

Wednesday, 16th July, 1947

Volume IV



**14-7-1947
to
31-7-1947**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed at JAINCO ART INDIA, New Delhi

CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 16th July, 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. Mr. Kishori Mohan Tripathi (Eastern States Group).
2. Mr. Ram Prasad Potai (Eastern States Group).

Shri Sri Prakasa (United Provinces: General): Sir, before you begin the proceedings of this afternoon I should like to bring to your notice what I regard as a serious breach of the privileges of the Members of this House. I found that tongas bringing in Members of this Assembly were not allowed to drive into the portico of this building. Till yesterday they were so allowed but today when our need for this convenience was greatest, as it was raining, a European officer was stopping the tongas outside the portico. When I asked him if members were expected to get drenched in the rain, he replied that those were his orders, that tongas were to be stopped outside and only cars were to be allowed inside the portico. I think, Sir, that this is a piece of snobbery which you, of all others cannot tolerate.

Mr. President: I will ask the Secretary to look into the matter.

ELECTION OF VICE-PRESIDENTS AND OF MEMBERS OF COMMITTEES

Mr. President : I have pleasure in announcing that Dr. H. C. Mukerjee and Sir V. T. Krishnamachari are the only candidates who have been duly proposed and seconded for the office of Vice-Presidents and I accordingly declare them as duly elected Vice-Presidents of this Assembly.

As the House is aware it was decided to elect members to certain other Committees and I have to announce the results in regard to those elections also.

The following members have been duly nominated to the various Committees in accordance with the resolutions of this House of the 14th July, 1947:

1. *Credentials Committee:*
Bakshi Sir Tek Chand.
B. Pocker Sahib Bahadur.
Sri Ram Sahai.

[Mr. President]

2. *House Committee:*

Ch. Mohd. Hassan.
Mr. Upendra Nath Barman.
Sri Jainarain Vyas.

3. *Steering Committee:*

Haji Saiyid Mohd. Saadullah.
Mr. Abdul Kadar Mohammad Shaikh.
Sri Surendra Mohan Ghose.
Sri Jagat Narayan Lal.
Acharya J. B. Kripalani.
Gyani Gurmukh Singh Musafir.
Sri Chengalaraya Reddy.
Sri Balwant Rai Mehta.
Diwan Chaman Lall.

4. *Staff and Finance Committee:*

Shri Bhavanji Arjan Khimji.
Shri K. Santhanam.

There being only as many candidates as there are vacancies in all cases, I have great pleasure in declaring these members to be duly elected to the respective Committees.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, on a point of order, Dr. H. C. Mukerjee and Bakshi Sir Tek Chand have not, I believe, signed the Register of this House and as such they are not eligible to be elected to the Committee until they have duly signed the Register.

Mr. President: They will begin to function only after signing the Register and as soon as they come here they will sign the Register.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL
CONSTITUTION—*contd.*

Mr. President: We shall now go on with the discussion of yesterday's Resolution.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Sir, I desire to raise a point of constitutional importance. Maharaja Nagendra Singh, representative of the Eastern Rajputana States is a member of the Indian Civil Service. His name is on this cadre. He has not retired and his services have not been terminated. Can a salaried servant of the Crown be a member of the independent sovereign Constituent Assembly of India? Is it not inconsistent on his part to owe allegiance to the British Crown and at the same time be a member of the sovereign Constitution Assembly of India? Under Section 25 of the Succession to the Crown Act, "If any person being chosen a member of the House of Commons shall accept any office of profit from the Crown during such time as he shall continue a member, his election shall be and is hereby declared to be void".

Mr. President: I understand that the particular gentleman is no longer working in the Defence Department of the Government of India and that he is on his way to take service in the Bundi State, perhaps as Dewan of the State. He has been returned.

Kazi Syed Karimuddin: He has not retired from service, nor have his services been terminated.

Mr. President: That is not a disqualification according to our rules.

Yesterday Clause 1 was moved, and there was an amendment by Maulana Hasrat Mohani. The resolution as well as the amendment are now open for discussion.

CLAUSE 1—*contd.*

Mr. H. V. Kamath: Mr. President, Sir, yesterday we listened to a speech which I believe was the first of its kind ever delivered in this House. It was a speech unique in more respects than one. It was in the first place a jumble of nationalism, national socialism, republicanism, communism and what not. It was unique for the vehemence with which it was delivered. In spite of all that, I listened to the speech with the respect and attention which any utterance from Maulana Hasrat Mohani ought to command. We have known him as a veteran, as a hero of a hundred battles in the country's cause for freedom. Whatever political complexion he might be wearing today, whatever Political "choga" he might be putting on today, we have known him in the past as a valiant fighter for the country's freedom. We have not forgotten the days when he was with us in the Congress, when he was a close co-worker and associate of Mahatma Gandhi and our other revered leaders. But the speech which he made yesterday, cannot escape our attention and our notice. The speech dealt so little with the amendment and so much with everything else besides, that I for one was hard put to it to sift the grain from the chaff. Maulana Sahib thinks that by substituting the word 'President' for the word 'Governor' he would, as if by a wave of his magic wand, create a socialist republic in every province. I for one fail to see how by substituting the word 'President' for 'Governor'. Such a transformation could be brought about. We know very well how even the President of America is different from the President of Finance. We know how the Chancellor Germany—the Reichskanzler-der-Fuhrer—differed so much from the other Chancellors of Europe. Therefore, I do not see any point in this mere change of the word 'Governor' into 'President'.

Another point which he sought to make was about socialism. Well, even Netaji Subhas Chandra Bose, whose Forward Bloc he did mention in the course of his speech, used to say times without number that in the immediate present our main task was the achievement of the independence of India—a united, free, strong and independent India—and that only after the achievement of this independence our labours and energies should be directed to the socialist reconstruction of a free, united, independent India. Of all people I least expected that Maulana Hasrat Mohani as he is today would bring before this House the plea for socialism. I believe Maulana Hasrat Mohani is a pillar of the Muslim League today, and it is a historic fact that the Muslim League has demanded and achieved the partition of India on a communal basis, a basis which to my mind is the very antithesis of socialism. If Maulana Hasrat Mohani stands before us today and tries to preach socialism to us I would tell him "Physician, heal thyself". It is not for members of an organisation who are committed to a patently communalistic policy to come before us and advance the plea for a socialist society unless they shed their communalism. It does not lie in the mouth of members of such an organisation to plead for socialism. We who have been guided by leaders like Mahatma Gandhi, Pandit Nehru, Sardar Patel and Netaji Subhas Chandra Bose, do not stand in need of instruction about socialism. If at all anybody stands in need of being taught about socialism, I should say it is the Muslim League which has been for the last so many years

[Mr. H.V. Kamath]

preaching a vivulently communalist policy and today has achieved a certain measure of success. I for one would plead with Maulana Hasrat Mohani even today to reconsider his own attitude and his own approach to Indian politics. I would ask him "What about the masses in your own Pakistan? Will you call upon your own masses in Pakistan to join hands with the masses in the Indian Union—in our Hind, in our Bharat Varsha—on a socialist basis, shed your communalist 'choga' and policy and let us go forward to build a united, strong, independent, socialist India in a socialist Federation of one free world?" I do not wish to take any more time of the House. I only wish to reiterate that this amendment is a pointless amendment and that nothing would be gained by the substitution of the word 'President' for 'Governor'. After all we have reserved that term for the head of the Indian Union. There must be some way of discriminating between the head of the Indian Union and that of a province. On these grounds, I oppose the amendment of Maulana Hasrat Mohani.

Mr. President: If the Mover of the Resolution wishes to say anything in reply he may do so.

Maulana Hasrat Mohani (United Provinces): May I be permitted to say something?

Mr. President: The mover of an amendment has to right of reply.

Maulana Hasrat Mohani: The previous speaker was asking 'How has Maulana Hasrat Mohani become a socialist, he is a communist, etc. I What to say something by way of personal explanation.

Mr. President: I do not think the House is much interested in that personal explanation.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): Sir, I shall give my reply to the speech made by the Mover in support of his amendment. I note that he was anxious to say something a second time. He has moved an amendment to the effect that instead of 'a Governor' there should be 'a President' for each Province. In the Union Centre we have a President and, if in the Provinces also, there are to be Presidents, there will be confusion. These Governors are to be elected by adult franchise. Therefore we must not have the wrong idea that anything appearing in the new Constitution connotes the old ideas, connected with the Constitution under which we are now functioning. This is a simple proposition in which there should be no misunderstanding or further discussion. I hope the amendment will be withdrawn.

Mr. President: the question is:

"That in Clause 1, for the words 'a Governor' the words 'a President' be substituted."

The motion was negatived.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, will you allow me to say a few words before you put this Clause to the vote?

Mr. President: I gave an opportunity to Members to speak on this amendment, but nobody desired to speak at that stage.

The Honourable Pandit Hirday Nath Kunzru: The discussion so far has been on the amendments. There has been no discussion on the clause as a whole.

Mr. President: I said definitely that both the Clause and the amendment were open to discussion and invited Members to take part in the discussion. When nobody rose to speak I thought nobody had anything to say on the question.

The Honourable Pandit Hirday Nath Kunzru: If you hold that no further discussion is permissible under the procedure adopted by you, I do not want to speak. But if it is still open to a member to offer any general remarks, I should be glad to avail myself of the opportunity.

Mr. President: I think the time for these remarks is over. Those who are in favour of the original proposition will please say 'Aye' and those against will say 'No'.

The motion was adopted.

CLAUSE 2

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 2 relating to Term of Office.

"2. (1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned."

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I have an amendment to Clause 1. It has not been considered. It is in the Supplementary List of amendments.

Mr. President : I am afraid there has been a mistake. There are a certain number of other amendments to Clause 1 of which notice has been received last night. I have not given an opportunity to Members who have given notice of those fresh amendments to move their amendments. I think I had better call upon them to move their amendments one after another. I do not think they should suffer on account of my mistake.

(Shri R. V. Dhulekar did not move his amendment.)

Dr. P. S. Deshmukh: Mine, Sir.

Mr. President: That comes under sub-clause (3) which will now be moved.

The Honourable Sardar Vallabhbhai Patel: I do not propose to move sub-clause (2). Then I move sub-clause (4) which becomes sub-clause (3) which runs thus:

"(3) The Governor shall be eligible for re-election once, but only once."

I move the three sub-clauses of this Clause for the acceptance of the House.

Mr. President: There are two amendments of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. and Berar: General): I do not move them.

Mr. President: Mr. Santhanam may now move his amendment.

Shri K. Santhanam (Madras: General): Sir, I move:

“That in sub-clause (2) of Clause 2, for the words ‘to be tried by the Upper House of the Federal Parliament’ the words ‘to be confirmed by the Upper House of the Federal Parliament after investigation by a Special Commission of that House’ be substituted.”

In the case of the Union Constitution, a similar procedure has been adopted for the impeachment of the President. There it is laid down that the Lower House shall make a charge and the Upper House shall appoint a Commission to investigate and after it is satisfied that the charge is proved, then, by a Resolution, the Upper House will confirm the charge. I have adopted the same procedure. Otherwise it will mean that the Governor will be tried by the whole Upper House. It will be inconvenient and damaging to the prestige of the province as the Governor is to be elected by adult franchise. I hope the House will accept this amendment.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in the matter of omitting the sub-clauses, may I point out, Sir, that it would be better for the Mover, Sardar Vallabhbhai Patel, to formally move the subclauses as they appear on paper for adoption and then to get someone to move an amendment for their deletion where necessary. This is a report of the Committee and therefore the proper thing to do is for the Mover to move it as it is, and then allow an amendment for the deletion of the unwanted item.

Mr. President: The question has been raised that it is not open to the Mover to remove any particular clause which is contained in the report, that it can be deleted only by way of an amendment and that the Mover can then accept the amendment.

The Honourable Sardar Vallabhbhai Patel: The objection is more of a technical nature. I do not think it makes any substantial difference, but if the technicalities are to be satisfied, I have no objection. Then sub-clause (3) stands. In substance it makes no difference.

Mr. President: Pandit Pant will now move his amendment.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I move:

“That sub-clause (3) of Clause 2 be deleted.”

The Mover is in agreement with me, so also a large body of opinion in this House. In fact, we had no desire to keep this clause ourselves. A similar clause found a place in the Draft Constitution of the Indian Union also, but when the matter was examined, it was found that it would not work, and so it was removed from the draft; you will not find it in the Report that has been circulated. Similarly, this clause also was scrutinised and it was found advisable to remove it. The clause says, “The Governor shall be deemed to have vacated his office by continued

absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months". Who is to determine what amounts to incapacity or failure to discharge his functions? Considering all these things, we came to the conclusion that the sub-clause will not work in actual practice. Besides, it was decided to bring the constitution of the provinces so far as possible in a line with that of the Central Constitution. Keeping all these points in view, it has been decided to omit this clause. I move that this sub-clause be omitted.

Mr. President: There are certain other amendments.

Mr. H. V. Kamath: President, Sir, I am now advised by our elder statesman that a two-thirds majority is enough and so I withdraw the amendment.*

Mr. H. V. Kamath (Bombay: General): In view of the fact that sub-clause (3) is to be deleted, I do not want to move my amendment.

(Other Hon'ble Members who had given notice of amendments did not move them.)

Mr. President: Mr. Ayyangar, are you not moving any of your amendments.

Shri M. Ananthasayanam Ayyangar (Madras: General): No. Sir.

(Messrs. K. Santhanam, P. S. Deshmukh and H. V. Pataskar did not move their amendments.)

Mr. President: I think these are all the amendments of which I have received notice.

The clause and the amendment are now open for discussion. If any member wishes to make any remarks, he can do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, in regard to Clause 2, I feel some difficulty in agreeing to sub-clause (3) being deleted. Sub-clause (3) has certain good features. The other features are impracticable. So far as the good features are concerned, they are that the Governor shall be deemed to have vacated his office by continued absence from duty. This is a very desirable provision. If the Governor remains absent for a continued period of more than four months, the work of the province will come to a standstill. It is my humble suggestion that we should retain this part of the sub-clause.

With regard to another part of the sub-clause, *viz.*, continued incapacity, this has not been defined. It will be very difficult to decide as to what is continued incapacity.

*That in sub-clause (2) of Clause 2, for the words the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned" the following be substituted:

"the resolution in the former case to be supported by not less than two thirds, and in latter not less than three-fourths, of the total membership of the House concerned."

The Honourable Pandit Govind Ballabh Pant: May I just have a word, Sir, in order to avoid unnecessary discussion? I should like to invite your attention to another amendment which is on the Order Paper, where I wish to move that the Deputy Governor should be appointed. That comes under clause 3. It is No. 8 on the Order Paper which was circulated in the form of a supplementary list.

Mr. Naziruddin Ahmad: It is said that an amendment on the lines of what I have suggested is already on the supplementary list, but we have no notice of any supplementary list whatsoever. I believe many Honourable Members have not seen it. If there is any amendment it should be moved along with these, for attention should be called to them together. If there is any amendment to that effect it would be a good amendment. I was however pointing out that the good feature in this sub-clause should be retained. But the condition as to continued incapacity is vague that relating to "failure to discharge his functions" is equally vague and will lead to great difficulties.

With regard to the next sub-clause, I feel some difficulty. I do not desire to oppose this clause altogether, but I submit my difficulty for clarification or correction, if necessary. Sub-clause (4) says that the Governor shall be eligible for re-election once, but only once. I do not see the point that a Governor cannot be re-elected twice. Suppose there is a very good Governor, a very competent man and ready to do good to the people he will be shut out for the second re-election by the last portion of this sub-clause. The sting of this sub-clause lies at the tail. There is no point in limiting the people's choice in electing a Governor. It is just like the chimney sweeper who has to go up inside a chimney in order to clean it and in order to go into it, he must be small enough but as soon as he gets experienced he becomes too big to get into it. I think the chimney sweeper test should not be applied to a Governor. I make only a suggestion for the Honourable Sardar Vallabhbhai Patel to give his consideration to this. I simply draw the attention of the House to what seems to be an absurd and untenable position, though I think it is too early to go into great details. Enough opportunity would be given to the House to give its verdict on the final draft. I therefore make a suggestion in the hope that those in charge should keep it in their minds.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much controversy about the motion that I have moved. About the third clause I had already suggested that I would not move it as I anticipated that there was going to be a suitable amendment in a subsequent clause. We found that if we retained sub-clause (3) difficulty would arise as to who is to judge the 'incapacity or failure to discharge his functions'. In order to avoid all these complications, an amendment has been tabled to the subsequent clause, which avoids all difficulties. Now I accept Pandit Govind Ballabh Pant's amendment. About the fourth sub-clause a suggestion has been made that the re-election should not be restricted for any term. In all if he is allowed to stand for election twice, he gets a period of eight years. For the third re-election the sub-clause proposals to restrict candidature because according to the discussion that took place in the Committee it was suggested that the President, if he remains for two terms, may well establish his power to such an extent that perhaps somebody might suggest or some suggestions may be made that he has stabilized his position and it may be difficult to absolve him from the charge of having manoeuvred, from his position, support for the third election. It was considered better to avoid any such insinuation against the Governor

as well, as it was also considered that the eight years' period is a sufficiently long time. As the candidate for the Governorship will fairly be a man of substance, age, and experience, after the eight years, period he may better retire and give a chance to a younger man. I think the Committee has come to the conclusion after mature consideration. I think it is a better suggestion. Therefore, the motion that I have moved as modified by the amendment of Panditji should be adopted, and the amended clause as it stands should be accepted by the House.

I forget to say that I accept Mr. Santhanam's amendment.

Mr. President: I have to put to vote the two amendments moved, one relating to sub-clause (2) of Clause 2 and the other relating to sub-clause (3) of Clause 2. The mover has accepted both these amendments. So I put the clause as a whole to the House, but before doing that I had better take votes on the amendments also.

Mr. Santhanam's amendment is as follows:

"That in sub-clause (2) of Clause 2 for the words 'to be tried by the Upper House of the Federal Parliament' the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a special Commission of that House' be substituted."

The amendment was adopted.

Mr. President: The other amendment is by Pandit Govind Ballabh Pant and it is as follows:

"That sub-clause (3) of Clause 2 be deleted."

The amendment was adopted.

Mr. President: Now, clause 2, as amended is put to vote.

Clause 2, as amended, was adopted.

CLAUSE 3

Mr. President: We will now go to Clause 3.

The Honourable Sardar Vallabhbhai Patel: Casual Vacancies. (1) Casual Vacancies in the office.....

Mr. President: There is notice of an amendment that after Clause 2, another clause be inserted. I do not know whether it can be moved as an amendment. We shall put it in the right place. We shall go on with the clauses as they stand.

The Honourable Sardar Vallabhbhai Patel: I move:

"*Casual Vacancies.*—(1) Casual Vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of this predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected as the case may be."

In this, as was suggested in the course of the discussion of Clause 2, there is an amendment to be moved by Pandit Govind Ballabh Pant. Therefore, I move this portion and I do not propose to say anything more.

(Messrs. V. C. Kesava Rao, M. Ananthasayanam Ayyangar and Shibban Lal Saksena did not move their amendments.)

The Honourable Pandit Govind Ballabh Pant: I move, Sir, that for Clause 3, the following be substituted:

“There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor and he will also act for the Governor in his absence.”

The first part of Clause 3, that is sub-clause (1), is incorporated in my amendment. In so far as it differs from Clause 3, it provides for a contingency which might arise in consequence of the adoption of the amendment which I moved a few minutes ago. The original clause provided that in case of casual vacancies occurring during the term of office of the Governor, the vacancy will be filled up by election. The legislature would be seized of the matter and the provincial legislature would elect a substitute Governor for the remainder of the term according to the system of proportional representation by means of the single transferable vote.

In the case of short term vacancies, however, which might occur, it was provided by sub-clause (2) that the President of the Federation would nominate a Governor to officiate for the permanent Governor. I think it would be unwise to impose this embarrassing duty on the President of the Federation. Besides, it would be somewhat repugnant to the principle of provincial autonomy. As Honourable Members are aware the provision in the constitution that has been devised for the Federation contemplates a Vice-President to be elected by the legislature after the general election. A Vice-President is elected so that in case any vacancy occurred or any occasion arose for another person stepping into the shoes of the President, a person might be readily available to discharge the functions of the President. By the amendment that I am proposing, I am suggesting a procedure that will be in accord with that already accepted for the Federation.

As Honourable Members are aware, in some of the constitutions abroad, a Vice-President is elected by the general electorate along with the President. It is not necessary to go through an equally cumbersome process here as the Vice-President will not have very heavy responsibilities to discharge and a second election in the course of four years for the election of a substitute Governor for a short term would involve undue labour and worry and expense. So it is considered desirable that some simpler method should be prescribed. We have accordingly by this amendment suggested that the Deputy Governor should be elected by the legislature and he should be readily available to fill any vacancy that might occur during the term of office of the Governor whether the vacancy be temporary or permanent.

It is likely that the Governor may have to go abroad for important public business, that he may be deputed for diplomatic service of an important character for a short term or he may be required to perform other duties for a limited period which may not allow him to discharge his normal functions. For such occasions we should have a Deputy Governor to take his place. The question was raised by one of the Honourable Members when I moved my first amendment. This amendment that I have now moved furnishes the remedy. The amendment is straight forward and simple and I hope it will be unanimously accepted and adopted by the House.

Mr. President: Mr. Santhanam, you have an amendment.

Shri K. Santhanam : I do not wish to move it.

Mr. President: Mr. B. Das.

Shri Biswanath Das (Orissa: General): I do not wish to move.

Mr. President: Dr. Deshmukh has given notice of an amendment to Clause No. 1. Do you wish to move it now?

Dr. P. S. Deshmukh: It is covered by Pandit Pant's amendment. I do not wish to move my amendment.

Mr. President: The Clause has been moved and so also the amendment of Pandit Pant. Those who wish to say anything with regard to the original proposition as also the amendment are now free to do so.

Mr. Naziruddin Ahmad: Mr. President, Sir, I regret having to come here for the second time in connection with these amendments. With regard to the amendment that has now been moved, it was not circulated to us. It was only when it was moved here that I discovered its existence. It is difficult for us to follow the implications of these amendments. The original clauses have been drafted very carefully by an expert Committee consisting of expert draftsmen, experts in Constitutional Law and our great statesmen together. When they have drafted the report after so much deliberation and care its amendment should be taken in a serious manner; I should think the task of following the clause and the amendment on the spur of the moment on obtruse constitutional questions, becomes for us, laymen, all the more difficult. I submit that an amendment of this serious character altering the basic character of the original clause should not be allowed without giving us some time to consider its repercussions on the clause itself as well as upon the whole report because upon these clauses the final Bill will be drafted for our final consideration. In a matter of this importance, I think some caution should be used and some time should be allowed us for considering them. I find that to the original clause a large number of amendments have been moved. I doubt not that if the amendment just now moved was circulated to the Honourable Members, many amendments might have been suggested.

In the circumstances, I would suggest that this clause should not be rushed with. Some little time, however small, which the House or you, Sir, might consider sufficient, should be given to us. I must make it plain that it is by way of co-operation that I approach the House and approach you, Sir, for a little time. I plead with the Mover of the Clause as well as the Honourable the Mover of the amendment, who are great figures of our country, for a little time. I would ask them to consider the position of laymen in constitutional law having to take decisions on important issues without having previously considered them adequately. That is a prayer which I wish to make so that it may be sympathetically considered and some time given to us to consider the situation.

Mr. President: Does any one else wish to speak on the clause as well as the amendment?

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir the question that the House has to consider is whether the original clause, or the clause sought to be substituted by the amendment, should be adopted by the House. I think the amendment should be accepted for various reasons which have already been mentioned by the Mover of the

[B. Pocker Sahib Bahadur]

Amendment. It is very unwise to create a possible occasion for an election by this complicated procedure in the middle of four years. In order to avoid that, it is much better to have a Deputy Governor elected even along with the general election itself. Therefore, I have great pleasure in supporting the amendment that has been proposed. But I have one doubt as regard the system of proportional representation by means of the single transferable vote. I ask you, Sir, to consider the question whether that is an effective system when the object is only to elect one candidate. I can understand the efficacy of that system when you have to elect a larger number of candidates than one. But if the candidate to be elected is only one, I do not know how far this system would be efficacious in achieving the object at all. The object of having election by means of proportional representation by single transferable vote is to give representation to various groups or sections or views among the voters. If the candidate to be elected is ultimately only one, I doubt if it is wise to undergo this laborious process of proportional representation by means of single transferable vote. This is a matter to be considered by the House, particularly by the experts who have drafted this Report. They certainly must have thought about this point. I am afraid, in the first place, it has no effect at all so far as the object to be achieved is concerned, when the candidate to be elected is only one. But as I said, this is a matter to be considered by the House, I have not given any amendment, but I hope this matter will be taken up for consideration by the drafters of this Report.

Sri M. Ananthasayanam Ayyangar: The last speaker seems to be under the impression that the Deputy Governor will have to be elected by votes of all the adults of the province. This, however, is not the case. The election will be done by the Provincial Legislature where the number will be only about 150 or 200. That being so it will not be a difficult matter at all. It is not a huge body; we have such elections by proportional representation by means of single transferable vote for various other bodies also. For example, in the case of the Council of State, the strength of the electorate is 3,000; in the case of a Provincial Legislature, I suppose the strength will not be more than say 300. Therefore, this need not stand in the way of our having proportional representation by means of the single transferable vote. I think the amendment may be accepted.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I am going to speak on the amendment. It deals with the filling up of a casual vacancy in the office of the Governor. It, however, does not solve the problem of a casual vacancy that may arise in the office of the Deputy Governor. The amendment says:

“There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence.”

But what will happen if there are casual vacancies both of the office of the Governor and of the office of the Deputy Governor? In that case, there will be a dead-lock. There is no provision at all for such a case. For this reason, Sir, it seems to me that the clause as drafted originally is far better than the amendment. At every casual vacancy of the office of Governor, the Provincial Legislature may fill up that vacancy; but according to the amendment there will be a vacuum, there is no provision

for filling up a vacancy if there are such vacancies both in the office of the Governor and in the office of the Deputy Governor. For this reason, Sir, the clause as originally drafted it seems to me, is preferable to the amendment.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, with regard to the submission made to the House by Mr. Pocker, the explanation why the system of proportional representation by means of single transferable vote has been inserted in the clause is clear enough. If this method of election were not introduced here in Clause 3, the result would be that a person would be elected as Deputy Governor by less than one half of the members voting. If it is by proportional representation, then by transfer of second vote, whoever succeeds will get one half *plus* one votes more than the number of votes cast for the others. That is why this system has become necessary.

As regards the difficulty put forward by Rev. Nichols-Roy, about both the Governor and the Deputy Governor disappearing from the scene simultaneously, it is very difficult to conceive of such a contingency at this stage. Even if we had a third man, he too may disappear. Therefore, at this stage, we can only fix the general principle. If by some sudden stroke of calamity, the Governor, the Deputy Governor and all the rest disappear, then the whole machinery will collapse. But we need not think of such far-fetched events. We hope the Governor will continue, if not, the Deputy Governor at least will continue, till the end of the term.

Srijut Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, the Committee which produced this Report was presided over by no less a person than the distinguished and revered Sardar Vallabhbhai Patel and we think full opportunity was given for discussion of each matter so that when the Report was before the House there would be no need for any change. I should not be understood to be opposing Pandit Pant or to criticise him, because physically, morally and intellectually I would not be equal to that task. (*Laughter*). But I think it would be better and more helpful to us if we know what would be the normal functions of the Deputy Governor, when the Governor is not absent. Would his function consist simply in longing and praying for the absence of the Governor or for him to be incapacitated *i.e.*, for a casual vacancy? (*Laughter*). That question, Sir, may please be borne in mind and duly considered.

Then, Sir, it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy Governor with all the costly paraphernalia which will be there?

Then, Sir, I am speaking on behalf of those who may aspire to become Governor of a province—but if—God forbid—a Governor should die immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes? It may be said that the Vice-President of the U.S.A. enjoys all the powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is

[Srijut Rohini Kumar Chaudhury]

not elected by the entire adult votes but only by a few people? These are points to be considered and I hope a suitable reply will be given to these questions.

Mr. Debi Prosad Khaitan (Bengal: General): Sir, in trying to understand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clauses are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original draft as placed before us it was stated that "the Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months".

This was thought to be very uncertain and very vague, as to when and in what manner the Governor is to be deemed to be in continued incapacity to discharge his functions. Similarly what was meant by the expression "failure to discharge his functions"? It became very difficult to decide what authority would declare that a Governor was in continued incapacity, except in the case of illness. Similarly, "failure to discharge his functions" is again a very vague expression. One may consider that the Governor was failing to discharge his functions while a large body of other persons and the Governor himself may think that he was not failing to discharge his functions. This has again to be read with sub-clauses (1) and (2) of Clause 3. There it was stated:

"Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature."

That is to say, there will not be a ready-made person capable of filling the office of Governor when a casual vacancy would arise. The election by the provincial legislature would necessarily take some time to carry out, and in the meantime the office of Governor would remain vacant without anybody to perform the functions of that high office. In Sub-clause (2) again, which is to be read with Clause 2(3):

"In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, etc."

Supposing a Governor becomes ill and wants to take a holiday to some place and thinks that he will recover within three months but does not, it becomes very uncertain as to when the period will exceed four months and when it would not exceed four months. All these questions had to be seriously considered and a remedy was to be found, or at least it was thought that another remedy should be put before this House; and that is just what Pandit Pant has done, namely that after each general election when the provincial legislature meets it would elect a Deputy Governor according to a certain process. Even now some lacuna still remains, namely, it is said that the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of the office of the Governor. It has not been stated here as to what will be a casual vacancy, and who would determine whether there is a casual vacancy or not; whether it is the Governor himself that will determine it or some other authority will have to be duly considered by the expert draftsmen that are serving the Constituent Assembly.

An Honourable Member: Sir, is the Honourable Member in order in reading a written speech.

Mr. Debi Prosad Khaitan: I have no written speech; I am only looking at the clauses and the amendments and have to read them because I have not committed them to memory.

As I said, the expert draftsmen will have to consider when a casual vacancy occurs, which authority will determine whether a casual vacancy has occurred or not and whether the Deputy Governor—if this amendment is accepted—will fill the office of the Governor for the remainder of the term of his office or will simply act for the Governor in his absence for a short period. All these are difficult matters to consider; and if the principle that has been put forward by Pandit Pant is accepted the remaining details will have to be filled in and again brought up before this House for consideration. In the circumstances, I think the amendment of Pandit Pant is a good substitute for Clause 2 (3) and sub-clauses (1) and (2) of Clause 3, and I hope the House will accept it.

Mr. H. V. Kamath: Sir, in order to meet the difficulty visualised by Mr. Rohini Kumar Chaudhury, we might, as we have proposed in the case of the Upper House, direct that members of the Constituent Assembly from each Province shall vote separately and decide whether a Deputy Governor should be appointed for their province or not.

Mr. President: The Mover may reply.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much to be said by me, because subsequent speakers have replied to the previous speakers. This is a simple clause relating to how usual vacancies in the office of Governor are to be filled and the proposal has been improved upon by the amendment that has been moved by Pandit Govind Ballabh Pant. Doubts have been raised as to what would happen in case both the Governor and the Deputy Governor disappear. In any constitution difficulties of this kind may arise but human ingenuity always finds a remedy when such abnormalities occur. The House may also be aware that this constitution will be adjusted or revised in the first three years whenever necessity arose. Therefore, if any such unexpected or unforeseen difficulty arises, the legislature at that time will take care of itself and make provision in time to meet such contingencies. Therefore, I see no difficulty in accepting the amendment moved by Pandit Govind Ballabh Pant and I do not think it is necessary to make any more suggestions.

Mr. President: An amendment to Clause 3 has been moved. The question is:

“That for Clause 3, the following be substituted:

‘There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence. The motion was adopted.’”

Mr. President: The question is:

“That Clause 3, as amended, be passed.”

The motion was adopted.

CLAUSE 4

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

“Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.”

This is a very simple clause.

Mr. President: There are several amendments to this Clause.

Mr. H. V. Kamath: Sir, I am told on the highest authority that a man, or for the matter of that, a woman also,—as she too is eligible for election as Governor,—may attain to maturity and mellow wisdom even before the 40th year! I do not therefore wish to press my amendment.

Shri V. C. Kesava Rao (Madras: General): Sir, I do not wish to move my amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I beg to move:

“That the following be added as sub-clause (2) of Clause 4 and the existing Clauses be renumbered as Clause 4(1):

‘(2) No person holding any office or position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor.’”

Sir, it is one of the generally accepted principles that a public servant shall not stand for any elected office and hence the need for incorporating this provision in the constitution. It is likely that for such an eminent office sometimes an over-zealous public servant may stand for election and some people may also allow him to stand. As a matter of fact, I wanted that even a person who retired from public service during the previous five years ought not to be allowed to stand for election as a Governor. That will be a proper safeguard. I do not think that a public servant, how-ever, great he might be as an administrator, is as competent as a public man devoted to public service will be and is expected to serve his province as a Governor. However, that amendment is not before the House and I am moving a lesser and more innocuous amendment that a public servant should not be allowed to stand for election as a Governor. Sir, I move.

(Messrs. Shibbanlal Saksena and Biswanath Das did not move their amendments.)

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendment moved by Mr. Ananthasayanam Ayyangar.

Mr. Debi Prosad Khaitan: Sir, an age limit has been fixed for the Governor. May I know if there is any age limit for the Deputy governor also?

(No answer was given.)

Mr. President: The question is:

“That the following be added as sub-clause (2) of Clause 4 and the existing Clause 4 be renumbered as Clause 4(1):

‘(2) No person holding any office, position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor.’”

The amendment was adopted.

Mr. President: The question is:

“That Clause 4, as amended, be passed.”

The motion was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

“Disputes regarding the election of a Governor shall be inquired into and determined by the Supreme Court of the Federation.”

I do not think this is a controversial clause and there is no amendment to it.

The motion was adopted.

Mr. H. V. Kamath: Sir, would it be too much to request you for a little recess, say, half an hour to enable members to have tea?

The Honourable Sardar Vallabhbhai Patel: Is that an amendment? The House is only sitting for three hours and members could have had their tea and come.

Mr. H. V. Kamath: If we had a recess of half an hour for tea, we could sit till 6-30.

Mr. President: Members can go and take their tea as the proceedings of the House go on.

CLAUSE 6

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

“6.(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.”

You will see that sub-clause (1) provides that in case a person who stands for election as Governor and is a member, is elected, he has no option but to vacate his seat in the legislature. He automatically comes out of the Legislature and becomes the Governor. I think it is a proper provision. There can be no dispute about it.

Sub-clause (2) refers to the holding of other offices by the, Governor. It forbids it. This is also necessary. We, have provided for the acceptance of Mr. Ananthasayanam Ayyangars’ amendment to the previous clause prescribing the qualifications necessary. This sub-clause is therefore very necessary.

Sub-clause (3) provides simply for residence and emoluments. It is not necessary to say anything about it. Provisional arrangement is made till it is fixed by the legislature.

Dr. P. S. Deshmukh: I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States): May I make a few observations on this motion?

Mr. President: Yes, after the amendments have been moved.

Mr. R. K. Sidhwa: Sir, the amendment that stands in my name states that the salary of the Governor should form part of the Constitution. I am strongly of the view, particularly for maintaining the dignity, the prestige and honour of the Governors who will be Indians themselves hereafter, that fixation of the salary should not be left to the caprices and whims of the provincial legislatures. Again, under the circumstances in which the Governors will be elected by adult franchise, it will be undignified to let the provincial legislatures, where party politics will prevail, sit upon the fixation of the salary of the Governors. I do feel, therefore, Sir, that the Constitution itself should provide as to what should be the salary and other emoluments of the Governors. I am quite prepared to grant that small provinces like Assam and Orissa need not pay their Governors the same salaries as the other provinces. This too may be put down in the Schedule. I feel that this matter should be reconsidered by the Provincial Committee. In this connection, I would point out that the Schedule stated to be there is not in fact there. The Schedule, has to be considered by the Provincial Committee. I have mentioned in the amendment that the Schedule should state what salaries should be incorporated in the constitution. I have been told that my point will be considered by the Provincial Constitution Committee. Under the circumstances, I do not move this, but I desire to emphasise this point so that the Provincial Constitution Committee may bear it in mind when they consider the Schedule. I repeat, Sir, that in view of the fact that party politics will prevail in the provincial assemblies, we should see that the salaries of the Governors form part of the Constitution.

Mr. President: The Provincial Constitution Committee has already reported. I do not know if this point would be going back to it. I take it, it will be taken into consideration when this matter comes up again in the final form when the final Constitution is considered.

Mr. R. K. Sidhwa: Yes, Sir. I have been told also that it will be borne in mind.

Mr. President: As there are no amendments moved to this Clause, I call upon Mr. Aney to speak.

Mr. M. S. Aney: Sir, I have only a few observations to make in regard to this Clause. Sub-clause (1) says that the Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature. This applies not merely to the Governor who is elected but also to anybody, the Deputy Governor for instance who might happen to be in the position of the Governor, in view of the provision made therefore in an amendment given notice of by my friend Mr. Govind Ballabh Pant. The case of the Deputy Governor who acts as Governor will also be covered by this Clause. But it is not, so stated in the proposed amendment. It is not stated in the aforesaid amendment that the person who acts as Governor shall not be a member of the Legislature, although by virtue of his becoming a Governor he will be taken to have vacated his seat and a vacancy will arise and it will have to be filled. That is a consequence of this amendment. We should think over the matter and see if something can be done to make this position more clear. I have nothing more to add. This is one of the points that struck me.

Mr. President : Is there any other member who wishes to speak about this?

Mr. Naziruddin Ahmad : Mr. President, Sir I feel some difficulty about Clause 6 which is under consideration. The first sub-clause says that the Governor should not be a member of the legislature, and if so after, election, he should be deemed to have vacated his seat. Coming to sub-clause (2), it is provided that the Governor shall not hold any other office or position of emolument. We have already provided through an amendment moved on the floor of, the House, of which enough notice was not given, that a candidate for Governorship should not hold any position of emolument, anywhere, even under Government or even under a local authority. To that extent, sub-clause (2) seems unnecessary.

Then, Sir, I am speaking on behalf of those who may aspire to become immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes?. It may be said that the Vice-President of the U.S.A. enjoys all the Powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is not elected by the entire adult votes but only by a few people?

Then, Sir it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy. There are points to be considered and I hope a suitable reply will stand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clause are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original final draft would diminish the dignity and value attaching to that high office. With regard to the amendment moved to this clause, I think I should support that amendment that the legislature should have nothing to do with the fixation of the salary of the Governor.

Mr. K. M. Munshi: It has been withdrawn.

Mr. Naziruddin Ahmad: That was a good amendment, but I need not say anything further on the subject. This is a point, however which the Drafting Committee may keep before their mind.

These are some of the points which require careful consideration. Although I feel that this is not proper time to go into great details. I make these suggestions for the consideration of the Drafting Committee.

Sri M. Ananthasayanam Ayyangar: I want to say a few words about what Mr. Aney said about this clause. He thought that when the Deputy Governor becomes the Governor during the latter's temporary absence, he would lose his seat in the legislature. The Deputy Governor becomes the Governor only when the Governor vacates his office. Under the amendment moved by Pandit Govind Ballabh Pant, the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor

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his absence. Should the Governor die or resign, the Deputy Governor becomes the Governor in which case he has no right to continue to be a member of the legislature. If on account of illness or absence, the Governor does not discharge his duties, the Deputy Governor will act in the Governor's place as Deputy Governor and not as Governor and therefore his place in the legislature is not vacated.

Then as regards the observations made by the previous speaker in regard to sub-clause (2) which says the Governor shall not hold any other office or position of emolument. He says that the amendment moved that no public servant can be eligible for candidature as Governor is comprehensive and therefore this sub-clause is not necessary. He has forgotten the difference between the eligibility of a candidate for Governorship and, after becoming Governor, his holding any other office. He may not be a public servant at the time of his election but he may hold any other office thereafter. The idea is that the Governor should be a full-time servant and must not hold any other office. That is the reason for this sub-clause.

Then as regards sub-clause (4). Very often a legislature which is opposed to the Governor will try to diminish and not increase his salary. Anyhow, I would prefer the word "change" substituted for the word "diminished" in this sub-clause.

The clause, as it stands, may be accepted.

Mr. President: I put the clause to the vote. No amendment has been moved.

The motion was adopted.

CLAUSE 7

The Honourable Sardar Vallabhbhai Patel: I move:

"7. The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority."

I move this proposition for the acceptance of the House.

Mr. President: Mr. Ananthasayanam Ayyangar, you have got an amendment?

Sri M. Ananthasayanam Ayyangar: I have dropped it, I will reserve it for some other clause.

Mr. President: You are not moving so far as this clause is concerned. Very good.

Shri Biswanath Das: Sir, I move:

"That to Clause 7, the following proviso be added:

"Provided that the Federal Legislature shall contribute for such functions discharged in its behalf'."

This is an ordinary amendment and was probably left out owing to oversight. Honourable Members are aware of the fact that the Provincial and Federal Constitutions clearly lay down the respective function and

responsibilities. In the present clause the federation is authorised to call upon the Provincial Executive to discharge certain functions over and above their own work. In such cases it is but fair that the Federal Parliament should pay for the work done in their behalf by the Provincial Executive as the agents of the Federal Parliament. I claim this on two accounts. It is just and fair that the principal should pay for the agent in discharge of its agency work. Secondly, its responsibility cannot be complete unless the Federal Legislature finds its agency to carry on its work with its expense. The work in contemplation may relate to directions by the Federal Parliament or to work imposed on the Provincial Executive by means of Federal statutes. In such cases it is but fair that the principal must pay for the agency work. True it is that the Government of India Act had a similar section for discharge of its work by the Provincial Executive without any payment, but we are substituting a Federal system of Government in place of a Unitary type. I therefore hold that it is fair and necessary that this agency work should be paid for.

Mr. President: Clause 7 has been moved and the amendment to it is also moved. The original proposition and the amendment are open for discussion. Members who wish to make any remarks may do so now.

Shri Ajit Prasad Jain (United Provinces: General): The present clause says that the Executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him. There is a corresponding clause as recommended by the Union Constitution Committee which says "subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President". The present clause, that is the one recommended by the Provincial Constitution Committee, follows more or less the lines of the Government of India Act, 1935, and there was a reason for this. Under the Government of India Act, 1935, there are some services which were under the control of the Secretary of State and they had to function under the authority of the Government but that distinction will cease to exist under the new Constitution. I do not think that this phraseology is meant to perpetuate any distinction, but, at any rate, I believe that the recommendation made by the Union Constitution Committee is simple and much better worded and perhaps we shall be wise in adopting that phraseology.

The Honourable Sardar Vallabhbhai Patel: There is only one amendment which Mr. Biswanath Das has moved, that the Federal Legislature shall contribute for such functions discharged in its behalf. I am afraid there is some misunderstanding about this. Otherwise, the amendment would not have been moved. He is under the impression that the functions refer to the Federation authority. What the clause contemplates is that the executive authority of the province shall be exercised by the Governor either directly or indirectly or through officers subordinate to him. It is only the executive authority of the province and not of the Federation. Therefore there is no question of the Federal authority being called upon to pay. It is only a misunderstanding or misreading of the clause which has actuated the amendment. Further this is practically a non-controversial clause. Therefore, I hope the House will accept it.

Mr. President: The amendment to clause 7 has been moved. The question is:

"That to clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for functions discharged in its behalf'."

The amendment was negatived.

Mr. President: I now put the clause as originally moved:

“The executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by an existing Indian law on any court, judge or officer or local or other authority.”

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai Patel: I move:

“8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the provincial legislature has power to make laws.

(NOTE.—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say this will not interfere with the accession of the State or states concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.)”

I move this for the acceptance of the House.

Mr. President: Mr. Santhanam, you have given notice of an amendment.

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I think that this clause requires fuller consideration. So far as the main clause is concerned, namely that the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws, no exception can be taken.

Mr. President : Shall we not take this up after the amendments have been moved?

Sir Alladi Krishnaswami Ayyar: What I was going to move was a postponement of the consideration of this clause for tomorrow morning, if that is possible.

Mr. President: That may be possible. But I think it would be better that the amendments are moved so that the members may have an opportunity of considering the main clause and the amendments.

Sir Alladi Krishnaswami Ayyar: I shall then reserve any remarks.

Mr. President: Yes.

Shri K. Santhanam: I beg to move:

“That in Clause 8, for the words ‘Subject to the provisions of this Constitution and of any special agreement’ the following be substituted:

‘Subject to such restrictions and extensions as may be provided in this Constitution’.”

Sir, as Sir Alladi has already remarked, ordinarily the executive authority of each province extends only to those matters with respect to which the provincial legislature has power to make laws. The point of my amendment is that an extension should not be done by the province on

its own authority. It should be done only through a provision specially inserted in the federal part of the constitution, as to how far a province can enter into agreement, with a State or a neighbouring province and make an extension of its authority. Otherwise the whole Union will be reduced to chaos. The Central Ministry may not have power to prevent it and may be in great difficulty. Therefore, I want to restrict the power and scope of any such agreement to the limitations imposed by the constitution and therefore the agreement should be subject to such restrictions as may be provided within the Constitution. Beyond the constitution, there should be no power to any province to make any agreement with a state or even a neighbouring province. It is only to draw attention to this important point that I have tabled my amendment.

Of course, if as Sir Alladi has suggested, this is postponed and a better draft provided, I have no objection. I only want that this clause should not be left as it is so that the provinces may think that they can deal with the neighbouring States just as they please and come to any agreement with them with or without the consent of the Federal Government. In such a case, the permission of the Federal Government should be necessary. Not only permission of the Federal Government, but even the permission of the Federal Legislature in certain matters should be necessary. In what cases agreements should be subject to the approval of the Federal Government and in what cases it should be subject to the authority of the Federal Legislature, all these things should be provided in the Federal part of the constitution. It is only to draw attention to this important point that I have tabled my amendment.

Sir Alladi Krishnaswami Ayyar: Sir, I have got a draft ready. Mr. Santhanam's amendment is an innocuous amendment. You may make any agreement or provision you like. It does not finally settle the question. There may not be any objection to that form because it commits us to no particular principle. But if really, the object is to tackle the question and to enable the provincial executive to take up the administration of subjects under the sanction or in pursuance of any agreement with the States special provision may have to be made. If you will permit me, Sir I shall move an amendment, or at any rate, I will make my position clear with reference to the substance of what I have noted down even if it be not moved.

Mr. President: I will give you an opportunity. There is only one more amendment and after that amendment has been moved, I will give you an opportunity.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group):
[Mr. President, the amendment which I am going to move is to Clause 8. The note connected with the said clause says at one place: "In such cases, the rulers concerned may by a special agreement cede the necessary Jurisdiction to the Provinces". I desire that wherever the word "Rulers" appears in the note the word "State" should be substituted. So far, the word "State" has been used everywhere in this note. Now when the States are going to have responsible government and in some States it is being established, I wish that the word "Rulers" should not be used, but the word "State" instead, for this word includes both the Rulers and the ruled. The contemplated agreement should be made with the consent of both the Rulers and the people. This is the purpose of my amendment. I think Sardar Patel will have no objection to this, for the word "State" is more dignified here than the word "Rulers"]

[] English translation of Hindustani Speech.

Mr. Gopikrishna Vijayavargia (Gwalior): *[The amendment moved by Mr. Gokulbhai Bhatt, seeking to substitute the word "Rulers" by "State" is necessary and ought to be accepted.]*

The Honourable Pandit Govind Ballabh Pant: Mr. President although this is a very trivial point, still as it is relevant, and I would like to be enlightened on that. Mr. Bhatt's amendment relates to a word which appears in a note annexed to Clause 8. Is the note a part of this memorandum? Is it open to the members to move amendments to the wording of the note or to anything appearing in the note? I have not considered the note as an integral part of the clause. It is nothing but explanatory. I personally think that one need not worry too much about the language of the note. If the original clause is deleted, the note will fall. If the original clause is amplified, the note may not remain consistent with the amended clause. I would like to know whether you consider that amendments to notes are admissible and can be considered.

Mr. K. M. Munshi: Sir, I support my friend Sir Alladi that this clause requires reconsideration. As it is, it reads:

"Subject to the provisions of this Constitution and of any special agreement, the executive authority of each Province shall extend to the matters with respect to which the Provincial Legislature has power to make laws."

But the insertion of the word 'of any special agreement' without any further qualification would go to show that it would be competent to the Provincial Legislature to acquire the power to make laws, not by virtue of this Constitution, but by any special agreement it may enter into. That might conceivably lead to great complications. Therefore, I submit that this requires consideration, and time should be given till tomorrow to put this into shape. It may possibly touch External Affairs too.

Mr. President: As here is a desire expressed by some members that further consideration of this clause be postponed till tomorrow, I would like to have the views of other members if they wish to say anything on that point. I would not like to rush with it if there is a wish on the part of any considerable number of members to postpone discussion.

Sir Alladi Krishnaswami Ayyar: Sir, I support the motion of Mr. Munshi that the consideration of this matter be adjourned till tomorrow. But I would like to say a word in support of my proposition. It is this, Sir, that the Province as a unit, has certain defined rights and duties under the Constitution. You provide for the Province taking upon itself the administration of certain subjects at the instance of a State. It is an extra-Provincial sphere. If that is so, is it to extend to the Legislative, Executive or the Judicial sphere and to what extent is that agreement to be supported? In a case like this, it is matter for Federal intervention, which is necessary. These are matters which require very careful consideration and we cannot merely by adding a clause 'subject to some agreement' give a *carte blanche* for any agreement that might be entered into between Provinces and States in the Legislative, administrative or judicial sphere. Therefore, Sir, I support the motion of Mr. Munshi that the consideration of the whole matter may be adjourned until tomorrow morning. I have given notice of an amendment. I hope that will be treated as being in time because I gave it at 2 O'clock this afternoon. It reads as follows:

1. In paragraph 8 of Chapter 1, *delete* the words 'and of any special agreement'.
2. After paragraph 8 of Chapter I, *insert* the following paragraph:—

[] English translation of Hindustani Speech.

'8-A. It shall be competent for a Province to undertake the legislative, executive or judicial functions vested in an Indian State under an arrangement made in that behalf with the State concerned, provided, however, that the arrangement relates to the class of subjects falling within the jurisdiction of the Province as a member of the Indian Union.

On such an arrangement being concluded, the Province may, subject to the terms of the agreement, exercise the legislative, executive and judicial functions through the appropriate authorities of the Province."

If you want to have a provision, it should be a full provision on these lines. If on the other hand, the idea is to postpone until the whole question of Union Constitution is considered, then it is another matter but I do not think it will be possible to provide for it by means of a phrase or addition of a sub-clause in the body of the section. That is my idea of the matter and I have already stated that the consideration of the whole matter may be adjourned till tomorrow morning.

The Honourable Sardar Vallabhbhai Patel: May I suggest that this involves some complicated points of law and requires further consideration as suggested by Sir Alladi? I suggest that a Committee of two or three lawyers might be appointed to consider this question and thrash out if an amendment to or modification of the present clause is necessary so that we may find it easy to tackle it tomorrow when it comes up.

Chaudhuri Khaliquzzaman (United Provinces: Muslim): I support it.

Mr. President: Will you suggest the names?

The Honourable Sardar Vallabhbhai Patel: Sir Alladi, Dr. Ambedkar, Mr. Munshi and Mr. Chundrigar.

An Honourable Member: May I request that as the subject relates to Indian States, States Representatives also might be included?

Mr. K. M. Munshi: I propose the name of Sir B. L. Mitter.

Mr. Mohammad Sheriff (Mysore): I propose that Sir Arcot Ramaswamy Mudaliar's name may be included in the proposed Committee. This matter requires very careful consideration as it involves the interest of the States and since we represent the States, we would like to have a considered say in the matter. I request the consideration of this matter be postponed for the present and the Committee which is to be constituted should thrash out all the points and for this purpose I suggest that the name of the Mysore Dewan be included in the Committee.

Mr. President: We have got six names altogether, four suggested originally and two other names have been added—Sir B. L. Mitter and Sir A. Ramaswamy Mudaliar. I take it that the House accepts the suggestion that this clause be referred to a Sub-Committee and the report of the Sub-Committee be put up day after tomorrow. We shall go on with the other clauses and take this up day after tomorrow. There was one question raised by a member with regard to the notes whether the note also forms part of a clause. I do not think the notes form part of a clause. That is for explanatory purposes and no amendment need be moved to any of the notes.

Mr. Debi Prosad Khaitan: I want to make one suggestion. With regard to your Ruling that the notes are not considered to be part of a Resolution, may I draw your attention to the note to Clause 9 and perhaps that may have to be considered as part of the Resolution. It reads—"For the most part, the Governor will act on advice, but he is

[Mr. Debi Prosad Khaitan]

required to act in his discretion. in the following matter”—I would submit that the general statement need not be made and it may apply only with regard to this note.

The Honourable Pandit Govind Ballabh Pant: The note in Clause 9 refers to certain sections which are to follow thereafter. It is not part of the clause at all.

Mr. C. V. Krishnaswamy Rao (Mysore): Sir, while this Committee considers this Clause 8 tomorrow, will it take into consideration the obverse possibility of certain Provinces entering into agreements with a State in respect of certain matters and cede certain powers to the State in administration of those matters? Will the Committee consider this aspect of the question also?

Mr. President: Whenever that question arises, we shall consider it. The consideration of this clause is adjourned today after tomorrow and we shall now pass on to the next clause.

Mr. N. V. Gadgil (Bombay: General): It is already past 5-30, and it will be better if we adjourn now and meet tomorrow. We have done good work today.

Mr. President: Is it the wish of the House that we adjourn now? (*Honourable Members* 'Yes'.) The House seems to be in a holiday mood. We adjourn till 3 pm. tomorrow.

Before we disperse, I would like to make an announcement. It has been brought to my notice that the time I have given for sending in amendment to the Union constitution, *i.e.*, till 5 P.M. tomorrow is two short, and some members want this time to be extended. So I extend the time till Friday evening at 5 o'clock.

The Assembly then adjourned till 3 P.M. on Thursday, the 17th July, 1947.