

Friday, 25th July, 1947

Volume IV



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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 25th July, 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register: Mr. Mihir Lal Chattopadhyaya (West Bengal: General).

AMENDMENT OF RULES

Mr. President: The first item of the agenda this morning is a motion by Shri Sri Prakasa.

Shri Sri Prakasa (United Provinces: General): Mr. President, Sir, I have the honour to move:

That after Rule 5 of the Constituent Assembly Rules the following new rule be inserted:—

“5-A. Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India, may in pursuance of His Majesty’s Government’s Statement of June 3, 1947, order; fresh elections to the Constituent Assembly from the areas mentioned in para 14 of that Statement and thereupon the members already elected from the said areas, whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats; and the members newly elected shall be deemed to have been duly elected as members of the Assembly.

This Rule shall have retrospective effect from June 3, 1947.

Sir, I venture to place this motion before the House with three objects. The first is that I should like to regularise some of the very undesirable incidents that have occurred during the last few months. Secondly, I want to vindicate the honour of this Assembly and, if you will permit me to say so, with respect, your own honour as the President of this Assembly. And, lastly, I should also like to lodge a protest against the manner in which many things have been done during the last few months (*hear, hear*). Many old members of the Assembly who were originally elected were, so to say, summarily dismissed; new elections were ordered and new members were elected in their places.

Sir, when this Assembly was first elected—it does not matter how it was elected—it claimed to be what it obviously was, a Sovereign Body, fully entitled to make its own Rules of Procedure. It was quite clear that an Assembly like this could not go on without any rules for its own conduct and therefore we prepared a regular pamphlet that gave all the Rules of Procedure of this House. No person could claim that he was ignorant of the existence of these rules. If anyone had taken care to look into this pamphlet he would certainly have found Rules 4 and 5 staring him in the face, which laid down in unequivocal language the method by which new members of this Assembly could be chosen after other members had vacated their seats in the manner prescribed. What has happened, however, is that certain negotiations took place between certain people behind the back of this House, certain agreements were come to, some members were, so to say, summarily dismissed from this House, now, elections took place and new members were elected in their places. And we had to acquiesce in that agreement. Whether we like it or not, the fact is that new members have come and old members have

[Shri Sri Prakasa]

gone, and in the bargain our dear country has been cut up into two. I think, Sir, that it is high time that we should at least regularise this procedure by inserting a rule of our own so that we may at least save our faces and be able to say that what has been done has been done according to a definite rule framed by ourselves.

Now, Sir, my second purpose is to vindicate the position of this House and the honour of its President. I looked in vain during those fateful days to see you mentioned anywhere, in the course of those negotiations and to be assured that you were consulted. You may have been consulted as a Member of the Interim Government and as a member of the Congress High Command; but you were nowhere in the picture as President of this Assembly. I have no doubt that if you had been consulted as President of this Assembly, punctiliously careful as you are of the proprieties, you would certainly have asked this Assembly, for its own opinion on the subject.

When, Sir, you asked the Assembly whether it would permit me to move a simple Resolution like this the other day, you will surely have consulted the Assembly on such a vital matter if you had been consulted as President. We would have been amply satisfied if we could have been assured by you that you had agreed to the procedure on behalf of the Assembly, that was not sitting at the time. You were perfectly entitled to act on our behalf. The Assembly, however, if I may say so, has been completely ignored. The other day when Pandit Govind Ballabh Pant referred to some sort of a party mandate, you very rightly got up and said that the Assembly does not recognise any parties. But, if I am not mistaken, over and over again during those fateful days, 'the leaders of the two major parties' were referred to in statement after statement that appeared in the Press. So, while you do not recognise the existence of any party so far as this Assembly is concerned, we have to acquiesce in an arrangement that had been come to behind our backs by what are described as leaders of major parties in the country. In this connection I feel that the insertion of this rule might right the wrong to some extent, and we may at least have the feeling that what has been done has been done according to the rules of our Assembly themselves.

Lastly,—and this is as far as I am concerned the most important Part— I would like to lodge a protest against all that has happened. I do not think it was right either on the part of the leaders referred to in those statements or on the part of the Governor-General not to have consulted you, Sir, as our President and the Assembly in that important matter. You know that those negotiations have resulted in the cutting up of our country which is not to our liking. I have no doubt, Sir, that if the original procedure had been followed, and if all who had been elected to this Assembly had attended it and the matter had been placed before the House in the proper manner, we ourselves might have agreed—gladly or otherwise—to the very arrangement that was finally come to over our heads. We would in that case have had the satisfaction that the representatives of the country met in this Hall, and after solemn deliberation decided that for the time being at least in the interests of the country it would be best if we have two separate Constituent Assemblies and two separate parts of the country governed by two Governments. But, as it is, the whole thing has been flung at our face in a manner which it is difficult for an ordinary person to understand,—much less to appreciate. In any case, as things are, there is nothing else for us to do than to agree, as gracefully as possible, to what has happened. I hope that I shall have the unanimous support of the House to my motion to insert this new rule in the Rules of Procedure of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I find myself in a difficulty in regard to this Resolution. But with regard

to the Honourable Member's desire to regularise any irregularity if there is one, I have full sympathy. Then again, with regard to the vindication of the honour of yourself, Sir, I also fully sympathise. Then, as regard the protest against many things that have happened, I feel that I should express my neutrality. Things happened in an overwhelming manner with which we poor fellows had nothing to do.

Coming to the merits of the Resolution, it says: that the Governor-General of India, may, in pursuance of His Majesty's Government's Statement of June 3, 1947, order fresh elections to the Constituent Assembly from the areas mentioned in para. 14 of that Statement.

Sir, in this famous paragraph are included the following areas:—

(1) Sylhet which is now beyond the jurisdiction of India; (2) West Bengal which is now within the jurisdiction of India; (3) and (4) East Bengal and West Punjab which are outside the jurisdiction of India; and (5) East Punjab which is within our jurisdiction.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I want to know, Sir, whether the Honourable Member is in order in raising a discussion, on the whole of His Majesty's Statement, in connection with this Rule? The Honourable Member has referred to that Statement *in extenso* and to parts of it which have no bearing on the motion before the House.

Mr. President: I think he was referring to paragraph 14 of the Statement because the motion under consideration itself refers to it, and developing his argument. He is in order.

Mr. Naziruddin Ahmad: That is exactly my position, Sir. In fact, these areas are referred to by implication in the resolution under consideration. I was referring to the areas mentioned in paragraph 14.

Then it is said that as a result of the election of those members and in consequence of the proposed election, the members who have already been elected in the first election will from that date be deemed to have vacated their seats. It assumes therefore that till the proposed election the members who were originally elected at the first election would retain their seats, although I understand that all of them have resigned. Then again it is also sought to be made out that upon the proposed election the newly elected members—I believe members who would be elected hereafter—should be deemed to have been elected, and what seems to be impracticable and absurd is that they should be elected with back effect, namely with effect from June 3. I submit that there are three elections to be considered; the first election, the second election through which we, some of new-comers have come, and the proposed third election. The resolution ignores altogether the second election through which some of us have come. Then the implications of this are that the members who were elected at the second election have no *focus standi* as their place will be occupied by those elected at the first election and things said and done by us in this Assembly would have to be erased from the pages of the report. Then, let us consider the probable time when the third election is likely to take place. The second election took place within about a month of the June 3 Statement, that is in the beginning of July. This third election can thus take place within about a month from this date, that is about the 25th August. If that is so, serious complications will arise. The resolution refers to election from all the areas including those areas which will then be outside India. By 15th August, a new transformation in the country will take place. Two new Dominions will come into existence, and it would be a serious proposition to say that the Viceroy, Lord Mountbatten, will order fresh elections from the areas over which he has no jurisdiction. In these circumstances, I submit that resolution is impracticable. It will lead to serious anomalies. The resolution purports—at least so the speaker

[Mr. Naziruddin Ahmad]

made out-to regularise what has happened. It seeks to vindicate the honour of this House. The Honourable Member supposes that those very members who have been elected at the second election will automatically be elected at the third election, if any. I beg to submit that some of us may not be able to come. It may be that we will have a new set of members. In that case, the so-called regularisation of the election of members like us goes to the wind. I will ask, what is to become of our assertion that we have come here as loyal and law-abiding citizens of India? If we go out, will that declaration stand or will that go? Then what will become of the acceptance by Choudhury Khaliquzzaman Saheb of the National Flag on behalf of the League group here, if he fails to come? Then again, what will become of our signatures in the Great Book which is to go down to history? Will they be scored out and erased? What will become of the T.A. and daily allowances which we have received? Will the monies have to be returned or will that be made over to the next set of members to be elected and who are to be our legal heirs and representatives? These are some of the serious anomalies which face us in accepting the resolution as it stands. I have already submitted that I am in full sympathy with spirit which actuated this resolution. The resolution is however impracticable. It is said that the honour of this House will be vindicated by this. I believe that the honour of the President will not only be vindicated but will rather be stultified. The Honourable the President has in his wisdom allowed us to take part in the proceedings and do other things in the House. If the resolution is carried, I think it would stultify the action of our own President. I submit that, if the real desire of the Honourable Member is to safeguard the rights and prestige of the House, we could have done it by straightforwardly declaring that we adopt the second election. That would regularise the second election in a decent manner. That will regularise irregularities if any, and safeguard the honour and prestige of this House. I repeat I am in full sympathy with the spirit which actuated the Honourable Member in moving this resolution, but there are practical difficulties and the best way would be for the House to adopt the second election. With these few words, I submit that the resolution in its practical implications cannot be accepted, and therefore I respectfully beg leave to oppose it.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): May I draw the attention of the Honourable Member to the last clause of the resolution which says that this Rule shall have retrospective effect from June 3, 1947?

Mr. Naziruddin Ahmad: That does not solve the problem at all. The point is, will those gentlemen, those Honourable Members who have been elected, come back, in a body in the third elections? Can any one guarantee that? If the same Honourable Members are elected once again, then this retrospective clause has some meaning. Retrospectivity with regard to members who would be elected for the first time at the third election has no practical meaning, so far as my humble judgment goes. Then there will be overlapping of two batches of members, the first batch and the second batch who will, according to the Resolution, both be members simultaneously for a period. With these few words, Sir, I respectfully oppose the adoption of this resolution.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I am in entire agreement with the object of the Honourable Mover of this resolution. At the same time, I must say that I find it difficult to understand it. The resolution gives power or seeks to give power to the Governor-General in pursuance of H. M. G.'s Statement of June 3 to do this or that even in the future. I cannot understand at all why the Governor-General should be brought into our rules. Mr. Sri Prakasa's object obviously is to validate something that has been done, something bad according to him, and I agree with him that was not done

with due propriety. I agree that we should validate it but not by making any fundamental changes in our rules, even giving powers to the Governor-General in the future about it. So I suggest, Sir, that instead of considering this resolution as it is in this form, it might be referred to a small committee to redraft it with the object of merely making it a validating measure. I would suggest a committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B.L. Mitter.

This is a legal matter and so I have suggested the names of these three lawyers although Mr. Sri Prakasa is not much of a practising lawyer. I do not think it will take very much time to redraft it and bring it forward as a resolution, not as an amendment to the rules.

Shri Sri Prakasa: I agree with what my friend Pandit Jawaharlal Nehru has just said. In fact when I tabled this Resolution at the beginning of this Session, the N.W.F.P. referendum was in the offing and there was the prospect of three more members being dismissed—they have since been dismissed and this is the reason why I have given this power to the Governor-General. Now this is finished, and so far as I can find out there is nothing for the Governor-General to do in this behalf so far as the H.M.G.'s Statement of June 3 is concerned. We might just as well have this in the form of a Resolution as suggested by Pandit Jawaharlal Nehru and I am quite agreeable to this Committee being appointed and to bring forward the whole thing in a sort of validating Resolution. In that case I shall ask for leave of the House to withdraw my motion.

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

The Honourable Mr. Hussain Imam (Bihar: Muslim): What about Assam? Election is still in the offing there.

Shri Sri Prakasa: This Committee will have to consider Assam also. It is just as well that it should.

Mr. President: I was just going to point out that the Resolution as it is drafted has that lacuna also. It does not cover members from Assam other than Sylhet. So I think the best course is, as has been suggested by Pandit Jawaharlal Nehru, that the matter be referred to a Sub-Committee and the Sub-Committee might redraft the Resolution, because, there is, as far as I can judge, no difference so far as the object is concerned. May I take it that it is the wish of the House that this Resolution be referred to a Sub-Committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B.L. Mitter?

The motion was adopted.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now go on to the consideration of the Report of the Union Constitution Committee. We shall take up Clause 6 of Part IV.

CLAUSE 6

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move clause 6 in regard to the Vice-President:

“(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President, of the Council of States.

(3) The Vice-President shall hold office for 5 years.”

[The Honourable Pandit Jawaharlal Nehru]

I might mention, Sir, that I propose to accept some amendments to this Resolution if and when they are moved. They are rather amendments regarding the wording of the clause and one or two lacunae have to be filled in this clause. With regard to the age of the Vice-President, it is the desire of the House, that his age should be fixed also as 35 as that of the President. I am prepared to accept it.

(Shri A.K. Ghosh did not move his amendment No. 165.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move that for sub-clause (1) of Clause 6, the following be substituted:

“(1) When the President is absent from the Union or when the office of the President is by reason of his death, resignation or removal from office, or when the President is on account of illness or other cause unable to perform his duties, his functions shall be discharged by the Vice-President during the period (if such absence, of such vacancy or such inability as the case may be.”

Sir, the original Clause contains certain expressions which to my humble mind raise some amount of difficulty. I have suggested this amendment so that the House will consider the difficulty and the House or the Drafting Committee will consider them. The clause allows the Vice-President to function in certain contingencies. Sub-clause (1) refers to the absence of the President. Absence from where is not clear to me. We know that provincial ministers function even in their absence from their headquarters. Does the absence of the President mean absence from the Union, when he goes outside his area to a foreign country or when he leaves his headquarters. I suppose what is meant is “absence from the Union”. That is what I have attempted to incorporate in my amendment. The second difficulty is that the Vice-President should act when incapacity is established. There is great difficulty in determining what incapacity means and implies. The President may act in a certain way. One man might take the view that he has shown incapacity. The President might say that the critic has failed to appreciate his capacity, and many others might be willing to agree with him. There is no court of law or tribunal which can adjudicate upon the incapacity. Then the question arises. “Is the President supposed to be incapable of discharging his duty”? This creates a similar uncertainty. So this uncertainty should be removed. Incapacity is a very doubtful expression which may lead to serious complications and squabbles.

Then the other condition is “failure to exercise and perform his powers and functions”. That is also equally vague. It is not clear as to what is meant by “failure to perform the powers and functions of his office” and this is also open to the same arguments and objections as the word ‘incapacity’. So I have attempted to submit for the consideration of the House a sub-clause which eliminates the fundamental difference, the objectionable features, provided the House considers the same. Apart from that, there is nothing new in the proposed sub-clause which I have submitted, for consideration. I submit that these serious points should be taken into consideration and the principle of the sub-clause which I have submitted may be accepted, if agreed to. We are not now considering the real draft but to eliminate certain difficult problems, certain objectionable features principles. The amendment embodies certain principles and attempts and nothing more. With these words I request the Honourable Mover of the Resolution to consider the same and in possible give effect to the principles embodied therein.

Mr. President: I take it that the word ‘vacant’ is dropped after the words. “..... or when the office of the President is by reason of his death, resignation or removal from office” in your amendment.

Mr. Naziruddin Ahmad: Yes, Sir. The word “vacant” should be inserted. It was due to hurry that I lost sight of it. I am grateful to you for pointing it out. The word ‘vacant’ is to be so read in the context indicated.

(Shri Jadubans Sahai did not move his amendment, No. 167 in the list.)

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

“That in sub-clause (1) of Clause 6, the words ‘or incapacity or failure to exercise and perform the powers and functions of his office’ be deleted”.

In fact, the reason for this amendment have in some way been explained by the previous speaker. I submit, Sir, that these expressions are not only very vague, but they are also unnecessary and superfluous in view of the other parts of the section where such contingencies can be met. Who is to declare his incapacity or failure to exercise and perform the powers and functions of his office, or what is the criterion or determining it, these are matters too vague and there is no necessity for such a clause at all. Because, if a man is found to be incapable or fails in the discharge of his duty, there is the remedy of removal from office. Therefore, Sir, I do not think that it is either necessary or, advisable to have such a vague clause as that in the Statute. Therefore I move this amendment.

Mr. President: Mr. Gupte, your amendment is the same as the amendment which has just been moved.

Mr. Subramaniam, Mr. Diwakar, Mr. Naziruddin Ahmad, your amendments are the same as the one just moved.

(Amendment Nos. 169, 170, 171 and 172 were not moved).

(Messers. Rajkrushna Bose and Shibbanlal Saksena did not move their amendments, Nos. 173 to 176).

Shri D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, I beg to remove :

“That for sub-clause (2) of Clause 6, the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college.’”

Shri K. Santhanam (Madras: General): Sir, there is an amendment in my name in the supplementary list, to sub-clause (1) of Clause 6.

Mr. President: I will take up the amendments in the supplementary list also.

Shri D. H. Chandrasekharaiya: I beg to move:

“That for sub-clause (2) of Clause 6, the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States’.”

Under the Union Constitution, the President is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federal Parliament and the members of the Unit legislatures, while the Vice-President is elected only by the members of the two Houses of the Federal Parliament. This means that in the election of the Vice-President, the members of the Unit legislatures will have no hand, whatsoever. I for one have not been able to see as to why this difference is made in the method of the election of the President and the Vice-President. The Vice-President is as much an important functionary of the Federation as the President himself. As you know, he is to act for the President during his absence, and, besides he is to preside over an important chamber of the legislature namely the Upper House. I think that the same electoral college which elects the President can be made use, of without much difficulty for electing the Vice-President. In the

[Shri D.H. Chandrasekhariya]

United States of America, the Vice-President is elected through the same electoral college that elects the President. The same method may be adopted here with great advantage. I therefore urge that this amendment of mine is a very reasonable one and that the House will be pleased to accept it.

Mr. President: I think, Mr. Santhanam, you had better move your amendment at this stage.

Sri K. Santhanam: Sir, I move:

“That for sub-clause (1) of Clause 6, the following be substituted:

‘During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions will be discharged by the Vice-President’ ”.

This is largely a drafting amendment and many of the other speakers have explained why a change is required. I have tried to put in it the briefest and most lucid form possible.

(Messrs. Rajkrushna Bose, A.K. Ghosh, H.V. Pataskar, Brajeshwar Prasad, H.J. Khandekar and S.V. Krishnamoorthy Rao did not move their amendments, Nos. 178 to 183).

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

“That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause 3 be renumbered as sub-clause 4:

‘During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman’.”

Sir, the Vice-President is to be the *ex-officio* President of the Council of States. While he is acting for the President, he cannot function as the President of the Council of States. Therefore Provision has to be made for a temporary Chairman and that is done by my amendment.

(Messrs. Rajkrushna Bose, H.V. Pataskar and Shibbanlal Saksena did not move their amendments, Nos. 185 to 187.)

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which stands in my name reads as follows:

“That in sub-clause (3) of Clause 6, for the figure and words ‘5 years’ the following figure and words be put in:

‘4 years or until the election of a new Vice-President whichever event happens later’.”

The terms of office of the President is fixed at five years and it is proposed to fix the term of office of the Vice-President also for the same period. I do not see any reason as to why the periods for both the President and Vice-President should be one and the same.

It was urged in the case of the President that he should continue for sufficient time so that arrangements for electing a new incumbent may be finished. But such reasons will not apply in the case of the Vice-President and it will be reasonable and advantageous to synchronize the period of the Vice-President with that of the Lower House. As I explained yesterday, what happens under this arrangement is that he becomes more and more removed from the Lower House as it advances from the second to the fifth term. That is a position which is not very happy.

The House may be aware that in the U.S.A. the Vice-President is elected for four years along with the President and the provision for having a Vice-President in the Union Constitution must have been thought of in the light of the precedent existing in the American Constitution. If that is so, we should be ready and willing to follow the practice adopted elsewhere. The American Constitution is more than 150 years old now and considerable experience must have been gained

in working the same. In framing our own Constitution it would be useful to accept the principles or methods adopted elsewhere. It is only by profiting by the experiences of others that we can make our Constitution more perfect and practical than by inventing something new of which we may not know much. I feel, Sir, that the term of four years for the Vice-President is really in the best interest of the country and is a sound constitutional arrangement.

I have suggested that we might fix the normal period of the Vice-President at four years. But as pointed out in the amendment he may be continued for short period thereafter till a new legislature comes into existence and a new Vice-President is elected. This will enable the office of the Vice-President to remain always filled. I therefore commend this amendment to the kind consideration and acceptance of this House.

(Amendment No. 189 was not moved.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

“That in Clause 6, the following new sub-clause (4) be inserted:

‘(4) The provisions of Clause 4 above shall, *mutatis mutandis*, also apply to the Vice-President.’”

In Clause 4 certain conditions are laid down for the office of the President. It seems reasonable that the same, in so far as they are applicable, be also made applicable to the Vice-President. This is only a drafting amendment.

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President the amendment which I wish to move is as follows:

“That the following sub-clause be added after sub-clause (3):

‘(4) No person, who has not completed the age of 35 years, can be elected as the Vice-President.’”

There does not appear to me the necessity for mentioning many reasons for (the adoption of) this amendment. By accepting Clause (3), the House has accepted and is committed to the principle that no one below 35 years of age can be the President. And because the Vice President has to act in place of the President therefore there is little doubt, that the Vice-President should not be under 35 years in age. Besides, the Honourable Member (the Mover) has also expressed his readiness to accept this amendment. Therefore I do not want to waste the precious time of this House on other reasons (in favour of this amendment).]*

[Shri Mohanlal Saksena did not move his amendment. (No. 3 of Supp. List D).]

Mr. President: I think these are all the amendments of which I have notice. I take it that no other member has got any amendment of which he has given notice, Now the original clause and the amendments are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, sub-clause (1) of Clause 6 lays down that in the event of the President's incapacity or failure to exercise and perform the powers and functions of his office, the Vice-President shall carry on such duties. In other words, Sir, if the President is incapable or fails to carry out his duties, the Vice-President shall act for him. I find, Sir, there are two amendments to this resolution. The amendments are in these words:

“that the words ‘or incapacity or failure to exercise and perform the powers and functions of his office’ be deleted.”

That means that if the President is incapable or fails to do his duty, the Vice-President shall have no power, to act for him. The question that will arise is that if the President is incapable or deliberately does not do his duty, who, will act for him. Suppose he becomes suddenly ill

*[]*English translation of Hindustani Speech.

[Mr. Tajamul Hussain]

or insane. Surely there must be somebody to carry on the duties of the President. With all due respect to the Honourable the Movers of the amendment, I find the amendments are meaningless and therefore I have no option but to oppose it. Now, Sir there are two Officers, Heads of the States; one is the President and the other the Vice-President and if the President is ill, of course the Vice-President will act for him but when the Vice-President is doing the work of the President and acting for the President, there is no provision as to who will act for the Vice-President when he becomes temporary President.

Mr. R. K. Sidhwa (C.P. and Berar: General): Suppose the third man also falls ill?

Mr. Tajamul Husain: If the Vice-President is acting as President, then there should be someone to carry on the duties of the Vice-President. There is an amendment by Mr. Gupte which says that as soon as the Vice-President acts for the President, a Chairman should be temporarily elected to carry on the duties of the Vice-President. Now, Sir, I have been interrupted by my Honourable Friend Mr. Sidhwa from Sind. He says, "Well, what will happen if the third man is ill?" If I were to agree with him I would say "Have the fourth man as well". The only amendment before us is that there should be a Chairman. I support it.

Mr. Bhargava has just now moved an amendment that as there is an age-limit for the President of the Republic there should be also an age limit for the Vice-President. I think, Sir, this amendment is reasonable because after all the Vice-President automatically becomes President, if the President is dead, and it will look very anomalous that when the permanent President is 35 the Vice-President should be 22 or 21 years of age. I support that amendment.

With these words, Sir, I have finished.

Mr. Mohammed Sheriff (Mysore State): *[Mr. President, in my opinion the words "or incapacity or failure to exercise and perform the powers and functions of his office," should be expunged from sub-clause (2). If these words are retained intact, then I think, there will be many complications and we will have to face numerous difficulties. The purport of Section 6 is that the President is liable to be removed from office, if there is not a proper use of the proposed powers. The exercise of the powers that have been proposed for the President, is a "relative term". It is probable that you might consider proper what to me might seem improper and also that others might consider those powers proper which I might consider improper; therefore as I have already stated, this is a matter which is totally 'relative'. For this reason, I think that these words may be deleted and the remaining ones allowed to remain as they are. My other request is that the appointment of Vice-President should be on the basis of Adult Suffrage. While making the speech concerning the election of the President, the point which I kept in view was, that so far President and Vice-President are concerned—their appointments should be by way of direct election. Even though Pandit Nehru has said many things against this principle, I, as a supporter of democratic principles think it proper that the election of the Vice-President should be on the basis of adult suffrage. With these words, I support the amendment which my colleagues have moved.]*

Mr. President: I understand that Pandit Jawaharlal Nehru is in a position to accept some of the amendments. I am asking him to accept such amendments, as this will cut short the discussion.

B. Pocker Sahib Bahadur: On a point of order, Mr. President, I would just like to make this submission. The Honourable Member who spoke just now has evidently dealt with some amendments, of which one is mine own. I am not in a position to know whether he supported it

*[]*English translation of Hindustani Speech.

or he opposed it or what he said. Therefore it is only just and fair that I should know his attitude. May I request you therefore, Mr. President, to ask that gentleman to give a gist of his own speech in English? He is capable of doing that. He knows English well.

Mr. President: I have ruled before this that I cannot compel a member to speak in a particular language and if the member is suffering under that disability, I think he and the speaker can consult each other and find out what the latter's attitude is. (*Laughter*).

The Honourable Pandit Jawaharlal Nehru: Sir, the various amendments that have been moved fall roughly in two or three groups. I agree with most of the amendments in the sense that the wording of this Clause 6, as it has been printed, is not very happy. I think in regard to the first matter, *i.e.* "incapacity", that word is unfortunate. Of all the various amendments put forward I feel that the one which is shortest and clearest is Mr. Santhanam's. That, I think, meets most of the difficulties that have been pointed out. Therefore, I accept it.

I also accept Shri Gupte's amendment:

"That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause (3) be renumbered as sub-clause (4) ;

'(3) During the time the Vice-President is acting in the place of the President, the Council, may if necessary, elect a temporary Chairman.'

Lastly, I accept the amendment of Pandit Thakur Das Bhargava:

"That the following sub-clause be added after sub-clause (3) :

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President.'

I do not think there are any other amendments on my proposal which I can accept.

Mr. Jagat Narain Lal (Bihar: General): I want to have some clarification: Sub-clause (2) provides for the method of election. It says:

"The Vice-President shall be elected by both Houses of the Federal Parliament, in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the council of States.

In case there is only one Vice-President to be elected, what is the meaning of having the election carried on the basis of proportional representation? We have got in our Constituent Assembly Rules, Rule 6, sub-clause (6) the process of elimination. I just want the matter to be clarified, whether in case there is only one Vice-President proportional representation would be necessary.

Mr. President: I am advised by those who are supposed to know these rules of representation that this system is proportional representation can be applied even in case there is only one vacancy to be filled in.

Mr. Jagat Narain Lal: Sir, I know that even in the case of the election of the President the system of proportional representation has been provided for and we have already accepted that rule. But still, I think it is our duty to point out that where there is only one person to be elected, the process of elimination which we have already provided for in the Constituent Assembly Rules is the best method. In that rule commends itself to the House, I submit, Sir, it is not too late even at this stage, to say that when the final drafting is done we should provide for that rule to apply here, instead of the present one which does not seem to have any meaning in order to fill a single vacancy.

Mr. President: As I have already said, those who are supposed to know these rules tell me that this system can be applied even when there is only one candidate to be elected. But if the Honourable Member has any doubts, I may request Sir N. Gopalaswami Ayyangar to explain that view-point.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think there is some want of comprehension of the principle underlying the system of proportional representation. It can certainly be applied to cases where only one vacancy is to be filled. The application of this principle really ensures that the successful candidate should be returned by an absolute majority of votes. If there are more candidates than two, it may be that, if you apply the simple majority rule, the person who does not get 51 per cent. of the votes cast in the election might have to be declared elected; whereas, if you apply the principle of proportional representation, you will, by the system of transferring votes, be able to get a candidate finally declared elected by an absolute majority. That is why, even in cases where the seat to be filled is only one, we provide that it should be by the system of proportional representation by the single transferable vote.

Mr. Jagat Narain Lal: Sir, I do not propose to enter into further discussion about this point; but my purpose only to draw the attention of the House to it. I will read sub-clause (5) of Clause 6 of the Constituent Assembly Rules and draw the attention of Sir Gopalaswami Ayyangar to it. Sub-clause (5) says:

“Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing of lots.”

And sub-clause (6) reads:

“Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot, being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidates shall be declared elected.”

I think, Sir, Sir Gopalaswami Ayyangar has been referring to this method. I do not know if the system of proportional representation refers to a method like this.

The Honourable Mr. Hussain Imam: May I explain, Mr. President?

Mr. President: Yes.

The Honourable Mr. Hussain Imam: The basic principles of proportional representation are the fixation of a quota. Fixation of quota takes place by dividing the number of votes by the vacancy *plus* one, and adding one to the result. For instance, if there are 100 voters and the vacancy is one, the quota will be 100 divided by two, which gives 50 *plus* one. So any person who does not secure 51 votes will not be elected. The quota is not filled up if nobody secures this number. The man who gets the least number of votes is eliminated; the votes go to the others successively until a person has secured 51 votes. As soon as 51 votes are secured by a candidate, he will be declared elected.

This is a short method of expressing the idea which prevails in elections in France where also elections are held on the basis that the President must have an absolute majority. There they have repeated ballots; but our framers have shortened the process by adopting the single transferable vote. They have attained the same object which France has, but by a simpler and more straightforward method.

Mr. President: I think we had better leave it at that.

Does anybody wish to speak about the amendments or the original clause?

Mr. Tajamul Husain: Sir, it is all finished. Pandit Jawaharlal Nehru has replied.

Mr. President: No, he has not replied. He has only referred to the amendments he is prepared to accept.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want the Drafting Committee to take note of certain inconveniences that

may arise by allowing the clause to stand as it is. No amendment is necessary at this stage. The Vice-President can be an outsider belonging to neither the Council of States nor to the Lower House—the House of the People; under the existing law, in the Council of States the President as well as the Deputy President are both members of the House; the Vice-President under the Constitution will be an extra member with a vote in case of difference of opinion. This matter has therefore to be considered. It has to be considered for the reason that we expect both the Houses to be absolutely elected, except in the case of the Upper House where ten seats are reserved for nomination. He may fill one of the nominated seats instead of adding to the seats already provided for in the latter clause.

Secondly, he may be a member of the Lower House—the House of the People in which case provision has to be made that he will cease to be a member of the Lower House the moment he is elected Vice-President of the Federation and *ex-officio* President of the Upper House. Under the existing law, there is provision for a President and a Deputy President for the Upper House, Pandit Jawaharlal Nehru accepted the amendment of Pandit Thakur Das Bhargava, that a temporary Chairman may be elected whenever the President of the Upper House who is the Vice-President of the Union acts as the President of the Union. Instead of that, I would suggest that as soon as the Vice-President is elected for the Union, a Deputy President may also be elected for the Council of States who normally acts when the President is not there. You know, Sir, that in the Assembly there is the President and the Deputy President. The Speaker cannot sit all day long and the Deputy Speaker takes his place now and then. Likewise provision has been made in the Government of India Act for a Deputy President who will constantly officiate for the President in the Council of States whenever the President, even during the course of the day is not able to sit, when the sitting goes on. Therefore, instead of having a temporary Chairman, a Deputy President may be appointed from among the Members of the Council of States to officiate when the President who is the Vice-President of the Union is unable to preside.

Thirdly, he may be a member of any House or any legislature elsewhere, in which case also provision has to be made that he ceases to be member of any of those Houses.

All these, I would like the Drafting Committee to take note of, before they place a detailed Bill, before the House.

As regards the amendment which seeks to reduce the period of five years to four years I see no reason for accepting it. Whether it is four years or five years does not matter so long as the full term of a member of the Council of States is six years which is the normal period after the first retirement by rotation, so that we will not extend it beyond six years.

I therefore find no reason for this amendment and it need not be accepted.

Mr. President: I will now put the amendments to vote. There are two amendments which are in the nature of substitutions of sub-clause (1) of Clause 6 one by Mr. Santhanam and the other by Mr. Naziruddin Ahmad. I will put Mr. Santhanam's amendment first.

The question is:

“That for sub-clause (1) of Clause 6 the following be substituted:

‘During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions shall be discharged by the Vice-President.’”

The motion was adopted.

Mr. President: It is not necessary to put the amendment of Mr. Naziruddin Ahmad and Mr. Pocker Sahib.

The question is:

“That for sub-clause (2) of Clause 6 the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States.’”

The motion was negated.

Mr. President: The question is:

“That in Clause 6 the following be inserted as new sub-clause (3), and the existing sub-clause (3) be renumbered as sub-clause (4):

‘(3) During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman.’”

The motion was adopted.

Mr. President: The question is:

“That in sub-clause (3) of Clause 6 for the words ‘5 years’ the following words be added

:

‘4 years or until the election of a new Vice-President whichever event happens later.’”

The motion was negated.

Mr. President: The question is:

“That in Clause 6, the following new sub-clause (4) be inserted:

‘(4) The Provisions of Clause 4 above shall *mutatis mutandis*, also apply to the Vice-President.’”

The motion was negated.

Mr. President: The question is:

“That the following sub-clause be added after sub-clause (3):

‘(4) No person who has not completed the age of 35 years can be elected as the Vice-President.’”

The motion was adopted.

Mr. President: I think the sub-clauses will have to be renumbered and the House will give permission to the Drafting Committee to renumber the sub-clauses. I will now put to vote the clause as amended.

The question is:

“That the clause, as amended be adopted.”

Clause 6, as amended was adopted.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move that Clause 7* be adopted. There is very little that I need say on this clause. The executive authority of the Federation in any State has really to be vested in the head of the State; in this case it will be the President of the Federation. The supreme command of the defence forces of the new State is also to be vested in the head of the State and that explains sub-clause (2) (a).

Practically all the amendments that have been given notice of relate to sub-clause (2) (b). On this point I understand a motion will be made by Sir Alladi Krishnaswami Ayyar for adjourning consideration of this particular item as the matter is being examined with reference to certain aspects of the question that have been brought to notice. That examination will, we hope, be concluded in a day or two, and when we meet next on Monday we shall probably be in a position to consider that on its merits.

Sir, I move.

7*: (1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provisions:

- (a) The supreme command of the defence forces of the Federation shall be vested in the President;
- (b) The right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of communication or remission may also be conferred by law on other authorities.

Sir Alladi Krishnaswami Ayyar (Madras : General): Sir, I move that the consideration of sub-clause (2) (b) be postponed I do not think it is necessary to give any detailed reasons for this. The clause requires closer examination with reference to the powers of the provincial Governor, the position of the States, *etc.* and if the House agrees the consideration of this clause may be taken up on Monday.

Mr. President: The question is:

“That the consideration of the Clause be postponed.”

The motion was adopted.

The Honourable Mr. Hussain Imam: Sir, what will be the position about amendments? When the new version of the clause comes up will an opportunity be given to the House to move amendments to it?

Mr. President: Yes, certainly; when certain changes are proposed members will be given an opportunity to give notice of amendments.

The Honourable Sir N. Gopaldaswami Ayyangar: The procedure may be that when this examination is concluded notice of an agreed amendment will be given by somebody and copies of that will be circulated to Honourable Members who will be at liberty to propose amendments to that amendment.

CLAUSE 8

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move Clause 8, *viz:*

“8. Subject to the provisions of this Constitution, the executive authority of the Federation shall to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or Agreement, and shall be exercised either through its own agency or through the Units.”

This merely states the general principle that executive authority is co-extensive with legislative authority. The only exception is in respect of matters which are provided for by special treaties or agreement and that occurs at the end of this clause.

(Amendment Nos. 201 and 201-A were not moved).

Sir Alladi Krishnaswami Ayyar: Mr. President. I have given notice of an amendment to Clause 8 as Clause 8-A.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, Clause 8 may be put to the House first. The amendment proposed is to have a new Clause as 8-A.

Mr. President: As a matter of fact I have got notice of two amendments, one by Sir Alladi Krishnaswami Ayyar and the other by Mr. Ananthasayanam Ayyangar for the addition of a new clause. I had better dispose of clause 8.

As no one wishes to speak on Clause 8 I shall put it to the vote.

Clause 8 was adopted.

Sir Alladi Krishnaswami Ayyar: Mr. President, I seek to amend Clause 8 in the following manner:

Mr. President: It is not an amendment to Clause 8, but an addition as Clause 8-A.

Sir Alladi Krishnaswami Ayyar: Yes, Sir. I may mention that, in the course of the clause, I have referred to the expression ‘the Union’ and substituted ‘Federation’. I trust the House will give me leave to substitute

[Sir Alladi Krishnaswami Ayyar]

the word 'Federation' for the word 'Union'. That is a slip. This is the amendment I am moving:

"That after Clause 8, the following new clause be inserted:

'8-A (1) The Government of the Federation may, by agreement with any Indian State but subject to the provisions of the Constitution, in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative, executive or Judicial functions in that State.

(2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.

(3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the provincial constitution, the latter shall stand rescinded and revoked.

(4) On an agreement as per the provisions of sub-clause (1) being concluded the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities.'

In support of this Clause, with your leave, I would like to say a few words. The object of this clause is to bring it in line with a clause already passed by this House in regard to the provincial constitution in the provincial sphere. That confers powers on the provinces to undertake the administration of certain departments ceded to them by a State as a result of an agreement in the provincial sphere. The object of this clause is to give an overriding power to the Federation. So far as sub-clause (1) is concerned, it refers only to acceding States. The acceding States may accede to the Federation in respect of particular subjects. Even in regard to the other subjects, they may be willing to enter into an agreement with the Indian Federation in regard to the exercise of particular functions. The object of this Clause is to enable the acceding States to enter into such agreements with reference to subjects not included in the terms of accession.

The second sub-clause refer to States which do not accede to the Federation, but yet may be willing to enter into agreement with the Indian Federation. Any such agreement will of course be subject to any Foreign Jurisdiction Act that may be passed in the exercise of the plenary powers of the Legislature as a Sovereign Legislature. That makes provision for it. "Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation."

The third sub-clause is intended to prevent any conflict between the Provinces and the States on the one hand and between the Federation and the States on the other. Even in the provincial constitutions we have made a provision to the effect that it shall be subject to the control of the Federal Government. The object of this sub-clause is that if an agreement is entered into between the Federation and a State and that agreement covers the field already covered by the agreement between the Provinces and the State, this agreement between the Centre and the State must have dominance over the agreement entered into between the Provinces and the State.

Clause 8(4) simply states what exactly is the effect of an agreement "On an agreement under the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise executive, judicial and legislative functions specified therein through the appropriate authority." It more or less is a provision corresponding to a provision already passed by the House in regard to an agreement between the provinces and the States, I would ask the House to accept the proposal contained In Clause 8-A.

Col. Shri Maharaj Himmat Singhji (Western India States Group): Mr. President, we have had no notice of this amendment. Kindly give us time till Monday to consider it and give notice of amendments if necessary.

Mr. President: This amendment was circulated to members.

Col. Shri Maharaj Himmat Singhji: It was not circulated to us. Many others besides me have not received notice.

The Honourable Mr. Hussain Imam: Notice was received at 4 p.m. yesterday.

Mr. President: Notice was sent at 4 p.m. If the suggestion of the Honourable member is accepted, we should hold this over to enable members to consider this amendment and give notice of amendments to it. I think members should have sufficient time to give notice of amendments, I think on the whole it will be desirable to postpone consideration of this.

The Honourable Sir N. Gopaldaswami Ayyangar: I shall have no objection, Sir.

The Honourable Mr. Hussain Imam: Everybody should have time to give notice of amendments.

Mr. President: Yesterday we decided that notice of amendments can be given to clauses which are to be considered on the following day, by the evening of the previous day. If time is required to give notice of amendments to amendments, I do not know where we will end.

The Honourable Mr. Hussain Imam: The usual practice in such cases is for the Chair to suspend rules of business and to allow the members to move their amendments, if the Chair considers that the matter is urgent.

Mr. President: I think it will be much better to pass it over. So we shall take up the consideration of this at a later date. Similarly, the next addition by Mr. Ananthasayanam Ayyangar may also be held over.

Sri M. Ananthasayanam Ayyangar: I have no objection.

Mr. T. Channiah (Mysore State): There is one amendment standing in my name.

Mr. President: We shall take up all the amendments when we take up the clause.

CLAUSE 9

The Honourable Sir N. Gopaldaswami Ayyangar: I beg to move Clause 9:

“The Executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.”

At the present moment, both federal and unit subjects are within the jurisdiction of the executive authority of an Indian State. When federation comes into existence and certain subjects are assigned to the Centre, their administration which is already in the hands of the State authorities, it is proposed, should continue in these hands until the appropriate federal authority makes other provision for their administration. The general principle, as I have already stated in connection with the previous clause, is that the executive authority of the federation is co-extensive with its legislative authority. That principle is respected in this clause. The only thing that is provided for here is that where that administration is in the hands of the State authorities now, that agency should continue, until the federal legislature or other appropriate federal authority chooses to make other provision. That is really for the purpose of preventing a hiatus in administrative jurisdiction particularly at the time of the inception of the federation. There are amendments to this, Sir, but I shall not deal with those amendments in any detail. But there is one amendment in the names of a number of Prime Ministers of Indian States. That amendment is real a reproduction of section 125 of the present Government of India Act. I have since given notice of an amendment in substitution of it and, if the Prime Ministers who have given notice of amendment agree to withdraw their amendment, I shall move mine.

Mr. President: As I understand it, Sir Gopaldaswami, the amendment of which notice has been given by the Prime Ministers is to be inserted as Clause 9-A. It is not in substitution. Is that the one you are speaking of?

The Honourable Sir N. Gopaldaswami Ayyangar: I stand corrected. I think what you have stated is correct, but I say that, if that particular addition which is proposed by the Prime Ministers is not moved, I shall be prepared to move an amendment to Clause 9 which I hope will be acceptable to them.

Sir B. L. Mitter (Baroda State): In view of Sir Gopaldaswami Ayyangar's amendment which he proposes to move, we do not move the amendment which stands in our name.

The Honourable Sir N. Gopaldaswami Ayyangar: I move that at the end of Clause-9 the following be added:

“In cases where it is considered necessary.”

These words hardly need any explanation.

Mr. President: We will now take up the other amendments. Mr. Chandrasekharaiya.

Mr. D. H. Chandrasekharaiya: Mr. President, Sir, I beg to move that for Clause 9 the following be substituted:

“The Executive authority of the Ruler of a Federal State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the federal head of the executive.”

Sir, the clause as it stands provides for the exercise of authority in regard to federal subjects by the rulers of federating States until other arrangements are made by the federation. Now, this exercise of authority is not made subject to the supervision and control of an appropriate federal authority. Such an uncontrolled exercise of authority in respect of federal subjects is neither correct nor helpful. I have therefore proposed in this amendment that the exercise of authority should be brought under the inspection and direction of the head of the federal executive. This is one aspect of the amendment.

The other aspect is that the State authorities are proposed to be used for administering federal subjects only for a time till other arrangements are made by the federation. My point is that if the State authorities could be used for a temporary period, why should they not be used permanently. Since the exercise of authority by the States is proposed to be controlled and directed by the head of the federation, any mistakes committed can be pointed out then and there and the administration set right. So far as the States are concerned, there will perhaps be a limited number of federal subjects for administration, and in such a case, will not be undertaking a responsibility beyond their capacity to shoulder. Besides, there are bigger States like Mysore, Baroda, etc., which have got efficient modern and well-organised administrations and I am sure that any other arrangement will not come up to the level already attained by such administrations.

It has, however, been proposed by Sir N. Gopaldaswami Ayyangar that the words “In cases where it is considered necessary” may be added at the end of Clause 9 to serve as a compromise between differing views. I do not think that such an amendment will improve the situation very much as it gives room for saying that it is considered necessary in every case.

In conclusion, firstly I propose that provision should be made for inspection and control of federal administration within State limits and secondly, State authorities should be permitted to administer Federal subjects on a permanent basis. I pray that the House will be pleased to consider and accept the amendment proposed by me.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch-Bihar Group): Mr. President, Sir, the amendment which stands in my name is a comparatively minor one. It only seeks to substitute for the words "by the appropriate Federal authority" occurring in Clause 9 the words "by virtue of a Federal law" I will read out the clause as it will be if the motion is accepted:

"The executive authority of the Ruler of a Federated State shall notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make Laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal Law."

The word 'authority', Sir, is not so very clear. It might mean and Under Secretary of the Federal Government. What therefore I wish the House to accept is a provision that where the executive authority of a Federation has to be exercised in a State, it should be by means of a Federal Law and not merely by an order of a Federal authority. Perhaps, Sir, the amendment is quite unnecessary because the drafters of the clause might ultimately have intended to make this expression more clear. I am not certain at all and in any case my object will be served if the Drafting Committee will kindly consider this matter at the appropriate time.

(Messrs. Kishori Mohan Tripathi, B. M. Gupta, Bishwanath Das, H. R. Guruv Reddy, Jainarayan Vyas, S. V. Krishnamurthy Rao and K. Chengalaraya Reddy did not move their amendment, Nos. 204 to 210).

Mr. President: I think these are all the amendments of which I have been given notice. Now the clause and the amendments are open to discussion. Does any member wish to speak about either the Clause or the Amendment?

Shri Mahavir Tyagi (United Provinces: General): *[Sir, this part of the Constitution is very important because it concerns a vast number of people of India residing in the States. At present, they enjoy enough powers of internal administration but in spite of this, in every state there is a Resident who represents the Paramount power. He has some voice in the administration and exercises a check on the powers of the rulers. Often he has safeguarded the rights of the people. If with the end of the office of the Resident, the Assembly does not provide some *via media* for safeguarding the peoples' rights, I venture to say, Sir, our functions of constitution-making will not be considered successful. When the States and their people join our Union, it is the duty of the Assembly to look to the welfare of the States' people and protect their rights. I stand here to take a little of your time so that the States people may not have cause to complain that when the question of the peoples' rights came before the Assembly, it remained silent and sacrificed the interest of the people in order to get the co-operation of the rulers. I do not want to delay the proceedings by bringing any amendment, because all the rules and provisos which are being framed here will come up before the Assembly in their final shape. Then it will have the right to scrutinise and change them. What I mean is this: At present there is a Resident who exercises some control and check on the powers of the rulers. But with the abolition of his office there is no machinery to control the authority of the rulers. The Negotiating Committee must place before the House now or later at some opportune stage in very clear terms as to what arrangements it has made to control the authority of the rulers. In the present set up, the rulers have all the powers that the Union will have and also powers which they do not possess at present. Its result will be that the despotic and autocratic States will become all powerful and there will be no check on them. There are many States which have no legislature at all. Under the circumstances if the present wide and discretionary powers are allowed to remain with the rulers, their joining the Union would be an advantage to them. We are paying this as the price to include the States in the

*[English translation of Hindustani speech begins.

[Shri Mahavir Tyagi]

Union. If the rulers are allowed to retain their present absolute powers, every ruler will be a gainer by joining the Union, because the States People have so long been fighting against their despotism with the help of the Congress and other such organisations and now the people will not receive this help any more from them. Henceforth the rulers will use their powers in their own arbitrary manner. Therefore, though it is proper to concede the rulers whatever powers they at present enjoy or to give them power similar to that of the Union, some restrictive provision must be incorporated in the Constitution so that they may not misuse the powers granted to them. When the Government of India Act was being framed in 1935 such restrictive provision was suggested in it in order to check the authority of the rulers. It is clearly stated in the said Act that any law of the States, which is contrary to or is incompatible with that of the federation, shall be deemed null and void and the law of this Federation shall prevail. The only difficulty at present is that instead of one, there are two Dominions now, one of Pakistan and the other of India. Both the dominions are anxious to include in their Dominion a greater number of States than their rival. Because of this rivalry the Princes are raising the price of their co-operation higher. I do not consider it desirable to concede to them more and more powers only in order to include them in our dominion. They are not willing to forego any of their powers in order to join the Union. By joining the Union they will be gainers in as much as they will receive military protection from the Union, but what benefit is that to us? We will only increase a member in our family. The States will receive tremendous help from this vast Dominion but in return for the privileges how many of their rights are they ready to concede to us? We must have everything before us. Every detail of the negotiation that is going on between our Negotiating Committee and the States must come before the House. It is only then, when we have considered all these that we should decide as to what power the rulers should be allowed to retain and what amount of control the Union should exercise over them. This clause, as it stands at present, grants wide powers to the States, but it does not mention as to what power the Union will have over them. I do not want to put any obstacle to the passage of this resolution but I want to that this must be established as a convention that when a member speaks it is not imperative for him either to oppose or support the resolution. When an important matter is being discussed in the House a member must have the right to express his views without supporting or opposing the motion so that his views may be recorded. I stand here only for this purpose that my views may be recorded and our Negotiating Committee may know that a section of the House entertains such views. I want that my speech should bring to light what "liberties" the States have and what further powers we are granting to them, I demand that when we are representing here the people of the States, the rulers must not be given powers beyond what they had. They have had ample powers. When they have joined the Union, the office of the Resident will be abolished and some of the States will become despotic. Therefore, without meaning any offence to and without making any allegation against any State I wish to say that when the States are joining our family—the Indian Union—they must respect the principles of our democracy. Despotic states have no place in our Union. Because of the assurances from some leaders States may fill today that they will have all the liberties in the Union; but I want to make it clear to them that, though the House is accepting all their terms, their joining the Union will put their despotism in danger. India and this Assembly will soon put an end to despotism and the States must join the Union with this definite knowledge. The general public demands it and, if for some reasons this Assembly cannot do away with despotism the nation will, after the expiry of the existing Assembly, call a new Constituent Assembly which will not only solve our economic problem but the political problem too. That revolutionary Assembly will not allow even a trace of despotism to remain in India. The Union of India

will not allow the black spot of despotism to remain long on her fair face. This is what I have to say.]*

The Honourable Mr. Hussain Imam: Mr. President, the remarks made by the last speaker asking for a minimum of democracy in the constituent units of the Federation is one on which I hope there will be no difference of opinion in this House. There are certain standards, and certain measures which are regarded as the bare minimum, as the *sine qua non* of a decent existence; and it is wrong in this age for any one to claim the privilege of divine right to rule as they please. I am one of those persons who believe in moderation as well as in negotiation. But there is a limit beyond which you cannot carry on these two processes. There are certain bedrock principles which have to be accepted. Because of the fact that the foreign Government had sanctioned the existence of 560 state units, it is not necessary that this Constituent Assembly should also accept the separate existence of these units. In these days it is almost a common principle that various small units cannot fight in the battle of life. Look at industrialisation and cottage industry. Cottage industry is every day being eliminated. We are trying to protect it and give it support because it is to the greater advantage of the worker than the mill industry. Similarly, if it were to be greater advantage of the common man to have the 560 units, I for one would have supported them. But many of the units are so small that they themselves have considered it essential to join together and form bigger units. This is a move in the right direction and if it is developed to the full extent to which it should be developed, it is possible to allow them to exist even today. But if individuality prevails and if the move for having a union of States where they can give common privileges and common advantages to which a citizen is entitled is not put forward, I am afraid that the existence of the States will be jeopardised. I endorse the appeal of the previous speaker that this Assembly and those who are in charge of negotiation should look to it that the right of the common man in the States which is as precious to us as the citizens of British India is safeguarded. (*Hear, hear.*) They must be protected with as much care and as much solicitude as we are taking in the other units, the provinces. There should be a minimum standard of democracy, and minimum rights of citizenship which should not be denied to any one in the Continent of India. No matter whether it is a big State or a small State, they must all strive to uplift and if we cannot uplift, we will be failing in the charge which has been entrusted to us. Independence is not worth anything if we allow a large part of the units to remain in the same degraded condition in which they existed before the departure of the British. I therefore endorse the appeal and hope that something will come out of it.

Mr. Jainarain Vyas (Jodhpur State): *[Mr. President, at present the whole question of States is not before the House but we have only to consider as to what authority the Princes should be given in respect of central subjects. Therefore I shall confine myself to this only and I would like the House also not to go beyond the scope of the subject.

It is true that the Princes or the States are going to have the powers and authorities which they do not have in the current set-up. But the words (of the resolution) show that power would continue with those who had it: not more than this, unless some other arrangements are made by law. In spite of this, as our Federal subjects are numerous and of various types it is apprehended that the powers granted to the Princes in respect of these subjects might be abused in some States. But now that we all have joined the Union, we may hope or rather we should appeal to the Rulers to fall in line with the rest of India. The Provinces too should be requested to make proper use of the powers granted to them. Under the

] *English translation of Hindustani Speech ends.

*[English translation of Hindustani speech begins.

[Mr. Jainarain Vyas]

circumstances, we need not oppose such clauses or sections. Mr. Tyagi has just said many things with reference to the general question concerning states. I am a State subject and represent the States people. I do admit that the representatives of the States people do not hold the same status as the ministerial representatives hold. They speak on behalf of the Government of the States. We have not attained this status. Really this is a painful position for us. But this certainly does not mean that we have given up all hopes of securing our real status. It is impossible for us to remain long in this position. I hope our Union will exercise its influence over the Princes, their ministers and the governments to see that the representatives of the people have equal share in the internal administration of the States. And if for certain technical reasons or legal complications this cannot be done, I hope we shall try to settle the matter by negotiation. However, if our negotiations with the Princes fail to secure an amicable settlement, after 15th of August the Rulers and the States people will stand in opposition to each other. The people have strength enough to settle their own affairs. We are grateful for the sympathy shown to us. But at the same time I wish to say that our attitude would not seriously affect the federal Subjects. It might affect the Union which would consider its own interests. Such is our hope. With these words, I support the original resolution.]*

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr President, Sir, I had myself brought an amendment that in these matters the representatives of the people in the States, may have a voice but I withdrew that amendment because an amendment by Sir N. Gopalswamy Ayyangar was accepted by the Ministers of the States. In this I see the dawn of a new era in the States. I hope the ministers have accepted this amendment with all the implications behind it. We the peoples' representative from the States, are in a very delicate position. On the one hand we do not want to take any attitude which will jeopardise the Union of India. Unity is the prime need of the hour. On the other hand, we have to safeguard the interests of the people of the States. With this view, we have accepted the amendment of Sir N. Gopalswamy Ayyangar. By the acceptance of the amendment, Sir, we believe that even in the States, minimum standards of democratic Governments will be established ere long, because the acceptance of this amendment in the Union Federation means the acceptance of the adult suffrage for the election of the representatives to the Federal Assembly and also the acceptance of the Citizenship Rights and the Fundamental Rights. I am sure the acceptance of these fundamental principles will have its own repercussions on the administration in the States. With this hope in view that ere long the Ministers who are charged with the heavy responsibility, will do their duty not only to their Rulers but also to the Union Federation and the people of the States, and will see that responsible Government will be established in the territories of the states, with this hope, I support the Resolution as amended.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Mr. President, I have only a few words to address this august Assembly on this very important subject. Some of the States' Representatives—I use the word 'Representatives with some hesitation,—the official Ministers of the States as they have been described,—have given notice of an amendment which tries to incorporate Section 125 of the Government of India Act. That Act suggested that the executive power of the Federation will be carried out by the States and the Rulers of the States through their own Officers and that the Federation should be content to have what may be called the right of inspection to see that that authority was properly exercised. There are a great many States where even now, whatever is India, the required on behalf of the Federation or the Government of India, the

*English translation of Hindustani speech ends.

work is carried out essentially by the State Governments and the executive authority of the States. During the years when the Government of India Act was under consideration at various Sessions of the Round Table Conference it was pointed out that while the States which acceded to the Federation would have no objection to legislation being passed on the ceded subjects by the Federal Legislature, the power of executive authority should still rest in the Officers of the States. This is to say that the Federation shall have legislative authority alone, but that for the administration of those subjects which States had ceded, the administrative authority, the executive responsibility may still vest in the States. This was the position taken up as far back as 1930. Things have marched very far in some of the States during the intervening period and there are indications that in many States things will march further still in the direction of a closer association of the people of the States in the administration of the States. There is no doubt whatsoever that the trend of events, the march of public opinion, the awakening in the States themselves and the very fact that the States may accede to the Union and send their representatives to the Union Legislature, all these facts will tend to quicken the progress and the process of the greater association of the people of the State in the administration of the State. (*Cheers*). I do not want to refer to any individual State, but I had in mind States which very shortly will give such an amount of power to the subjects of the States that there will be very little feeling in the matter in those States, at any rate. Even in 1930-31 those who represented the States in the Round Table Conference took the view that while the legislative power may be readily conceded to the Federal Parliament, the executive power must vest in the States to be exercised by the officers of the State. I venture to think—it is not a proposition that I am putting forward on behalf of any bureaucratic or undemocratic administrator of a State, but it is a proposition which may very well be put forward on behalf of the subjects themselves—that the executive authority in those States must vest in the authorities or the officers of the State. While that executive authority is to be imposed by a Federation through its own officers, who is it that will lose the exercise of that authority, except the very subjects who through their responsible representatives will be in charge now to a certain extent, and hereafter, to a much greater extent, for the affairs of the State? If, therefore, the Federation intervenes with its own executive set-up in the administration of a State, I venture to think it is not the Ruler who is going to lose much or anything at all; it is those representatives, those popular representatives as they are called, those who not be in charge of administration by closer association of the people in the administration, it is they who will forego the right of exercising their authorities in those States. It may be said that in provinces to a certain extent federal jurisdiction is exercised by federal executive authority. But I believe the Union Constitution Committee and those who have taken part in these proceedings have realised that there is a fundamental distinction between Provinces and States. I do not know whether Provinces are altogether too happy or will be happy over the decisions that have been so far taken with reference to the powers of the Federation in the Provinces. The list of subjects, Provincial and the Concurrent List have still to be examined by this House. What the fate of that examination will be I do not venture to say. But after all, Sir, I have not always been associated with States—my association has been of very recent times—and for years—30 years of my public life have been spent in what till the 15th of August may be described as British Indian Provinces. I venture to express the view that there is a very strong urge in the Provinces that as far as possible, what has been the subject of our agitation for decades, namely, provincial autonomy, should be a very real thing indeed. Provinces rare not likely to easily yield to the suggestion that a strong Central Government means a Central Government with a vast number of subjects to administer. My own view of a strong Central Government is not that. For what purpose should a Government be strong in the

[Diwan Bahadur Sir A. Ramaswami Mudaliar]

Centre? I venture to think that if that position is clearly and analytically examined, you will come to the view that for certain subjects and with reference to certain powers, the Central Government, the Federal Government—should have ample plenary and exhaustive powers, but that does not mean that, taking a subject like even patents or copyrights, a strong Central Government is created by vesting the rights over patents or copyrights in that Centre. It may be for other reasons, that it may be desirable. It may be done by co-operation, by co-ordination, by the idea of the agency that is established at the Centre which will have, if not the power, at least to a certain extent, the advisory capacity to bring about that co-ordination, but let us not, because we think in terms of a strong Central Government, forget the fact that strength does not lie in expansiveness, a wide variety of subjects coming under the scope of the Central Government. In fact, my own view is that the more subjects you bring under the Federation, the weaker you make it. So I would press very strongly when the time comes—if I may be permitted for a moment to say on behalf of the Provinces, forgetting my new *avathar*—I would press very strongly in favour of provincial administration having the widest possible power in consonance with the strength of the Central Government. There are occasions, of course, when an emergency arises when I would be willing to have the Federal Government over-run the whole of the sphere of the Federation. When an emergency is declared or proved to exist, then all these restrictions which we had even under the Government of India Act may well disappear and the Central Government may have all these powers; but normally, in day to day administration, in the absence of such an emergency, I venture very strongly, very respectfully and with great humbleness to urge that, Provinces should have as much and as wide powers as possible. If that is the case, Mr. President, a fortiori, the States should have even wider power and except for those subjects that they accede there ought not to be any interference in the States and so far as this power of administration, is concerned, I venture to state that States may be left to administer their own subjects. I understand that there may be some difficulties in some areas, some States, to confer the power on them to administer these subjects. I understand that the amendment of my Honourable friend Sir N. Gopaldaswami Ayyangar wants to preserve that position and to take care of that situation. It may be so. It is from the point of view that we have not pressed the amendment which goes the whole way before this House at present. But barring such exceptions, the general rule shall be and must be that the States which can administer properly, which have an administrator, whether popularly elected or unpopularly based, who carried on the administration on correct administrative principles, those States cannot and should not have their administrative sphere encroached upon by the Federal Government. I think some of the States at least can show a record of administration which is—in the presence of such a large number of provincial representatives and provincial ministers, I dare not say what otherwise I would have liked to say—which is at least not less efficient than the administration in the provinces. With that record, I venture to think that it will be accepted by everybody in this House that as far as possible, in as many States as possible where there is no question of the administrative machinery not rising to the occasion, that administration shall be that of the State itself. I therefore want to make the position perfectly clear that in accepting the amendment of Sir N. Gopaldaswami Ayyangar we are not giving up the essential principle that it shall be the rule that States shall have their own executive authority and that in special cases exceptions may be made.

Sir Alladi Krishnaswami Ayyar: Sir, I had no idea of speaking on this Resolution, especially after an agreement had been reached between the Mover of the Resolution and certain representatives of the States. In dealing with this subject, it is unnecessary for me to go into the question

as to the relative sphere of the Federation or of the Provinces in the Federal structure. I may have a good deal to say in favour of what Sir Ramaswamy Mudaliar has stated, namely, that the strength of the Centre does not depend upon the number of subjects assigned to it but upon the nation-building and nation-preserving subjects being in the hands of the Centre and the Centre being necessarily equipped with the machinery for enforcing its power throughout the area. But that is entirely irrelevant in the consideration of the question now before the House. The essential principle underlying the previous clause is that the executive power must be co-extensive with the legislative power. If the Federation has the power to pass certain laws it must have the necessary power to enforce those laws throughout the Federation. That is the common-sense, accepted constitutional principle to which no exception can be taken, either by State protagonists or provincial protagonists.

The second question is, how is this executive power to be exercised? It may be exercised through the instrumentality or agency directly appointed by the Federation, or it may, for the time being, employ a State or provincial agency. But the ultimate power and responsibility must rest with the Federation which must be satisfied that an efficient administration is carried on. If an efficient administration is carried on in State A, or State B or State C, very well. The Federation will not interfere. But the Federation is the sole judge and the only judge of the efficiency of the administration throughout the Union, and every State agency and every Provincial Agency and every other agency must be the agency of the Federation to that extent. The object of this amendment is very simple. If the State machinery is functioning properly, then you need not interfere; let the *status quo* continue. But the ultimate power will rest with the Federation, that is the principle to which we are committed. But that does not mean that the Federation or the Federal executive will go on experimenting. Why should it? For example, if the postal service or some other service is efficiently and properly conducted by the State agency, then the Federation will not have any need or business to interfere. If on the other hand, the State agency does not carry on the administration properly, the final authority must rest with the Federation. That is the principle of this amendment and I do not think that any State can take exception to it. It is really a midway solution between two extreme views. One view is that here and now the Federation must start off with a special agency for the purpose of carrying on this work. That is one extreme view. The other view is that the existing state of things must continue, especially when they are satisfactory. The view taken in this clause is that if and when the agency is found to be ineffective by the Federal authority, it will be up to the Federal authority—and they are the sole judges of the situation—to interfere. Let there be no misunderstanding on this point. The principle of Section 125 of the Government of India Act is expressly departed from in this Constitution. It is not a question of parleying between the States and the Federal authority. It is a question of the responsibility of the Federation. It is but a matter of prudence. It is a matter of giving stability to the administration. When the administration of a particular subject is efficient through the State agency, that agency may continue to be employed. But there is no denying the fact that so far as the principle of this clause and the earlier clause is concerned, the ultimate responsibility for the proper execution of the laws which the Federation is passing is with the Federation and Federation alone and the principle that the executive power is co-extensive, in general, with the legislative power is not to be departed from. It is on that ground, Sir, that I support the amendment moved by Sir N. Gopaldaswami Ayyangar with the modification, and on no other ground.

Sri K. Santhanam: Sir, I am glad that Sir Alladi has explained the fundamental principle of the federal system so clearly and emphatically. I shall not try to cover the same ground. But there is one point mentioned by Sir Ramaswami Mudaliar which also requires our attention.

[Sri K. Santhanam]

He suggested that as the States are getting democratised it may not be so objectionable to leave in their hands the executive authority on federal subjects. Sir, I do not think this is correct. To the extent the States get more and more democratised, the distinction between the Provincial and Federal subjects must become clearer and clearer. That is my view. When a Ruler or his Dewan defies the Federation it may be easy to deal with him because the Federal authority will get the support of the people. But if the Federal subjects are under democratic States then the people themselves may get a vested interest and they may defy the Federal authority. Therefore in all federal schemes, as far as possible, the powers of the Federation and the powers of the units are kept distinct. The executive authority of the Federation is emphasised in all Federal subjects and the autonomous units have the executive authority only in their own subjects. This distinction is carried to such an extent in the United States of America that even in the matter of courts the Federal laws are enforced by the Federal Judiciary and the State Laws are enforced by the State Judiciary. In course of time, the Indian Federation also will have to follow the same principle. I agree with Sir Ramaswamy Mudaliar that the strength of the Federation does not depend upon the number of subjects it administers. The Indian Federation may have only a handful of subjects—four or five. But so long as it has absolute and undivided authority over those subjects, it is bound to be strong. I am sorry Sir Ramaswamy Mudaliar brought in these issues, particularly the issue as to what constitutes the strength of the Federation. What should be the scope of the Federal subjects and what the scope of the Provincial subjects is an entirely different issue on which many of us will go a long way to agree with him. But this particular clause has nothing to do with it. Assuming that we define the Federal subjects, to what extent should Federal authority extend over these subjects? That is the issue of this clause. Sir Alladi has, of course, stated and explained the general principle. I say that to leave the Federal authority in the hands of the States will be even more dangerous when they become democratised. There may be conflicts between all-India patriotism and unit patriotism, and local conflicts can be dangerous. The Provincial authority may set in motion disintegrating forces which we should seek to avoid even from the very beginning. Therefore, let us make it quite clear that it shall be open to the Federation to take the executive authority in all Federal subjects whenever it chooses to do so. For the present, it may be left in the hands of the State, but the power to resume it, whenever the Federation may think fit, should be with the Federation. The argument that more and more the authority in the States will be with the people, has no relevance whatsoever. In fact, it operates against leaving the authority in the hands of the States. Therefore, let us have the Federal authority intact for the Federation. I suggest that, when the final draft comes, there should be no doubt left as to the power of the Federal authorities to resume their executive functions in Federal subjects as they have been defined in the list.

Shri Gopikrishna Vijayvargiya (Gwalior State): *[Mr. President, Sir, I come from an Indian State. The motive in my mind is that our country should have a strong Centre. Unfortunately our country consists of many parts. In some Indian States and in districts and provinces too, in a wave of local patriotism people wish to possess more 'autonomy'. This will make our country weak and our Centre will not remain strong.

I wish to tell you that we all, the States also, shall have to surrender (rights) so as to invest the Centre with the maximum power, to make it and the country strong. Under the present circumstances, the scope of executive functions in States should not be enlarged. As suggested by Sir Mudaliar the mere number of Federal subjects, by themselves are not enough to create a strong Centre. This is correct but some subjects have

*[English translation of Hindustani Speech begins.

to be assigned to the Centre and the ultimate authority about them should not be left to the discretion of the States.

The Central affairs of the States and provinces should be entrusted to the Centre. The minimum possible executive power should be with the States and provinces. It is not proper to keep the maximum power with them. In small countries like Switzerland and others, the executive authority is left with the units, but in India we cannot do so, as that would not be free from risks. Therefore excessive power should not be handed over to the States. The federal authority in the States should as far as possible be exercised through a federal machinery. But as suggested by Sir Gopaldaswami Ayyangar, in the beginning it is not necessary to add a provision to this clause. We would not object to it. But I think it proper to create a strong Centre in the Country and the States should not grudge it. If we want to make the Centre strong, we shall have to hand over at least some subjects to the Centre. Without it our country cannot progress. Hence it is in the hands of the States and the provinces that if they intend having a strong Centre, they should confer upon the Centre the maximum power. We must make our Centre strong and along with this the powers of direction and inspection should vest in the Federation. The States should not seek to possess as much power as possible. Therefore, at present I do not oppose it. As it is, the amendment of Sir Gopaldaswami Ayyangar should be accepted but this should be our aim, that the Centre be made as strong as possible.]*

Mr. R. K. Sidhwa: After Sir Gopaldaswami Ayyangar's speech it was very good of Sir Alladi to have made the position very clear as to what the object of this resolution is. He has in unmistakable terms stated that the final authority shall vest in the Federation: Sir, we congratulate the States' representatives who have been good enough to participate in this Constituent Assembly and I also congratulate those of the States who have given a lead in this matter and made it clear for others to enter it. I also desire to tell them that while one part of the country is becoming democratic, the other part of nearly ten crores of people cannot remain under autocratic rule. It has been a principle with us and we have declared that when India becomes free we shall see to it that our States' brethren also become free. Therefore in this august Assembly, when we have all met together—and I am very glad that it is so—the Rulers, their representatives and the peoples of the States,—that we should tell them that was our object and desire. I am very glad that some of the Rulers do feel that they cannot expect one part to rule autocratically and the other to rule democratically. I do not want to go into the details of various States but I know of some States where there are no local bodies, no municipalities, and where there are Legislative Assemblies there is a majority of nominated members. Days of nomination are gone. There should be all elected representatives both in the municipalities and the legislatures. The nomination period has gone, and if you want to make it democratic, abolish all these nominations. I would suggest to the Rulers that they must have elected Legislative Assembly members with powers to function as it will be in the provincial legislatures. Please also see that elected members, local bodies and municipalities are also established where they do not exist. I know of a State where a printing press is not allowed to be established. I do not want to mention the name of that State. It is a fairly big State. I do not want to record a discordant note on this. Our spirit is equally good but we want to tell the Rulers today that the time has come when we have to implement the pledge given to the States people. We have been telling them “when the time comes to obtain our freedom we shall see to it that you also shall get it,” and I therefore take this opportunity of telling the people of the States that we shall strain every nerve and see that the people of the States are also ruled exactly in the manner we rule in India.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, the amendment under discussion is a compromise arrived at between the Ministers of

] * English translation of Hindustani Speech ends.

[Mr. M. S. Aney]

some of the important States who are fortunately present here and who have joined the Constituent Assembly to help us and the spokesmen of non-official members of the Constituent Assembly representing British India. Therefore, the proper persons to explain the implications of this compromise are those who are parties to that compromise. We have yet to hear what Sir Gopalaswami Ayyangar has to say. But one of the important members of the ministerial party, Sir Ramaswami Mudaliar, has made a speech and tried to explain the point of view which he had in mind in accepting the compromise which is embodied in this amendment. I only want to make a general observation and not any specific suggestion. The point of view is perfectly clear to my mind that as a general rule the executive authority of a State shall be continued to be exercised by the ruler in respect of federal subjects. There is a warning however to the States in the clause that a certain standard of administration is demanded of them. I believe at present, at least, the Assembly is in this mood. It does not want the Federal authority to exercise its powers to bring about a change in the administration of the States. It expects that the force or great events and the circumstances which we have to fact, will have the desired effect upon the psychology of those who have to administer the States. The signs of progress are already there. It has begun, and we hope it will continue uninterrupted for some time. We have come to a compromise and let us for the time being rest our faith in that hope. We can tell them that if the time comes the Federal authority will not be wanting in exercising its powers in cases where it may become necessary in course of time. I think the wording is sufficiently clear. Those who have got the interest of the country at heart will easily understand the importance of mutual responsibility and obligations that the Federal authority and the States have to bear in mind. We want to make a strong India, by encouraging the States to take part in the Union and by bringing about concord between the Union and the States. Our attempt should be to bring about this desirable result *viz.*, a strong India. That strength lies in the willing co-operation between the acceding States and the Federal authority. Therefore the policy of the Federal authority will be to maintain the essential unity. The proper thing for the State to do is to enlist the sympathy of their people by associating them with the State administration and that too as quickly as possible.

With these few words I support the amendment.

Sir B. L. Mitter: Sir, it is somewhat surprising that an innocent and agreed amendment should have evoked so much eloquence and a certain amount of heat also. What are the implications of this amendment? There are two implications : one is that the amended clause postulates the supremacy of the Federation. The last words are : "until otherwise provided by the appropriate Federal authority in cases where it is considered necessary." This shows that the ultimate authority is the Federal authority. The first part which says "The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects" merely continues the *status quo*.

The constitution which we are framing in this Assembly is not an unreal thing. We have got to take the facts in the country as they are into consideration and in the light of those facts prepare an appropriate constitution, one of the facts being that in some of the major States some of the Central subjects are administered by the State authorities. It has not caused my embarrassment to anybody. It has not occasioned any inefficiency. Well, if that be so, that State of affairs will continue. If you find that there has been any abuse or inefficiency, there is power in the Federal legislature to make adequate provisions. This is a simple clause embodying two principles, first is supremacy of the Federal authority and second the continuance of the *status quo*.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we have had a most interesting debate, if I may say so on an issue which is certainly an important one, but an issue on which I thought those who took somewhat differing views had already come to an agreed settlement. I do not wish to add to the eloquence that has been spent upon this issue in the last one hour and more. I wish only to say, Sir, that the basic principle of, this clause is that the executive authority of the Federation is co-extensive with its legislative authority, that, normally, it is the Federation that is responsible for the proper administration of Federal subjects. But we have taken the existing facts into consideration where a large number of Indian States are actually administering what will be Federal subjects in the new Constitution. We are providing that the existing state of things should continue, but that continuance is necessarily subject to the overriding control of the Federation itself, whenever it chooses to impose that control. We cannot get away from that position. As Sir B. L. Mitter pointed out, the supreme authority in regard to the executive administration of the Federal subjects is vested in the Federation. I should reverse the position that Sir Ramaswami Mudaliar contended for. He seemed to think that the general principle should be that the executive authority in relation to Federal subjects should vest in the States, but that, as an exceptional measure, the Federation should take over the administration into its hands whenever that becomes necessary. What I wish to point out is that the general principle should be that it is the Federation that is responsible for the executive administration of Federal subjects, but that it will not, unless it considers it necessary, interfere with the State administration of Federal subjects where it is in existence today and where it is efficient according to proper standards.

Now, it was said by the mover of one amendment that the taking over of executive administration in respect of the States should be done by Federal law and not by any kind of Federal authority as indicated in the Clause. I would only mention to him one range of subjects, *viz.*, External Affairs. A very large portion of the field of External Affairs is covered not so much by legislation as by executive action. In such cases it would be absolutely unnecessary for us to look to a Federal law for the purpose, of the executive administration of External Affairs being carried out in the proper way within the limits of Indian States.

So far as this particular matter is concerned, Sir, I consider that in regard to the executive administration of Federal subjects there is no fundamental distinction, as was pointed out by Sir Ramaswami Mudaliar, between the Provinces and the States. The only distinction is that the States are actually administering some Federal subjects while the Provinces are not doing so. But, so far as the right to administer them is concerned, I do not think there is any distinction between the Provinces and the States. Now what really distinguishes the Provinces and the States is only that different kinds of internal administration exist in the two areas. I do not wish to go into this wider field which some of the speakers have covered but I do wish to endorse and emphasise one point which was, I think, made by Mr. Santhanam and that is this : The need for the taking over of the executive administration of Federal subjects by the Federation will not be less, but perhaps will be greater when democratic institutions become more common in the States than they are today. After all we have got to consider that the principle of a Federal system is to divide the administration or the exercise of sovereign powers between the Centre and the Units. And I do not see why any hesitation should be felt with regard to accepting this position, because after all the federation is as much a part of the constitution which the people and the rulers of the States have to reckon with as the State constitution will be. In the federal legislature the States will be adequately represented, and when for example a federal law is passed providing for direct

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administration of federal subjects by the federation, that law will be one in the passing of which the representatives of the States have had a voice, and therefore I could see no real principle involved in contending that you must reverse the general principle in the States from what it has to be in the provinces. I do not wish to say more, Sir, on a subject on which there is agreement as to what we actually should do. I think the House is generally in favour of accepting the amendment that I have moved. I wish to say nothing more.

Mr. President: I will now put the amendments to the vote. The first is an addition of four or five words to the clause which, Sir Gopaldaswami himself proposed, that at the end of Clause 9 the following be added:

“In cases where it is considered necessary.”

I take it that the House accepts that.

The motion was adopted.

Mr. President: There are other amendments which have been moved. The amendment of Mr. Chandrasekharaiah that for Clause 9 the following be substituted:

“The executive authority of the ruler of a federated State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the head of the federal executive.”

The motion was negated.

Mr. President: Then the other amendment by Mr. Himmatsingh Maheswari is that for Clause 9 the following be substituted:

“The executive authority of Ruler of a Federated State shall, notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.”

The motion was negated.

Mr. President: Then I will put the original proposition, as amended by Sir Gopaldaswami to vote.

Clause 9, as amended, was adopted.

Mr. President: Honourable Members will remember that Mr. Sri Prakasa moved a resolution in the earlier part of the day which was referred to a committee of three members of the House, for redrafting and submission before the House. That is now ready. If Honourable Members like to pass it today.....

Many Honourable Members: Yes.

Shri Sri Prakasa: Sir I move that:

“Notwithstanding anything contained in the Rules of the Constituent Assembly in regard to its composition, methods of election, and termination of membership all elections which have been, or may be, duly held in pursuance of, His Majesty’s Government’s statement of June 3, 1947, shall be deemed to be valid, and the Assembly so constituted shall be deemed to be and always to have been validly constituted, and all proceedings hitherto had, shall be deemed to be valid.”

Sir I move.

Mr. H. V. Kamath (C.P. & Berar: General): Sir may I suggest that Clause 68 of the Rules of Procedure of the Constituent Assembly makes provision for removing any difficulties that may arise? It empowers the President.....

Mr. President: The proposition has been placed before the House to remove the difficulties that have been noticed. Does anyone want to say anything about this?

(No member rose).

Then I will put the proposition to the vote.

The motion was adopted.

Mr. President: The House is adjourned till Monday at 10 O'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 28th July, 1947.