and not ‘its’ citizens in the Preamble. I would leave this however to the Drafting Committee.

As regards the substance of the motion I do not propose to make a long speech. In this august House, the first Constituent Assembly of India, of our Bharata Varsha, in this land, ancient but ever young, which has through the ages renewed itself at the Divine Fountain, let us consecrate this Constitution by a Solemn dedication to God in the spirit of the Geeta.

Yatkaroshi yadashnasi

Yajjuhoshi dadasi yat

Yattapasyasi Kaunteya

Tatkurushwa madarpanam.

Whatever our shortcomings, whatever the defects and errors of this Constitution let us pray that God will give us strength, courage and wisdom to transmute our baser metal into gold, through hard work, suffering and sacrifice for India and for her people. This has been the voice of our ancient civilisation, has been the voice through all these centuries, a voice distinctive, vital and creative, and if we, the people of India, heed that voice, all will be well with us.

Shri V. I. Muniswamy Pillay (Madras: General): I strongly support the motion moved by Mr. Kamath.

(Prof. Shibban Lal Saksena rose to speak.)

Mr. President : Do you want to move any amendment?

Prof. Shibban Lal Saksena: Yes, Sir; No. 3.

Mr. President : Does anyone wish to speak on this amendment which has been moved by Mr. Kamath?

Shri M. Thirumala Rao (Madras: General): Are you allowing Mr. Saksena to move his amendment? I want to speak a few words on Mr. Kamath’s amendment.

Mr. President : We are now on Mr. Kamath’s amendment.

Shri Mahavir Tyagi: May I remind Dr. Ambedkar of the promise he made to me on another occasion. May I read a few lines, Sir ? Sir, on the 15th November 1948 when the question was discussed, Dr. Ambedkar had asked me to remind him about this question of sovereignty, I said-

“I hope..... that his draft means that it (sovereignty) vests with the people, and big explanation may well go down into the records for future reference.”

He replied -

“Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.”

Mr. President : That is not the point. At the present moment we are on Mr. Kamath’s amendment, not on that. We are not dealing with that question now.

Shri M. Thirumala Rao : It is unfortunate that Mr. Kamath has not seen his way not to press his amendment to a vote. This is a thing of such vital

importance and affects the life of the whole nation, that it should not be subjected to the vote of a House of three hundred people whether India wants God or not. We have accepted that God should be there in the Oath, but for those who do not believe in God, there is an alternative there, but there is no possibility of a compromise which can provide for both the things in the Preamble. Therefore, I think it would be better that Mr. Kamath withdraws his amendment and does not subject God about Whom he spoke in such reverent terms to the vote of the House, and if it comes to the vote, it will not be fair to ourselves and to the nation.

Dr. B. Pattabhi Sitaramayya: May I request that that amendment may be disposed of first before we take up anything else?

Pandit Hirday Nath Kunzru: It is a matter of the deepest regret that a matter that concerns our innermost and most sacred feelings should have been brought into the arena of discussion. It would have been far more consistent with our belief in the highest truths and our determination to adhere firmly to them that we should not seek to impose our own belief on others. I recognise the sincerity of Mr. Kamath and of those who agree with him, but I do not see why in a matter that vitally concerns every man individually, the collective view should be forced on anybody. Such a course of action is inconsistent with the Preamble which promises liberty of thought, expression, belief, faith and worship to everyone. How can we deal with this question in a narrow spirit? We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours.

Shri Rohini Kumar Chaudhury: Sir, I am at once with my Friend, Pandit Kunzru, in objecting to the amendment which has been moved by my Friend. Mr. Kamath. Sir, I have great admiration for my Friend, Mr. Kamath. I am one who has unbounded confidence in him so far as political affairs are concerned. I must confess that I am very sadly disappointed in him this evening. By this amendment, he shocked the feelings of many when he stoutly refused to accept the amendment which I proposed. Sir, it is not a matter of laughter with me. I believe in a Goddess. I belong to Kamrup where the Goddess Kamakhya is worshipped.

An Honourable Member: God includes Goddess.

Mr. President : It is bad as it is that we have brought in the name of God in our discussion. We should not become flippant about it.

Shri Rohini Kumar Chaudhury: We should remember that when we started our political movement, we started it with the singing of Bande Mataram. What does Bande Mataram mean? It means an invocation to a Goddess. It means belief in a Goddess. Sir, we who belong to the Sakthi cult, protest against invoking the name of God alone, completely ignoring the Goddess. That is my submission. If we bring in the name of God at all, we should bring in the name of the Goddess also. As I said, this amendment should not have been brought. But as it has been brought, this is my point of view.

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

Pandit Govind Malaviya (United Provinces: General): Sir, I wish to say a few words.

Mr. President : There are so many others who are wanting to speak. But it has now been suggested that the matter be closed.

Pandit Govind Malaviya: It has been said that we should not impose our will on any section. I hope the other section of the House also will not do that. I wish, with your permission to say a few words on this matter.

Mr. President : But closure has been moved. I shall put the closure motion to vote.

The question is:

“That the question be now put.”

The motion was adopted

Mr. President : Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

The Honourable Dr. B. R. Ambedkar : He may be asked to withdraw it.

Mr. President : I suggested to him not to move it. It rests with him to withdraw it.

Shri H. V. Kamath: I am not withdrawing it.

Mr. President : He says he does not withdraw it.

The question is:

“That in amendment No. 2 of the List of Amendments (Volume 1), the following be substituted for the proposed preamble:-

‘In the name of God,

We, the people of India.

having solemnly resolved to constitute India into a Sovereign democratic republic, to all her citizens,

Justice social. economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity, assuring the dignity of the individual and the unity of the nation;

in, our Constituent Assembly do hereby adopt, enact and give to ourselves the Constitution.”

Shri H. V. Kamath : I claim a division.

Pandit Govind Malaviya: I want a division on this question.

Maulana Hasrat Mohani: I also want a division on this question.

Pandit Govind Malaviya: I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The Assembly divided by show of hands.

Ayes: 41.

Noes: 68.

The amendment was negatived.

Shri H. V. Kamath: This, Sir, is a black day in our annals. God save India.

Pandit Govind Malaviya: Sir, it is so vital a matter and I again beg of you that we might have a division on this matter.

Mr. President : I have had the division now.

Shri A. Thanu Pillai: Sir, Mr. Kamath should not have made that statement and he should withdraw it.

Mr. President : I may tell Pandit Govind Malaviya this. I have got here in our Rules the following:

“A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the Chairman.

In all matters requiring to be decided by the members of the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.

Votes may be taken by voices or division and shall be taken by division if any member so desires.”

Here I have taken the voices and then I have adopted the particular method of division by asking members to raise their hands, instead of asking them to rise in their places. I think I have substantially fulfilled the requirement of the Rules.

Shri Mahavir Tyagi: On a point of order, Sir, the President has already once laid down, by means of a Standing Order, as to what will be the method of Division. I have not got the Order with me because it was issued separately. In that Standing Order it is mentioned in so many words that when a member calls a Division the President shall get all tile doors closed and say “Ayes to the Right. Noes to the Left.” And then the members will file past by the side of the Tellers. That Standing Order was issued during the session and the requirement of that Standing Order has not been fulfilled.

Mr. President : You have not read the rule rightly. Paragraph (4) of rule 30 says: “The Chairman shall determine the method of taking vote by division.” I have followed that.

Shri Mahavir Tyagi: My point is once the standing order was issued it cannot be changed verbally.

Mr. President : Is it suggested that paragraph (4) of rule 30 is superseded?

Shri H. V. Kamath: That has been amplified and clarified in your office circular.

Mr. President : It does not require any clarification. It is very clear. The Chairman shall determine the method of taking voice by division:

“If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for ‘Aye’ and for ‘No’ respectively to rise, in their places and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman there and then declares the determination of the House, the names of voters will not ordinarily be recorded.”

An Honourable Member: The word “division” has got a particular meaning in point of phraseology. Claiming of division means that names will have to be recorded. It is not mere counting of hands. That is the practice followed in the Legislative Assembly.

Mr. President : We are not concerned with the procedure in other places. Our procedure is governed by our own rules and I have taken the division in the sense intended by that order. That is my final ruling.

Pandit Govind Malaviya : I have no doubt about the rules. They are quite clear. It is for the Chair to decide the manner in which the views of the House should be obtained. I did not have any doubt in my mind when I made the request to you. But since it is so important a matter about which many of

[Pandit Govind Malaviya]

us feel so very keenly, I leave it to you to decide whether anything more should be done. If you are satisfied that what has been done is not enough then in view of our request and our feeling, if you could consider it feasible to have some other method for a division adopted, we shall be very grateful.

Mr. President : I am perfectly satisfied that I have got the view of the House correctly and that is all I am concerned with. We shall go to the next item.

Pandit Govind Malaviya: There was an amendment in my name on this point. You have decided that only Mr. Kamath's amendment will be moved, but my amendment is quite different. It does not bring in the name of God and it is possible that it may not be offensive to anybody.

Mr. President : I am now going to take the amendments as they are on the Order Paper. I will see what is to be done about your amendment when we come to it. Prof Shah is not here; so his amendment is not moved. Then Mr. Saksena's amendment.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That for the Preamble, the following be substituted:—

'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,

We, the people of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist Republic, and to secure to all its citizens:

JUSTICE, social, economic and political,

LIBERTY of thought, expression, belief, faith and worship,

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity and freedom of the individual and the unity of the country and the Nation:

In our Constituent Assembly this;..... day of Vikrami Samvat 2006 (the 26th day of January, 1950 A.D.) do hereby enact, adopt and give to ourselves this Constitution.' "

I have been very much pained to see the attitude of some of our friends regarding the introduction of the holy name of God and the Father of the Nation at the banning of our Constitution. While they have a right to have their say, other people also have a full right to have their say. This country has always prided on its discoveries in the realm of the spirit and we are now afraid even to put in God's name at the commencement of our Constitution. I am one of those who think that we have produced a great piece of work by preparing this Constitution. There may be some defects in it. But I am sure we have done some very great things. It is only meet and proper that the name of God and the name of the Father of the Nation should be put at the beginning of our Constitution. I am sorry that some people should have thought that we are forcing it on them. There are other Constitutions in the world—the Irish Constitution, for instance—wherein in the very beginning in the Preamble God has been mentioned and homage has been paid to the martyrs who won their freedom. I have therefore been very much pained to

feel that some Members merely at the mention of the name of God or the Father of the Nation feel that something is sought to be forced upon somebody. If they feel that way, they are at liberty to have their opinion, but why force others who feel intensely in the matter to eliminate God's name? I greatly regret the attitude of my friends. I hope they will reconsider it. This Constitution will probably build our country on a new pattern and on the basis of the ideals set by the Father of the Nation. It is therefore meet and proper that we should humble ourselves before God and pay homage to the Father of the Nation by incorporating their names in the very beginning of the Constitution.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, I rise to oppose the amendment moved by my Friend Prof. Shibhan Lal Saksena. I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution. The foundation stones of this Constitution are the decisions of the American Supreme Court. It is the Government of India Act, 1935, repeated again. If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in this rotten Constitution.

Mr. President : I will now put this amendment to vote.

Acharya J. B. Kripalani (United Provinces: General): May I request the Mover of the amendment to withdraw it? It is not behaving us to vote on this amendment. We must be very sparing of the use of the name of the Father of the Nation. My Friend Shibhan Lal knows that I yield to nobody in my love and respect for Gandhiji. I think it will be consistent with that respect if we do not bring him into this Constitution that may be changed and reshaped at any time.

Prof. Shibhan Lal Saksena: Sir, in response to the appeal of Acharya Kripalani, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly withdrawn.

(Amendment No. 4 was not moved.)

Pandit Govind Malaviya: The amendment of which I had given notice ran thus:

That in the Preamble, for the words 'We the People of India' the following be substituted:—

'By the grace of Parameshwar, The Supreme Being, Lord of the Universe (Called by different names by different Peoples of the world).

From Whom emanates all that is good and wise, and Who is the Prime Source of all Authority,

We the people of Bharata (India).

Humbly acknowledging our devotion to Him,

And gratefully remembering our great leader Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom, And."

Dr. P. S. Deshmukh: I rise to a point of order. The essence of this amendment is in two respects. It introduces the name of God and it brings in the name of Mahatma Gandhi. Both of these issues have been decided by this House. In one case there has been some debate and voting; in the other case the honourable Gentleman has withdrawn the motion. I therefore urge

[Dr. P. S. Deshmukh]

that this amendment should be ruled out of order since the main ingredients in that amendment have been already decided by the House.

Pandit Govind Malaviya: If the words which I had used had been noted, it would have been seen that I had said that I was reading the amendment which I had intended to move. I had said that “it ran thus and thus”. If the House had borne with me for a moment, I was going to say, Sir that this was the amendment of which I had given notice, but in view of the session which had just taken place what I wished to move now was:

I would delete the last portions referring to Mahatma Gandhi and others, and would also delete the word Parameshwara at the beginning. That was what I was going to say to meet the point of view which has been expressed.

The Honourable Dr. B. R. Ambedkar : They have been disposed of:

Pandit Govind Malaviya: Then the amendment would read:

“By the Grace of the Supreme Being, Lord of the Universe, called by different names.....”

Maulana Hasrat Mohani: Is he proposing some new amendment? I rise to a point of order. He is out of order. He is proposing something new.

Pandit Govind Malaviya: Then it will satisfy even the unreasonable point of view which has been expressed here. We will not be referring to ‘God’ as such or to anybody’s particular God because my amendment says “called by different names by different peoples of the world” and yet we would be able to put into our Preamble something which has been the most distinctive and permanent feature of the thought and belief, of the tradition, of the culture and of the history of the entire life of the people of this country from time immemorial. I submit, Sir, that we have come here as representatives of the people of India. Honesty demands that we should record here what may be their view. In this Preamble, Sir.....

Mr. President : I shall decide the point of order. The first point is whether it is covered by the amendment which has been defeated. I think it is covered.

Pandit Govind Malaviya: Even after the deletions, if you think so, I shall take my seat.

Mr. President : By simply omitting the word Parameshwar you do not take out of the amendment which has been defeated.

Pandit Govind Malaviya: I thought the objection of some of our friends was to the word “God”. I shall obey your Ruling, Sir.

Shri Mahavir Tyagi: I do not want to move my amendment No. 11 but I want to ask Dr. Ambedkar if he is going to keep to the promise he had made.

Mr. President : That is a different matter.

Shri Mahavir Tyagi: He told me to remind him at the time when the Preamble was being discussed.

Mr. Naziruddin Ahmad: If there is a breach of promise, then my friend should go to Court!

Shri Mahavir Tyagi: It is not a question of breach of promise. I was assured according to the proceedings, by what Dr. Ambedkar had stated about the investment of sovereignty. I had moved an amendment and he had replied that

the meaning was “vested in the people” but it was not defined in so many words I had insisted that it be ascertained. Dr. Ambedkar said: “You doubt that it vests with the people. I might tell my friend that I shall not have the least objection.”

Mr. President : Is there any amendment?

Shri Mahavir Tyagi: But this is for the Drafting Committee to do it.

Shri Satish Chandra (United Provinces : General): There is an amendment No. 452 in list XXI to the same effect, standing jointly in the names of Shrimati Purnima Banerji and myself.

Shri Mahavir Tyagi: If you permit me they might accommodate it in the Drafting Committee.

Mr. President : I understand there is an amendment to that effect. We shall have to take it up when we come to it.

Amendment No. 14: there are several amendments with regard to the name. Those do not arise now.

Does any Member who has given notice of the amendments printed in the first volume wish to move his amendment?

Honourable Members: No.

Mr. President : I shall go to the supplementary list. There are amendments in the supplementary printed list and I take it that no Member wants to move any of those amendments either.

Honourable Members: No, no.

(At this stage Shrimati Purnima Banerji rose to speak).

Mr. President : Yours is one of these recent amendments, but I am now thinking of the old printed list.

Then we come to amendment No. 452.

Shri Brajeshwar Prasad: There is amendment No. 313 previous to that in List XIII second page.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad: Mr. President, Sir, there are eight amendments standing in my name. I refer to amendments Nos. 313, 314, 316 and 317, 318, 319, 320 and 323. Sir, I would like to move only one amendment.

I refer to amendment No. 313. Mr. President, Sir, I move:

That for amendment No. 1 of the List of amendments (Vol. 1), the following be substituted:—

“That for the Preamble the following be substituted:—

“WE THE PEOPLE OF INDIA, having resolved to constitute India into a CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens—

- 1 an adequate means of LIVELIHOOD
2. FREE AND COMPULSORY EDUCATION
3. FREE MEDICAL AID
4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India”.

Dr. P. S. Deshmukh : What about a camel and motor cycle?

Shri Brajeshwar Prasad: It is for you to suggest those things. Sir, this word secular has not found any place in our Constitution. This is the word on which the greatest stress has been laid by our national leaders. I do submit that this word ought to be incorporated in our Preamble because it will tone-up the morale of the minorities and it will check the spirit of loafism that is rampant in politics. I have laid stress on another word. I refer to the word 'Socialist'. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History. I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation.

Now I come to some other words which have found place in the Preamble. There seems to be a confusion of thought. I hold the opinion that the word 'liberty' and 'equality' do not go together. They are incompatibles. They are the enemies of one another, the one can only triumph at the expense of the other. With your kind permission, I would quote a small passage of a few lines from a booklet. I refer to the book entitled "*Liberty versus equality*" by Muriel Jaeger:

"It is becoming more and more widely accepted that ownership is one of those liberties infringe the liberty of others and so must be abolished, or drastically restricted. And at this point what one may call the "paradox of liberty" becomes acute. If every liberty that does, or may do, harm to one's fellow-men were taken away, there would be no liberty left. The abolition or restriction of private wealth implies some kind of public control. Public control means public planning, for the general good is the whole object of taking wealth out of private hands. This is well-worn platitude; but it is the details that interest us—the effect that the application of those platitudes will have upon our lives from day to day, from year to year, and from generation to generation.

"Public planning means that enterprise, labour, distribution must be strictly regulated. It means, therefore that that one's chance to choose one's occupation must be reduced, since the plan cannot possibly be worked unless enough labour is directed into the occupation where it is needed, regardless of whether enough people want to do that kind of work or not."

Sir, I would crave your indulgence for a few minutes.

Mr. President : Are you going to read the Whole book?

Shri Brajeshwar Prasad: No, Sir.

Mr. President : I thought you said you would read one sentence, but at least you have read one paragraph.

Shri Brajeshwar Prasad: I have read a few lines; I wanted to finish one paragraph consisting of 12 lines

I will just urge another point. I hold that liberty and equality are not merely incompatibles but they can be reconciled only in a classless society and here, I would again refer to another paragraph and I would like with your permission to read a few lines:

"As for the final goal, the Marxists, who are so severe with "Utopians", have always been rather pathetically vague. But so far as one can discover, they foreseen a state in which everyone will work cheerfully for the common good, any help himself to whatever he wants from the common stock, which will then be so ample that there will be no danger of any rivalry or clashing of interests. They think that this will be the natural result of a society 'without force and without subordination' and that good social habits will grow of themselves in a classless society, so that special state apparatus will become gradually superfluous. It appears from this that the ultimate Communist idea is complete Liberty combined with complete Equality."

I do not want to place impossible ideals before the nation. Sir, it is only in a classless society that we can achieve a reconciliation of the two concepts of liberty and equality.

I have suggested that instead of these ideals laid down in the preamble we should have some pragmatic ideals before us. If we succeed in providing an adequate means of livelihood, free and compulsory education, free medical aid and compulsory military training I would think that our efforts have borne fruit. I do not want to place impossible ideals before the nation which we know well that neither in our life-time nor in the life-time of our children or our grand children we will not be able to achieve. I would like to refer to another point before I conclude. I object to the word 'sovereignty' in this Preamble. I hold the opinion that the whole concept of Austinian sovereignty has been exploded. A legal concept must have some relation with real facts. If it is not so, it has got no value.

Sir, it is not right to say that the Government of Nepal is a sovereign State. It has got the right: it is sovereign and it can declare war against the U.S.A. The Government of the U.S.S.R. is free to liquidate the Communist Party of Russia. We know that both in the external and internal affairs the State is circumscribed by numerous factors. If the Government of Nepal declares war against America or the U.S.S.R. tries to liquidate the Communist Party, we know what the result would be. Therefore, I hold the opinion that we should not place any undue emphasis upon this word "sovereignty". I hold the opinion that this ideal is neither necessary nor desirable because sovereignty leads to war; sovereignty leads to imperialism. (Clapping and interruption).

Mr. President : I hope the honourable Member will take the hint.

Shri Brajeshwar Prasad: I have a right to demand protection from you. I can never be hood-winked in this way.... I will have my say and let honourable Members clap their hands, I will go on speaking and unless you ask me to close my speech, I will go on speaking. I cannot allow, Sir, without raising my voice of protest.....

Shri Mahavir Tyagi: On a point of order, I hope you as the custodian of the rights of Honourable Members will see that Members are not shouted down like that.

Mr. President : There is no attempt at shouting him down. They only want to cheer him down. The honourable Member had better finish.

Shri Brajeshwar Prasad: Sir, I will now deal with only one aspect of the question. The word 'sovereign' has found a place in this Preamble. I am rather thick-skinned. I will never resume my seat. I will speak and then take my seat. I feel that this word 'sovereign' is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty.

We are sovereign. We are a sovereign State to the extent it is possible for a modern state to be sovereign. We do not aspire to rise to those Austinian heights because, as I have already stated, it is a frivolous concept, it is a mis-

[Shri Brajeshwar Prasad]

chievous concept. The deletion of the word 'sovereign will not in any way deter us from exercising the functions of sovereignty which are vested in the Government of India. It will not detract one iota of sovereignty. But by the retention of the word 'sovereign', we are placing a false ideal, a mischievous ideal before the nation. Therefore, I am opposed to this Preamble. Let us have some pragmatic life-ideals which we may be capable of achieving in our own life-time and in the life-time of our children.

Mr. President : Does any one wish to say anything about the amendment? I shall put this amendment to vote.

The question is:

That the amendment No. 1 of the List of Amendments (Vol. 1), the following be substituted:—

That for the Preamble, the following be substituted:—

“WE THE PEOPLE OF INDIA—having resolved to constitute India into a SECULAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens—

1. an adequate means of LIVELIHOOD
2. FREE AND COMPULSORY EDUCATION
3. FREE MEDICAL AID
4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India”

The amendment was negatived.

Mr. President : We shall take up the amendment of which notice has been given by Shrimati Purnima Banerji, amendment No. 452.

Shri H. V. Kamath: On a point of order, may I submit, Sir, that I have not moved my amendment No 2? This is with reference to my amendment. Therefore, it cannot arise.

Shri Mahavir Tyagi: On the point of order, may I submit, Sir.

Mr. President : The point of order has been raised. I am considering it. Let me find out what he has moved and what he has not moved.

Shri Mahavir Tyagi: On the point of order raised by my honorable Friend Mr. Kamath. I beg to submit that on previous occasions, such amendments have been permitted in the House. When there was no occasion to give amendments because they were time-barred, many of us took the opportunity of just hinging our amendments or connecting them with previous ones. If those Members did not move, it is not the fault of the other honourable Members who have come with their ideas and their amendments. Because there is no other chance of making the amendments relevant, with in the time, the only course left to them was, just to relate their amendments to previous ones already given notice of. I would therefore submit, Sir, that at this fag end of the debate, you might kindly not give a ruling which will debar the moving of this amendment.

Mr. Naziruddin Ahmed: May I point out Sir, that this is not an amendment to another amendment, in which case it would have been barred by the rules, but an amendment “with reference to” some other amendment. Therefore, the amendment is in order.

Mr. President : I have as a matter of fact allowed amendments of this nature to be moved. So, I cannot rule this out.

Shrimati Purnima Banerji: Sir, I move:

“That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed preamble, the following be substituted:—

‘We on behalf of the people of India from whom is derived all power and authority of the independent India.....

With your permission, Sir, I would like to drop the word “sovereign” here.

“its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:—

Sir, my honourable Friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore at this moment if members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from whom all power is derived and in whom all sovereign authority rests by merely believing that because they once go to the polls once in five years their sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life breath of the Constitution which we have here framed. I do not wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable Friend Mr. Tyagi from the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borne my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

Shri Mahavir Tyagi: Sir, In supporting the amendment of my honourable Friend, Shrimati Banerji, I have to remind the House of the proceedings of 15th November 1948, when a similar amendment was moved by me. It was worded like this that the sovereignty will vest in the whole body of people. It was discussed thread-bare and I was assured that the article to which I was moving that amendment was not the proper place for that amendment and I was promised that this amendment would be considered when the Preamble was discussed. Now is the occasion when I beg to remind the House of the promise the Chairman of the Drafting Committee gave me. I am keen that the residence of the sovereignty should be defined, I am more keen about it because up till today the sovereignty vests in His Majesty the King of England. There is all Englishman in whom we have vested the sovereignty for a century past. So if we do not say in so many words, as to where the sovereignty would vest in future it will go on vesting in an

[Shri Mahavir Tyagi]

Englishman. We want to break it away from him. Therefore we must definitely say that there is no more sovereignty attached to the King of England.

Then, I also do not want to let remain any doubt or danger of any Government, this or future, to bargain or barter away the sovereignty of the Country in the name of Commonwealth or common brotherhood or common citizenship or whatever it be. So the sovereignty must be vested in so many words in the people as a whole. In China in their Constitution they have put it that the sovereignty vests in the whole people of China. Whether the Communists take China or not, the people will remain. People will not be animals if they become communists or if they adopt any party label. People will remain in India as well and the sovereignty will vest in the people of India. It must be defined so that the Government might not misuse it. It does not vest even in the Government. Government only represents the people. Because Dr. Ambedkar has agreed to put it in the Constitution, I do not want to dilate upon it and I hope he will kindly accommodate these words and make it clear once for all that the sovereignty vest in the people and not in any foreigner as it does today, nor in the state even though it has the title of being a "sovereign state".

Acharya J. B. Kripalani: Mr. President, Sir, it was not my intention to speak but some friends, wanted that at this last moment when practically we are Finishing Our Constitution I should speak a few words. Some of my friends said that I began, by a formal speech, the proceedings of this House and that I should, at this time of its Second Reading which is for all practical purposes the final reading, finish the proceedings.

Sir, you, like a good host, have reserved the choicest wine for the last. This Preamble should have come in the beginning of the Constitution even as it is given in the beginning of the Constitution. There was a reason for that because it would have been before us in every detailed Provision that we made in the Constitution. It would have cautioned us that we were not deviating from the basic principles which we have laid down in the Preamble. As I have sat in this House from day to day, I have seen that very often we have deviated from the basic principle laid down in the preamble only recently we went against the great principle of democracy. This unfortunate land is divided into many castes and economic classes. There are innumerable divisions. I think it was the first time in the history of World's Constitutions that a new caste of administrators was created, and it was placed in a privileged position. It was placed in the position where even the chosen representatives of the people could not touch its special privileges as against the people. This, I submit, was going against the first basic principles of our Constitution.

Sir, I want, at this solemn hour to remind the House that what we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles and if I may say so, they are mystic principles. In fact these were not first legal and constitutional principles, but they were really spiritual and moral principles. If we look at history, we shall find that because the lawyers and politician made their principles into legal and constitutional form that their life and vitality was lost and is being lost even today. Take democracy. What is it? It implies the equality of man, it implies fraternity. Above all it implies the great principle of nonviolence. How can

there be democracy where there is violence? Even the ordinary definition of democracy is that instead of breaking heads, we count heads. This non-violence then there is at the root of democracy. And I submit that the principle of non-violence, is a moral principle. It is a spiritual principle. It is a mystic principle. It is a principle which says that life is one, that you cannot divide it, that it is the same pulsating through us all. As the Bible puts it, "we are one of another," as Vendanta puts it, that all this is One. If we want to use democracy as only a legal, constitutional and formal device, I submit, we shall fail. As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word "democracy". If we have not done that, we shall fail as they have failed in other countries. Democracy will be made into autocracy and it will be made into imperialism, and it will be made into fascism. But as a moral principle, it must be lived in life. If it is not lived in life, and the whole of it in all its departments, it becomes only a formal and a legal principle. We have got to see that we live this democracy in our life. It would be inconsistent with democracy to have it only in the legal and political field. Politically, we are a democratic people but economically we are divided into such classes that that the barriers cannot be crossed. If we have got to be democratic we have got to be economically so too.

I also say democracy is inconsistent with caste system. That is social aristocracy. We must do away with castes and classes Otherwise we cannot swear by democracy. And we must remember that economic democracy does not merely mean that there should be no classes, that there should be no rich and poor; but the State itself should live in a manner that is consistent with the life of the poor, if people happen to be poor. It is not economic equality if for pomp and pageant, we spend thousands and lakhs of rupees. It is again not democracy if at every corner of the Government House human beings are made to stand statue like and unmoving. Such things are against the dignity of the individuals. If we establish democracy, we have to establish it in the whole of our life, in all its departments, whether it be in administration, or in society or in the economic field. This we must know and understand.

Then we have said that we will have liberty of thought, expression, belief, faith and worship. We must understand the implications of this also. All these freedoms can only be guaranteed on the basis of non-violence. If there is violence, you cannot have liberty of thought, you cannot have liberty of expression, you cannot have liberty of faith or liberty of worship. And this non-violence should go so far as to make us not only what is popularly called tolerant of other people, but to a certain extent, we should accept their ideas as good for them. Mere tolerance will not carry us far. Many people are merely tolerant. Why? Because they are indifferent. They say "this man's worship is different from ours. It is wrong. The man is sure to go to hell"; but let him; it is none of my business." That is not tolerance. That is intolerance. If violence is not used physically, it is because it is not possible always to use violence, but there is mental violence. We have to respect each other's faith. We have to respect it as having an element of truth. No religion in the world is perfect, and yet there is no faith without some element of God's truth

Then we have said that there should be equality of status and opportunity. This implies that in our public affairs, we should be absolutely above board, that there should be no nepotism, there should be no favouritism, there should be no 'mine' and 'not mine'. This can be done. We can give equality of opportunity and equality of status only when what is considered as "Ours" is put behind and what is considered as "Not Ours" is put before. Unless we do these things, we will not be able to fulfil the aims of our Constitution.

[Acharya J. B. Kripalani]

Again I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say but as the mystic would say, that there is one life pulsating through us all or as the Bible says, "We are one of another." There can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived whether it is private life or it is public life, whether it is commercial life, political life or the life of an administrator. They have to be lived throughout. These things, we have to remember if our Constitution is to succeed.

Sir, one word more and I have done. I think the amendment proposed by Shrimati Purnima Banerji should be accepted, because it really describes the true position and as such it should be enunciated in the Preamble. On formal occasion, on great occasions, on important occasions, we have to remind our selves that we are here as the representatives of the people. More than that. We have to remind ourselves that we are the servants of the people. We often forget that we are here in a representative capacity. We, often forget that we are the servants of the people. It always happens that our language, because of our thoughts and actions, gives little countenance to this basic idea. A Minister says "Our Government" not "The People's Government." The Prime Minister says "My Government" not the "People's Government". Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly that sovereignty resides in and flows from the people. (*Cheers*). I hope therefore, this House will carry Shrimati Purnima Banerji's amendment.

Mr. President : Are there some other people who want to speak ?

Mr. Naziruddin Ahmad: Mr. President, Sir, the eloquent words of Acharya Kripalani require one explanation. He seems to think—and I speak with great respect—that the success of a democracy depends upon the introduction of some sweet and palatable words in the Constitution, I however, submit that the success of a democracy depends on how it is practically worked. It has nothing to do whatever with what we may state in the Preamble or in the Constitution. On the actual working of democracy its success depends.

Honourable Members: Closure, closure.

Mr. President : I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, viz. that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

Maulana Hasrat Mohani : Then why don't you accept it?

The Honourable Dr. B. R. Ambedkar : I propose to show now, by a detailed examination, that my contention is true.

Sir, this amendment if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory if I may say so. Now, the declaratory part consists of the following phrase: 'We the people of India, in our Constituent Assembly, day, this month..... do hereby adopt, enact and give to ourselves constitution.' Those Members of the House who are worried as to whether Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, this day, do hereby adopt, enact and give to ourselves this Constitution' Reading it in that fashion.....

Shri Mahavir Tyagi: Where do the people come in? It is the Constituent Assembly Members that come in.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum, that is quite a different question which has nothing to do with the point which we are debating whether this Constitution Should have validity if it was passed by this Constituent Assembly or whether it will have validity only when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

The point under debate is this: Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says: "we the people of the United States"—I am not reading the other parts—"We the people of the United States do ordain and establish this Constitution for the United States of America." As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met at Philadelphia to draw up the Constitution. (Honourable Members There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand unless a man was an absolute pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. (*'Hear, hear'*).

Maulana Hasrat Mohani: I do not think. It is only a community.

The Honourable Dr. B. R. Ambedkar : That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned,

[The Honourable Dr. B. R. Ambedkar]

I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that that is a right view to take. Every independent country must have some kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less sovereign on that account. *(Interruption)*. I am taking the worst example I know that some people have that sort of fear. *(Interruption)*.

Shrimati Purnima Banerji: May I, Sir.....

Mr. President : Let Dr. Ambedkar proceed. He has not insinuated anything.

The Honourable Dr. B. R. Ambedkar : I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect, in a form which would not fit in the Preamble as we have drafted, and therefore on both these grounds I think there is no justification for altering the language which has been used by the Drafting Committee.

Mr. President : The question is:

“That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed Preamble, the following be substituted:—

‘We, on behalf of the people of India from whom is derived all power and authority of the Independent India, its constituent parts and organs of government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens.’ ”

The amendment was negatived.

Mr. President : There is no other amendment. The Preamble, as it is, is now open to discussion, if any Member wishes to say anything.

Honourable Members: The question may now be put.

Mr. President : If nobody is willing to speak, I shall put the Preamble to the vote. The question is:

“That the Preamble stand part of the Constitution”.

The motion was adopted

The preamble was added to the Constitution.

Mr. President : We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled

at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to all it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

The Honourable Shri Satyanarayan Sinha: Sir I move:

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

Mr. President : The question is:

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

The motion was adopted.

Mr. President : I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the Second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes, and for recommending such formal or consequential or necessary amendments of the Constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me with this, we now adjourn till such date as I may announce.

The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.