

Tuesday, 27th January, 1948

Volume VI



27-1-1948

# CONSTITUENT ASSEMBLY DEBATES

## OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI  
SIXTH REPRINT 2014

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Printed at JAINCO ART INDIA, New Delhi

CONSTITUENT ASSEMBLY OF INDIA

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## CONTENTS

Volume VI—27th January 1948

TUESDAY, 27TH JANUARY 1948	PAGES
Presentation of Credentials and signing of the Register .....	1
Arrest of Shri V.D. Tripathi .....	1
Point of Order .....	2
Additional Representation to West Bengal .....	3
Additional Representation to East Punjab .....	5
Amendments and Additions to Rules, etc. ....	13
Presentation of Credentials and Signing of Register .....	24
Amendments and Additions to Rules, etc.— <i>contd.</i> .....	24
Announcement by President <i>re.</i> Next Session .....	54

## CONSTITUENT ASSEMBLY OF INDIA

*Tuesday, 27th January, 1948*

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

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### PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register :

- (1) Shri K. Hanumanthiah (Mysore State);
- (2) Shri T. Siddalingaiah (Mysore State);
- (3) Shri V. S. Sarvate (Indore State).

**Shri H. V. Kamath** (C.P. & Berar: General): Mr. President, I rise to a point of order.

**Mr. President :** We have not yet started the proceedings. No point of order can arise before that. We will now take up the first item on the Agenda.

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### ARREST OF SHRI V. D. TRIPATHI

**Shri H. V. Kamath:** Mr. President, before you proceed with the Business of the Day, permit me to bring to your notice the arrest of an Honourable Member of this House, I mean Shri V. D. Tripathi of the United Provinces during Netaji Jayanti celebrations on Friday last. In this connection may I ask if the United Provinces Government have addressed you any communication giving the circumstances leading to his arrest and the reasons for his detention which has prevented him from attending this Session ? In my humble judgment, Sir, this constitutes a breach of privileges of the Members of this House.

**Pandit Balkrishna Sharma** (United Provinces: General): On this point I would like to say one thing. I do not know how far the Honourable Member is in order in raising this point in this House. Full details have not been placed before the House. The House must be in full possession of all the facts before it is expected to pass any judgement in the matter. The arrest of Mr. V. D. Tripathi was due to the fact that he constituted himself as a member of an unlawful organization. Moreover, Mr. Tripathi violated an order under section 144 of the Criminal Procedure Code in force in the

[Pandit Balkrishna Sharma]

city of Cawnpore for various reasons. I do not see how any Honourable Member of this House is entitled to violate the law of the land and if he does so, he must be prepared to suffer the consequence.

**Mr. President :** I do not think the question of arrest arises here. We are sitting as the Constituent Assembly for the purpose of dealing with the amendments to rules which are going to be moved. If a Member has been arrested, the matter has to be dealt with in the proper place. We cannot go into that.

(Shri H. V. Kamath *rose.*)

**Mr. President:** Order, order. We cannot go into that matter here in the Constituent Assembly.

**Shri H. V. Kamath:** I want to know whether the Government of the United Provinces have informed you about this.

**Mr. President:** I have received no information.

**Shri H. V. Kamath:** The other point is that he should be released on parole to enable him to attend the session.

**Mr. President:** That again involves going into the merits of the case which I am not prepared to do in this case. We shall now go on with the Agenda.

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#### POINT OF ORDER

**Shri Yudhisthir Misra** (Eastern States) : On a point of order, Mr. President. The point is whether the Honourable Members of this House from Orissa and Chhatisgarh States who were nominated by the Rulers can sit in this House after the 15th December 1947.

According to the terms of the negotiation between the Rulers and the Constituent Assembly, the Rulers of Orissa had nominated two members and those of Chhatisgarh one member to this House to represent them and safeguard their interests in the future constitution of the country. Now on the 14th and 15th of December 1947, these Rulers had agreed to transfer and have actually transferred on the 1st January 1948 all their rights, authority and jurisdiction exercisable by them in their States to the Government of the Indian Dominion. After the 15th December, therefore, the nominees of the Rulers in this House neither represent the interests of the Rulers nor of the people of Orissa and Chhatisgarh States. One of the Honourable Members has already accepted service in Central Provinces. When the Rulers' power and authority do not exist in the States, their nominees, I submit, are not entitled to sit in this House. I would respectfully submit before you, Sir, to give a ruling on this point.

**Seth Govinddas** (C.P. & Berar: General): \*[Mr. President, as regards Chhatisgarh States I request that, though they have been merged into the province of Central Provinces and Berar, yet until fresh elections are held the present members representing those States should be allowed to participate in the proceedings of the Assembly. After the election they will cease to participate.

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\*[ English Translation of Hindustani speech begins.

I think that their removal at present would serve as a blow to the rights of those States. I, therefore, request you that, until fresh elections are held, the present members should be allowed to sit here and have the right of participating in the proceedings.]\*

**Shri Raj Krushna Bose** (Orissa : General) : \*[Mr. President, the point of order that has been raised just now in regard to Orissa and Chhatisgarh should not be accepted. The reason for it is that after August 15, though the rulers of a number of States relinquished the powers that they enjoyed before that date and all such States merged into the Indian Union, yet the election held for returning members to the Constituent Assembly has not been declared null and void. If we do that, we will either have to abandon the members from these States or we will have to say that they have no right of joining this Assembly. In my opinion if we take this step, they will cease to be members and till fresh elections are held, there will be no representation of those States in this Assembly. No rule of the Constituent Assembly permits us to tell them at present that they cannot come here. Therefore I think that the election that has been held should be valid. I want this, so that the representatives of 40 lakhs of people of Orissa States may participate in the proceedings of this House. The representatives chosen by the rulers have after the merger become people's representatives because the rulers have ceded their powers. It is said that there should be a fresh election and that it is necessary because the rulers as such have ceased to be, as also the representatives chosen by them. I am not of this opinion.]\*

**Mr. Tajamul Husain** (Bihar: Muslim): In my humble opinion, the only point before you is whether those Honourable Members were properly nominated at that time or not and also whether the territories they represent are still under the Indian Union. If these two facts are established, I think there is no power to remove those Members from the membership of this House.

**Mr. President:** I do not think that this matter can be disposed of as a matter of order. Those Members are validly Members of this House and until they resign or are otherwise removed, they continue to be members of this House. If certain circumstances have arisen which may necessitate their removal, well, action will have to be taken for that purpose, but until and unless that action is taken, they will continue to be Members of this House.

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#### ADDITIONAL REPRESENTATION TO WEST BENGAL

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, I beg to move the following resolution:

“Whereas West Bengal is at present represented in the Constituent Assembly by 19 members (15 General and 4 Muslims);

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of West Bengal;

and whereas since the aforesaid dates the boundaries of West Bengal have been revised in accordance with the Award of the Boundary Commission;

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] \* English Translation of Hindustani Speech ends.

\*[ ] \* English Translation of Hindustani speech.

[Shri M. Ananthasayanam Ayyangar]

and whereas on the basis of the revised boundaries West Bengal is now entitled to return 21 members (16 General and 5 Muslim) to the Constituent Assembly;

it is hereby resolved that steps be forthwith taken to secure the return from West Bengal as now constituted of 2 additional members ( 1 General and 1 Muslim) in accordance with the procedure prescribed for the filling of casual vacancies.”

Sir, the Resolution is sufficiently long and explains itself. Originally, when there was a national division it was expected that the population of West Bengal would be nineteen millions and fifteen seats were allotted to General and four to Muslims. Later on by the time the Radcliffe Award was given, it was found that the population on account of the addition of territories to West Bengal increased to twenty one millions and therefore it has now necessitated the addition of two more members, the population having increased from 19 to 21 millions; and the population has increased in both the communities, Muslims and non-Muslims. This Resolution contemplates the addition of one more General seat and one more Muslim seat. I crave the indulgence of this House to move this Resolution and I request that it may be accepted.

**Mr. President:** Mr. Naziruddin Ahmad has given notice of an amendment.

**Pandit Balkrishna Sharma:** Has it been declared by you, Sir, that the motion has been moved?

**Mr. President:** Yes; the motion has been moved.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I ask your permission to move two amendments. They are of the same nature and allied to each other. They should be moved and considered together.

Sir, I beg to move:

1. That in para. 2 of the motion, for the words, “basis of the then boundaries” the words “basis of the population within the then boundaries” be substituted.

2. That in para. 4 of the motion, for the words “and whereas on the basis of the revised boundaries West Bengal is now entitled” the words “and whereas on the basis of population in West Bengal as now constituted, is entitled” be substituted.

Sir, though the amendments are only of a drafting nature, I consider them to be important. The text of the Resolution says that additional members should be elected on the basis of the change of boundaries. My amendments seek to clarify the position that it is not the boundaries, but rather the population which is the basis of the proposed increase. On account of the change in the boundaries, the population as it now stands has increased. Therefore, population should be the starting-point and I have tried to make this plan. As I have already stated, the amendments are of a drafting nature, but they go to the root of the principle upon which the increased number is claimed. With these words, I move the amendments.

**Mr. President:** The motion and the two amendments have been moved. If any member wishes to take part in the proceedings, he may do so.

**Shri M. Ananthasayanam Ayyangar:** Sir, I have great pleasure in accepting the amendments. My friend wants to make the language more elegant. He wants to make the population within the boundaries of West Bengal

the basis. That is what was meant though the expression is “basis of the then boundaries”. To make it more elegant, I accept the amendments.

**Mr. President :** I shall now put to vote the amendments which have been accepted by the Mover.

The amendments were adopted.

**Mr. President :** I now put to vote the motion as amended.

The motion, as amended, was adopted.

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#### ADDITIONAL REPRESENTATION TO EAST PUNJAB

**Mr. President:** I have received notice of another resolution dealing with East Punjab. Notice of that was given only last night and therefore there has not been sufficient notice in regard to that. If the House has no objection I should like to take it up and have that also passed because the West Bengal resolution and the East Punjab resolution stand more or less on the same footing.

May I take it that the House has no objection ?

**Many Honourable Members:** No objections.

**Mr. President:** Giani Gurmukh Singh Musafir will move the motion.

**Giani Gurmukh Singh Musafir** (East Punjab: Sikh): \*[Mr. President, with your permission, I wish to move the following motion:—

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members;

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of East Punjab;

and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the filling of casual vacancies.

My object in moving this motion is to secure the same representation for the non-Muslims of West Punjab here, which they had in the Pakistan Constituent Assembly, that is to say, the number of members from East Punjab should be increased. I do not think anybody would object to this. This motion clearly lays down that those who have migrated from West

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\*[ English Translation of Hindustani speech begins.



[Giani Gurmukh Singh Musafir]

Punjab to East Punjab should be given full representation. The Hindu and Sikh members of the West Punjab Assembly have been allowed to sit in the East Punjab Assembly, that is to say, this principle has been accepted. Only the question was left out, which we have considered. That was regarding the question of numbers, whether it should be four or five. West Punjab is at present represented in the Constituent Assembly of Pakistan by five members, three General (Hindus) and two Sikh members. The motion which I have just moved demands four seats, two General and two Sikhs. I am still of opinion that five seats should be allotted, the same number of seats which have been allotted to the Punjab in the Constituent Assembly of Pakistan, that is to say, three General and two Sikh. For this purpose the Honourable President had appointed a sub-committee, with the Honourable Minister for Law as its Chairman. It was comprised of four members, besides the President. Yesterday morning a meeting of this sub-committee was held to consider this problem. We arrived at the conclusion that five members should be returned. But afterwards on calculation we felt a doubt that perhaps it may not be possible to return five members on population basis. Obviously all the Hindus and Sikhs have migrated to this side from West Punjab, and the rest are about to come. In West Punjab their number was more than 45,00,000 that is to say, 45,07,231. If this figure is taken into account, then, five members can be returned. Besides, a number of Hindus and Sikhs have migrated to East Punjab, also from N. W. F. Province, Sind and Baluchistan. But as at present it is not possible to have a correct estimate of the population, we have agreed that only four seats may be added. If, afterwards, on calculation it is found that the population has increased, then the matter might be reconsidered. I hope that this minimum demand which is before the House will be accepted.]\*

**Mr. President:** The motion has been moved. If anyone has got any amendment or if anyone wishes to speak, he may do so.

**Shri B. Das** (Orissa: General): Sir, I sent in a substitute motion this morning when I read the motion which my friend Giani Gurmukh Singh Musafir has moved just now. I could have understood it had he tackled the whole problem of representation of the population who have migrated from Pakistan to Hindustan. I have given notice of an amendment to his motion, but on reconsideration, I do not propose to move it; I wish, however, to submit a few things for the consideration of the Honourable the President and the House.

A large population has left Pakistan and entered the Indian dominion. From East Bengal, from Sind and from the North West Frontier Province, a large population have migrated. My honourable Friend wants representation. only for those from West Punjab. People have migrated to the United Provinces, Central Provinces, and even to Bombay, also Rajputana and Delhi side. It will not be fair if we ignore these people. The proper thing would be for this House to consider whether it should not resolve that those Hindu and Sikh members who were elected to the Constituent Assembly from the North West Frontier Province, Sind, East Bengal and West Punjab should be made eligible to sit in this House. If they are permitted to represent the Hindu and Sikh emigrants, then there need be no election as is suggested by my Honourable friend.

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\* English Translation of Hindustani speech ends.

Above all, if we accept his suggestion, the idea of electing eight General and four Sikh members is abnormally high to the number of Sikh and Hindu emigrants who have come to East Punjab. Further, that does not solve the problem at all. We have heard that ten to fifteen lakhs of people have migrated from East Bengal to West-Bengal. We know that at present there are very few Hindus and Sikhs left in the North-West Frontier Province. Our esteemed friend, Mr. Mehr Chand Khanna, is now a refugee in this city. Why should he not be permitted by this House to represent the Hindu residents of the Frontier Province? Similarly, we now find our friend Mr. Jairamdas Daulatram, who was elected by the Sind Province, a refugee, or rather a Minister, in Delhi. Why should not he represent properly the Sind emigrants in India ?

The problem of East Bengal is even more difficult. People have started migrating in large numbers. Last night a friend told me that fifteen lakhs of refugees have come from East Bengal to West Bengal. It may happen if the Pakistan policy goes on, that the whole of the Hindu population will migrate to West Bengal. It is this population we have to think about. It is to know what is in the mind of the people who represent the emigrants from East Bengal or West Punjab regarding the constitution that we shall pass, that we are trying to give them representation. The proposed solution means going into the franchise and the qualification of new members. I would suggest that my Honourable friend's motion may be adjourned until the President devises a way by which all those elected members from these Pakistan areas are permitted to become members of this House and participate in the discussions as they used to do before.

**Shri Jaipal Singh** (Bihar: General) : Mr. President, I strongly oppose the motion that has been placed before this House. I find it is dangerous, mischievous and sectarian, it is strange logic and lacking in simple arithmetic. The argument has been advanced that, according to the best estimates available, there should be added two additional General Members and two additional Sikh Members, and, in a clause of the motion, we are told that the present representation is 6 General, 4 Muslim and 2 Sikh members. I would like to ask my Honourable friend, why he, has not suggested that the Muslim representation should be reduced. That is my first point. If Muslims have left the East Punjab and gone elsewhere, then according to his logic—the logic that he has advanced on behalf of the Sikhs and the General population, surely the same argument should apply on this side. I, say, it is dangerous, Sir. My friend, Mr. Das, has already pointed out that this should be considered on an all-India basis and we should not be working upon flimsy estimates. There should be a census throughout the country. Take my own Province, Bihar. How do we know that we do not need further representation ? How many people have come to Bihar from East Bengal or West Punjab or from anywhere else ? I do not think we can work on the so-called estimates. They are only estimates. The figures that this Assembly can accept are only the census figures and unless an all-India census is taken and unless we know the actual number of Muslims and the variation there has been in their number from Province to Province or the variation of other people,—the general population—I do not think it would be wise for this House to accept his motion. I consider it to be a mischievous and sectarian motion.

**Diwan Chaman Lall** (East Punjab: General): Sir, I would not have spoken on this motion but for the speech made by my Honourable friend who has

[Diwan Chaman Lall]

just spoken. He talked about the figures being flimsy and statistics that do not exist, but I am afraid that he has not even read the report of the Steering Committee which is before him. According to that Report,.....

**Shri Jaipal Singh:** I have not got that Report.

**Diwan Chaman Lall:** If my Honourable friend has not got it, I can quite well understand why he got up to speak without knowing the real reason which prompted this particular motion before the House.

The position, Sir, is this. We have got the statistics. According to the notional division, the number of Mussalmans on this side was 3.8 million, Sikhs 2.1 million and General 5.6 million. After the Radcliffe Award, the figures were slightly altered. Instead of 3.8 million Muslims, it was 4.4 million Muslims, instead of 2.1 million Sikhs it was 2.3 million Sikhs and instead of 5.6 million General, it was 5.9 million General; the total is 12.6 million inhabitants. Now since then the disaster came upon us and practically every Hindu and Sikh excepting those who remain in a few isolated pockets has moved out from West Punjab to East Punjab. The total figures of those who moved out come to: General 2.25 million and Sikhs 1.67 millions. This is from Lahore Division, Rawalpindi Division and Multan Division and these are the exact Census figures although I would personally add 7 per cent. to the Census figures as a result of the recent increase since the Census was taken. The position therefore is that of the 12.6 million inhabitants, excluding 4.4 Muslims, 8.2 inhabitants, Hindus and Sikhs, have remained in Eastern Punjab, and in addition we have now 4.92 million Sikhs and General. The population that migrated from Lahore, Rawalpindi and Multan Divisions came to Eastern Punjab generally. Some portion of that population has come to Delhi and a little portion has gone to various other centres. But the vast majority is still there in East Punjab and they were the voters of those who were elected to the Punjab Assembly. The voters still exist and therefore they are entitled to further representation. This is the principle which is at the back of this Resolution. Therefore, although logically we should demand 4 or 5 seats according to population, nevertheless, in order not to create an unnecessary weightage, we were quite content to demand 2 for Sikhs and 2 for General for the purpose of election. Why is it that we are coming before you in regard to this motion to ask you to give us the right of appointing 4 more representatives to the Constituent Assembly? You will notice that an Ordinance was passed making it possible for members who were West Punjab Legislative Assembly members and who vacated their seats in West Punjab to take their seats in East Punjab. On the same principle we ask you now to allow us to elect 4 additional representatives reflecting an increase in population both of Sikh and General constituencies. I do not think the figures are very wrong as they are Census figures. The figures we have taken are the Radcliffe Boundary Commission figures. Comparing the existing figures of the Province with those of the Radcliffe Commission's we have come to the conclusion that there is a case for the increase.

**Shri Jaipal Singh :** On a point of order. Why have they not reduced the Muslim figures on their own argument ?

**Diwan Chaman Lall:** You, will find the following in the penultimate paragraph of the Report:—

“We were therefore immediately faced with a difficulty as to how to deal with the four Muslim members who still continue to be members of the Constituent Assembly even though we were given to understand that they did not attend during the last session of the Constituent Assembly functioning as the Dominion Legislature and that they did not intend to attend the forthcoming session either.”

Personally my view is that we must leave this matter as it is now. Possibly you may be constrained to make a change at a later stage, namely, that where a member does not attend the Sessions of the Constituent Assembly for a certain stated time, then he automatically vacates his seat. As there is no rule at the present moment we cannot take advantage of such a provision. The practical solution which we have considered in connection with this problem seems to be this—to let the 4 seats remain and to add other seats reflecting the increase in the population in East Punjab, and I do hope that the House will accept this proposal and give due consideration not only to those who have lost everything on the other side but to those who have come to this side so that they may be able to put their own point of view before you.

**Mr. President:** Just to avoid longer discussion may I make a statement with regard to the procedure that has been followed in connection with this particular resolution ? The matter came up before the Steering Committee and the Steering Committee felt that it was necessary to refer it to a very small committee to go into these figures. This committee consisted of—

Dr. B. R. Ambedkar,  
 Diwan Chaman Lall,  
 Giani Gurmukh Singh Musafir,  
 Mr. Rafi. Ahmed Kidwai, and  
 Mr. Ananthasayanam. Ayyangar,

and after taking into consideration all these figures and such information as was available with regard to the migration of population from one side to the other the Committee made certain recommendations on the basis of which the Resolution has come before the House. The matter has been considered by a Sub-Committee which I had appointed on the recommendation of the Steering Committee. Of course it is open to the House to accept it or not. I thought I had better explain that position. I am sorry that the report of that Sub-Committee has not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

**Shri Rohini Kumar Chaudhury** (Assam: General): Mr. President, Sir, I consider that this resolution is rather premature at this stage. Once you concede this principle, you cannot help granting the same privilege to the people of either Western Bengal or any other place. For instance a very large number of refugees has come to Delhi. Are you going to increase the representation of Delhi? Similarly a fairly large number of refugees has gone to Bombay. Are you going to consider the question of increasing their representation in this House ? Although, Sir, this may not be known to all, it is a fact that large numbers of people have migrated from East Bengal to West Bengal and also into Assam. Should they not be given representation if you concede in this case? Sir, an Honourable Member, Mr. Khaliqzaman, has left his constituency in United Provinces for Pakistan. Should not there be some adjustment in that also? So I say, Sir, if you wish to give additional representation on the ground that people have migrated from

[Shri Rohini Kumar Chaudhury]

other provinces, there should be deduction of representation with regard to certain others who have left the province. So the whole thing requires adjustment and unless those adjustments are made in all the representations, no action on the lines indicated by the Honourable Member can be taken.

**Begum Aizaz Rasul** (United Provinces: Muslims) : Sir, I am afraid, I have not been able to study this Report of the Committee to which you referred to just now, because I do not find it in the papers. I would, therefore, request you, Sir, kindly to postpone discussion of this very important matter until Members have had the time to study the implications of these amendments to the rules.

Sir, it is true that a very large proportion of the population in East Punjab have gone to West Punjab. In the same way a very large number of non-Muslims in West Punjab have gone over to East Punjab. They must have representation in this House, and as far as that matter goes, it is quite a justifiable demand and I do not think anyone here can possibly refuse it. But at the same time, it has to be seen and carefully studied as to the number of people who have gone and settled down from one part of the Punjab to the other Part. And as everyone knows, non-Muslims have gone not only to East Punjab, but they have also migrated to the U.P. and to the province of Delhi and other places. The situation at the present moment is very fluid. All these matters have to be taken together with reference to the context before any amendment can be passed in this House. I would, therefore, most respectfully request you, Sir, to postpone the consideration of these matters to a later date when we are in a position to know definitely what are the numbers of the people who are settling down in East Punjab and those who go back to their homes in West Punjab and also when Members have had the time to study the Report of the Committee. I hope this suggestion of mine will be acceptable and that the consideration of this subject will be postponed to a later date.

(Pandit Thakur Das Bhargava came to the rostrum.)

**Mr. President:** I would request the Honourable Member to be as short as possible.

**Pandit Thakur Das Bhargava** (East Punjab: General) : \*[Mr. President, just now Begum, Sahiba has suggested the postponement of this motion and the reason she gave is that some part of the population yet remains in West Punjab and some of it has come to Delhi and some have gone to United Provinces and therefore the question should not be considered at present. Other friends have given different reasons and have said that, as some people have also come from Baluchistan and Sind, they should also be given representation. It is correct that all new comers need representation. No such differentiation can be made amongst the people. But this should be remembered that this question has to be looked at from a practical point of view. No doubt, about 40 lakhs of people have moved from West Punjab into East Punjab and other areas. The Government has already decided that the whole Muslim population of East Punjab is to be transferred to West Punjab and all Hindus and Sikhs of West Punjab are to be brought to East Punjab. Now, the question is only that of Hindus and Sikhs and as to what is their exact number. About five lakhs have come to Delhi and five lakhs have gone to United Provinces. But as representation is given to numbers over 5 lakhs and

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\*[ English Translation of Hindustani speech begins.

not below it, so representation should be given at least, to those who have come to East Punjab. And those who are at present in Delhi or U.P. may also move to East Punjab. Thus to give them no representation or postponing it would be a great injustice. You know that those who have come to Delhi have not come here of their free will. Government has already agreed to the exchange of population both by their work and deed. Therefore, I would beg the House to look at this question from a practical point of view and not to deprive these men of their right. Those who are known as refugees today have as much claim on the Union and the Constitution as anyone else. As you have allowed representation for every 10 lakhs of population to other parts of Indian Union, you must do the same to those who have been uprooted from West Punjab so that they may also share in the shaping of the Indian Constitution. With these words I support the amendment.]\*

**Mr. President:** Is it necessary to carry on the discussion any further? I suppose we have had enough of discussion.

**Shri Mihir Lal Chattopadhyaya** (West Bengal: General) : Sir, I only request that the principle being followed in East Punjab should also be followed in the case of West Bengal. Everyone knows that about ten lakhs of people have migrated from East Bengal to West Bengal. Here in this Resolution on the basis of migration of population from West Punjab to East Punjab additional seats are being allotted. I submit that the same principle be followed in the case of West Bengal and additional seat—one seat—be given in consideration of increase of population due to migration from East Bengal to West Bengal. A few minutes back we have passed a Resolution allotting two more seats for West Bengal. But that was done on the basis of the Radcliffe Award boundary. But if the question of migrated population is to be taken into consideration in the case of West Punjab, I request the same consideration should be shown to Bengal also and one additional seat on the same principle given to West Bengal.

**Nawab Mohd. Ismail Khan** (United Provinces : Muslim) : \*[Mr. President, the authentic figures of those who have already migrated and may hereafter migrate from West Punjab have not been ascertained up till now. Neither have we any knowledge as to what would be the population of East Punjab. Unless correct figures are available, actual representation cannot be given. Therefore, I would like to submit that this should be postponed for some time.]\*

**Mr. President:** I would now ask the Mover to reply to the debate.

**Giani Gurmukh Singh Musafir** \*[Mr. President, I thought it to be a simple matter, and therefore the speech I made, while moving the motion, was also simple. Even now I regard it as simple. One of our Honourable members has objected to it as being sectarian. If you regard it as sectarian simply because of my beard then it is a different thing; otherwise there is nothing as such in it. If a demand for two additional seats for Sikhs and two for the Hindus is enough to make a motion communal then why not apply the same criterion to Mr. Ayyangar's resolution regarding giving of one additional seat to Muslims and one to Hindus in West Bengal? You have, not taken it to be, sectarian. I have no objection to what has been said with regard to

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] \*English Translation of Hindustani speech ends.

\*[ ] \*English Translation of Hindustani speech.

\*[English Translation of Hindustani Speech begins.

[Giani Gurmukh Singh Musafir]

reducing of Muslim representation in East Punjab. At present, Punjab's case is a special one. I am obliged to say that only those, who have suffered can realise and not the others. Punjab has gone through agony. Punjabis, who have suffered terribly and whose problems are before the Government will prove of much assistance in solving them, because all this has happened before their very eyes. The proposal which Begum Sahiba and Nawab Sahib have just put for the postponement of this question for the present is likely to injure the feelings of Punjabis. Therefore, I appeal to the House to accept my motion. Giving of additional representation would greatly assuage the feelings of those who have gone through terrible happenings. Not only that; it will also lessen to some extent the difficulties which our Government has to face daily in this connection. Our Ministers, who are very busy with work, get respite neither in the day nor in the night. It is because that the tales of the people coming are so full of woe and are so heart-rending. Sir Zafarullah has said in the United Nations Organisation that his house was burnt. I do not know whether that is true or not. But here are thousands, or rather lakhs, of people from West Punjab, and any one of them could have told the U.N.O. how his near and dear ones were killed, his house looted and burnt, his daughters and sisters abducted. There are so many things which are beyond description. Nawab Sahib has just said that this question should be postponed, as no correct estimate of the population is available. I believe it is not a question of postponing but of grappling with the problem of Punjab. Among the Punjabis, who were the victims of this terrible disaster, are many old and responsible congress men of the Province. Their houses were burnt, they were killed. To name a few, Sardar Jaswant Singh of Compbellpur, Hukumat Singh President of Gujarat District Congress Committee, Lala Niranjan Dass Bagga, Advocate, President of Gujranwala Congress Committee were killed.]\*

**Mr. President:** I did not want to interrupt the Honourable Member .....

**Nawab Mohd. Ismail Khan:** \*[I never meant that. I do not know what Sardarji has taken to mean. What misunderstanding has crept in? What I meant. For instance, Sir, it cannot bind its successor. It cannot pass a law population is not yet complete.]\*

**Mr. President:** The Honourable Member must confine himself to the motion before the House.

**Giani Gurmukh Singh Musafir:** \*[I have not at all misunderstood Nawab Sahib, I will only say that some of our Punjabi brethren have come to Delhi and have gone also to other places, but their eyes are set towards their homes. Wherever Punjabis have gone their miseries have followed them. They have not ended. They are now returning from Alwar and Bharatpur. They are thinking of going back from Delhi after getting kicks. They will also go back from Patiala and other States. Many places have refused to admit Punjabis. Honourable Pandit Pant is present here. You can ask him how many Punjabis he is willing to accommodate permanently in his Province. Therefore it should be admitted that this demand of East Punjab is quite just. Mr. President, I have presented this resolution through you. I hope that the House will accept this.]\*

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] \*English Translation of Hindustani speech ends.

\*[ ] \*English Translation of Hindustani speech.

**Mr. President:** I will now put the Resolution to vote. There is no amendment. The question is :

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members:

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of East Punjab; and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the filling of casual vacancies.

The motion was adopted.

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### AMENDMENTS TO RULES 2 AND 3

**Shri Balwant Rai Gopalji Mehta** (Residuary States) : I move:

"That the following amendments to the Constituent Assembly Rules be taken into consideration:—

*Rule 2.*—In Rule 2, insert the following new clause (cc) after clause (c):—

"(cc) 'Minister' means a Member of the Council of Ministers of the Governor-General of India."

*Rule 3.*—Add the following proviso to rule 3—

"Provided that every Minister who is not a Member of the Assembly shall have the right to speak in, and otherwise to take part in the proceedings of, the Assembly and any Committee thereof of which he may be named a member, but shall not by virtue of this rule be entitled to vote."

\*[This is moved for the simple reason that the experience of the Ministers of the Government of India, who are not elected to the Constituent Assembly, should be made available to the body. The Constituent Assembly (Legislative) has already adapted rules which allow Ministers to attend and participate in the debates of the House, without a right to vote. The Constituent Assembly also, when it works on the Constitution, should have the benefit of the experience accumulated by all the Ministers of the Central Cabinet. I recommend that the amendment be adopted.]\*.

**Mr. President:** I take it that the motion "the following amendments to Constituent Assembly Rules be taken into consideration" really means that the following amendments be made.

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\*[ ]\*English Translation of Hindustani speech.



[Mr. President]

The motion has been moved. There is notice of an amendment. I would ask Mr. Naziruddin Ahmad to move his amendment.

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

“That in the proposed proviso to rule 3, the commas after the words “the right to speak in” and “in the proceedings of” be omitted, and the words “by virtue of this rule” be omitted.”

With regard to these commas they appear to be absolutely unnecessary. With regard to the last amendment the deletion of the words “by virtue of this rule” seems to be necessary because the proviso ‘begins with the case of a Minister who is not a Member. If he is not a Member at all, then he is not entitled to vote. The question that his vote will depend upon this rule does not arise because we have begun with the assumption of a Minister who is not a Member and therefore he is not entitled to vote. So these words appear to be unnecessary. But both these amendments are of a drafting nature.

**Mr. President:** The amendment has been moved. Now the Motion and the amendment are open to discussion.

**Mr. Tajamul Hussain:** Mr. President, Sir, I beg to oppose this Motion. It is said that the British Parliament is a sovereign body and it can make and unmake anything. It is also said that the British Parliament, although a sovereign body and it can do or undo anything, works under certain limitations, namely, that it cannot bind its successor, because it is not the wish of the people that the British Parliament should choose who should succeed them. Secondly, the British Parliament cannot make a law which will not be obeyed by the majority of the people; and thirdly, it cannot nominate or elect a person to become a member of the House of Commons. That right is given exclusively to the people at large. Similarly, Sir, this House is no doubt a sovereign body; it can do or undo anything but it has certain limitations like the British Parliament. For instance, Sir, it cannot bind its successor. It cannot pass a law which will not be obeyed by the majority of the people and it cannot and should not nominate a person to become a Member of the Constituent Assembly.

The Motion does not say that the Honourable Ministers who are not members should become members but it clearly says that those Muslims who are not members of this Honourable House may attend the meetings of the House, that they may take part, address the House, but shall not vote.

My submission is that there must be some limit. You must draw the line somewhere. Once you concede the principle that this House can and will have outsiders—no doubt I have great respect for the Ministers—there will be no end to it. Further, they are all the same outsiders to this House. The moment you concede this principle that we can have outsiders to sit with us and give us the benefit of their advice, the next moment you will say that you might have experts who are not Ministers because their advice will be valuable. No doubt you want Ministers so that if anything is being discussed concerning their Departments their advice will be very necessary. I feel that you must draw the line somewhere. In the House of Commons every Member is elected and there is not a single nominated one. Now it is a rule of law even in India that a Provincial Prime Minister may choose a Minister who is not a Member of the Legislature. He therefore remains as

Minister for six months, but he must get elected to that House. If you want to have Honourable Ministers in this House, why not some members resign and vacate their seats? Now, Sir, after all we are here, we have been elected; I think, I am not sure, but each Member represents about 10 lakhs of people. The whole world knows that this Constituent Assembly was elected by the people. What will they say? Are we not going to be the laughingstock before the world if we are having outsiders here ?

Now, Sir, I remember during the last session of this Constituent Assembly that there was a talk that Mahatma Gandhi should be persuaded to come and address this House and one Honourable Member said that this was not right. Well, Sir, after all Mahatma Gandhi is the biggest person in the world, and we must admit that everything is due to him; our membership is due to him; the whole constitution is due to him; our independence is due to him. If such a big personality like him could not be requested to come, should persons who are much lower be allowed to address this House? The rule of democracy also prevents us from asking any outsider to come here.

We are not working here on Party lines, but the Congress Party are ruling the country. They are in the majority; I am not in the Congress Party and they can by their votes pass anything. So if this is done on Party lines, I do not think it is right. As I have said we must draw the line somewhere and I submit that the House should accept my proposition and reject this motion.

**Mr. President:** May I just point out that at our last session of the Constituent Assembly a resolution was passed which accepted this very thing and it is only to formalize the thing that the motion has been moved? The Resolution was passed on the basis of the report of the Mavalankar Committee that Ministers of the Dominion particularly who are not Members of the Constituent Assembly should have the right to attend and participate in the work of Constitution-making though until they become Members of the Constituent Assembly they should not have any right to vote. This was passed by the Constituent Assembly during the last session and this amendment in the rules is now being brought forward so as to bring it within the rules. As a matter of fact the question has already been discussed and accepted during the last session.

**Mr. Tajamul Hussain:** Mr. President, if you had told me this in the beginning, the time of the House would not have been wasted.

**Mr. President:** I thought the member was aware of what took place in the last session. Anyhow, that is the position.

**Mr. Tajamul Hussain:** I suggest that in the future, you should inform the House which is a formal Resolution and whether we have a right to discuss the matter. If you had told us that a Resolution had been passed, no member would come up to speak.

**Mr. President:** Is there any other member who wishes to speak? I shall put to vote the amendment and the motion.

**Shri Balwant Rai Gopalji Mehta:** \*[I accept the amendments of Mr. Naziruddin Ahmad.]\*

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\*[ ]\*English Translation of Hindustani speech.

**Mr. President:** The amendments moved by Mr. Naziruddin Ahmad have been acceptable to the mover. I take it that the House accepts the amendments.

The amendments were adopted.

**Mr. President:** The motion, as amended, is put to vote.

The motion, as amended, was adopted.

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#### ADDITION OF RULES 5-A AND 5-B

**Shri P. Govinda Menon** (Cochin State): Mr. President, the motion which I propose to move is intended to lay down a procedure regarding the filling up of casual vacancies in the office of members of this Assembly representing Indian States. In Rule 5, the present rules contemplate to lay down a procedure regarding the filling up of casual vacancies in the case of members who come from the provinces and from Ajmer-Merwara and Coorg. There is a lacuna in the rules in that nothing is said about vacancies arising in the case of members coming from Indian States. The motion standing in my name seeks to insert two rules, Rules 5-A and 5-B after Rule 5, to fill up this lacuna.

I move, Sir.

that Constituent Assembly Standing Orders 13 and 14 be made part of the Constituent Assembly Rules as shown in the amendments below:—

Rule 5: Insert the following as Rules 5-A and 5-B after rule 5:—

“5-A. When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State, the President shall notify the vacancy and make a request in writing to the Ruler of the Indian State concerned to proceed to fill the vacancy, as soon as may reasonably be practicable, by election or nomination, as the case may be.

“5-B. In the case of a vacancy in the office of a member of the Assembly representing more than one Indian State, the President shall notify the vacancy and make a request in writing to the Rulers of the Indian States concerned to, proceed to fill the vacancy, as soon as may reasonably be practicable, by the same method as was applicable to the case of the outgoing member when he was chosen as a member of the Assembly.”

Sir, although these rules do not find a place in the Rules of procedure, they have been incorporated in the Standing Orders by virtue of the powers granted to the President under certain of the rules. The attempt now is to give a place to these Standing Orders in the Rules themselves.

There is an amendment standing in the name of Shri Santhanam seeking to add a proviso to rule 5-A : “Provided that, where the seat was filled previously by nomination, the Ruler may fill the vacancy by election”. I can even now state that I will be accepting that amendment when it is moved; because that will give an option to the Ruler concerned to fill up a vacancy by election where previously it was filled up by nomination.

**Mr. President:** The motion has been moved. I have received notice of amendments. Mr. Naziruddin Ahmad.

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

That in para. 1 for the words "be made part" the words "be omitted and be inserted as Rules 5-A and 5-B respectively", and for the word "amendments" the word "amendment" be substituted.

May I move the next one too?

**Mr. President:** I think the first amendment of yours is unnecessary because they are going straightway to insert the Rules according to the next part of the Resolution. If you leave that out, you can move the next one.

**Mr. Naziruddin Ahmad:** Sir, I move:

That in the proposed Rule 5-A, for the words "Ruler of the Indian State"; the words "Ruler of the State"; be substituted.

I do not move the other part of the amendment.

Sir, with regard to the first amendment, it does not affect the Rules, but it merely affects the heading. With regard to the second, if we mention the word "State" that means "Indian State". The word Indian is unnecessary. With these words, I beg to move the amendments.

**Mr. President :** You do not move the other part?

**Mr. Naziruddin Ahmad:** No. I do not move.

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

That at the end of the proposed Rule 5-A, the following proviso be inserted:—  
"Provided that where the seat was filled previously by nomination, the Ruler may fill the vacancy by election."

As the mover has already promised to accept this. I need not take up much of the time of the House. I do not want any Ruler to say. "I am willing that the seat may be filled up by election, but the Constituent Assembly has prevented it by Rule and laid down that I should not fill it by election". I hope the House will accept this amendment.

**Mr. President:** Does anyone want to say anything about this?

**Shri P. Govinda Menon:** Sir, as I said, I accept the amendment moved by Shri Santhanam. In the case of the amendments moved by Mr. Naziruddin Ahmad, I wish to point out, Sir, that his first amendment is that in para-1 the words "be made part" be omitted. If it is accepted, it would mean that certain words in the Standing Orders will have to be omitted. We are not here to amend the Standing Orders. We are amending the Rules. Standing Orders are made by the Honourable the President of this, Assembly and I do not think it is necessary to amend them. If this finds a place in the Rules, then, probably, the Standing Orders will either become superfluous or the Standing Orders will be changed by the President.

Regarding the use of the word "State" instead of the word "Indian State", I wish to point out that everywhere in these Rules and Standing Orders, the word used for States is Indian States and I do not find any reason why in this particular Rule the word Indian State should be changed into the word State. I would therefore put it to the Honourable the mover of the amendments that the amendments are really unnecessary.

[Shri P. Govinda Menon]

Coming again to para. 1 of the motion standing in my name, I wish to point out that if the motion moved by me is accepted by this House, that para. in the motion will not find a place in the Rules. In the Rules, we will find only Rules 5-A and 5-B and any attempt to beautify the words of para 1 will be of no avail, because that will not find a place in the Rules. Really, the motion before the House is that Rules 5-A and 5-B be inserted after Rule 5. No amendment is sought with respect to Rules 5-A and 5-B. I would request Mr. Naziruddin Ahmad not to press his amendments. I am not accepting them.

**Mr. President:** I shall now put the amendments to vote. I do not think it necessary to put the first part of amendment to vote at all. We will go straight to the second part, namely.....

**Mr. Naziruddin Ahmad:** I beg leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

**Mr. President:** Then there is only one amendment of Shri Santhanam which has been accepted by the mover. The amendment of Shri Santhanam is put to vote.

The amendment was adopted.

**Mr. President:** The motion, as amended, is put to vote.

The motion, as amended, was adopted.

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#### ADDITION OF NEW RULES 38-A TO 38-V

**Shrimati G. Durgabai** (Madras : General) : Mr. President, Sir, I beg to move the motion that stands in my name, namely:—

That the following amendments to the Constituent Assembly Rules be taken into consideration:—

After Rule 38, insert the following:—

The proposed Rules lay down in a Chapter, Chapter VI-A, the procedure for legislation for making provision as to the constitution of India. They spread over above 22 Sections, from 38-A to 38-B, and are divided into two categories.

Before going into the body of these proposed Rules, I feel it necessary to explain the scope and object of these Rules. Sections 38-A to 38-K seek to lay down an appropriate procedure for the consideration and the passing of Bills proposing amendments to the existing constitution as embodied in the Indian Independence Act, the Government of India Act, 1935, as adapted, and any Order, Rule, Regulation or any other instrument made thereunder. Sections 38-L to 38-V seek to lay down a procedure for the introduction, consideration and the final passing of the new constitution of India. The power of making legislation for a provision as to the constitution of the Dominion is vested, as we all know, in this sovereign body, the Constituent Assembly of India. The Constituent Assembly sitting as a legislative body cannot do this. By virtue of Section 8 (1) of the Indian Independence Act, this sovereign body alone is competent to make this legislation for providing for the amendment of the constitution and also for the final passing of it.

Sir, the procedure laid down in Sections 38-A to 38-K enables us to amend the existing constitution even during the interim period without waiting for the final emergence of the new constitution. We have all noticed that it is necessary for us to make some progressive provisions for amending the new constitution, because the members are aware that some contingencies arose and are likely to arise, such as for instance the emigrations that have recently taken place. Therefore, it may be highly necessary for us to amend the constitution of India so as to enable ourselves to make any proposed changes to the constitution. The necessity, therefore, for the adoption of some procedure being laid down for amending the constitution without waiting for the final constitution is amply clear. I need not say much about the details of the procedure laid down because it is almost the same as we are familiar with and which we follow in the case of ordinary legislation.

Now, I turn to the second set of rules, namely, Rules 38-L to 38-V. They propose to lay down a procedure for the introduction, consideration and the final passing of the new constitution of India. As I have already stated, the power of making this provision is solely vested in this sovereign body and by this procedure the Constituent Assembly of India will put its seal of approval for the final acceptance of the new constitution. Members have already noticed that 38-L dispenses with the motion for leave for introduction of the new constitution. The whole object of the procedure is to simplify the matter and also to enable ourselves to expedite the matter of passing the constitution. Therefore, though I would like to be brief, I shall refer to the salient features of these provisions which lay down the procedure for considering and passing the new constitution.

Briefly, the procedure adopted is this. It, of course, differs in some essentials from the procedure we lay down for the consideration of the Bills which will amend the existing constitution. In three essentials it differs. One of them is this, that it dispenses with the motion for leave for introduction of the new constitution. Any member can introduce the constitution after giving five days' notice of his intention to move it. Thus delay is avoided. In yet another essential it differs, *i.e.*, Rule 38-R lays down that there shall be no intermediary stage between the stages of introducing the constitution, its consideration and final passing. There is no Select Committee stage, but all the same, 38-R enables us still to have it referred to the Drafting Committee, if the President so desires. The President can send the constitution as amended to the Drafting Committee for carrying out any verbal or consequential or formal amendments or for inserting some marginal notes or for renumbering of the clauses. Even here delay is avoided because it is only just a formal thing *i.e.*, refer it to the Drafting Committee which sits from day to day and which simultaneously goes on with the work of renumbering or making any consequential or formal amendments. For the final act of completing the constitution and the making of the constitution the procedure is laid down in 38-U which reads thus:—

“When the constitution is passed by the Assembly it shall be submitted to the President who shall authenticate the same by affixing his signature thereto.”

Honourable Members are already aware that this meets as a Sovereign body and for finalizing and passing the Constitution it does not require the approval of any outside body but the President authenticates it by putting his signature. That is what we note here.

[Shrimati G. Durgabai]

There is another clause to which I would like to refer. That is provided in 38-V. The procedure there slightly differs. That is, in, the case of a bill passed by the Assembly and before it becomes a Final Act it will have to go to the Governor-General for his assent. There we see the marked difference between the bills for amending the existing constitution and also for the final new constitution where the Governor-General also assents.

Sir, this is all that I wanted to explain before I commend my motion for the acceptance of this House. I have got some amendments before me. The amendments given notice of by Mr. Naziruddin Ahmad seek only formal or verbal changes. Therefore I do not think that I need say much about those amendments; but the amendments given notice of by Mr. Santhanam are there. I understand that his object in proposing his amendment is to simplify the whole matter and to pass the constitution without any delay or by a simpler process. While I appreciate his object. I feel that the procedure, which he wants to adopt is by making a reference to rule 24 of the Constituent Assembly Rules which lays down that the business of the Assembly shall be brought before it or its Committee by means of a Motion, etc. I wish the Mover of the amendment to understand the business of the House and the motion which he proposes should be distinguished from the task that is before us. What we are seeking to do is to make provision for amending the constitution, which is quite different. Even for the ordinary bills we are adopting an elaborate procedure that several stages are to be gone through before a bill finally becomes law. If that is true in the case of an ordinary law much more so it must be in the case of the very important legislation that we have got before us, viz., the amending of the existing constitution and also passing the new constitution. We have got to give adequate publication before we do these two matters which are of very great importance. Therefore I feel that an elaborate procedure under these circumstances has to be laid down and incorporated in the Rules that we have. The existing rules and Standing orders did not provide for a procedure like that. I feel very happy to be able to say that here is the procedure that we want to lay down for amending the existing constitution which we feel necessary at this stage to do and also for passing the new constitution of India. The time has come when the whole world is focussing its attention on the final emergence of this new constitution. Therefore here is the procedure which we have got ready for receiving when the draft comes before us for our consideration and passing. With these observations, Sir, I commend my motion for the acceptance of the House.

**Shri Phulan Prasad Varma** : (Bihar : General): On a point of order. Paragraph 38-V says—

“When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General it shall become an Act and shall be published in the *Gazette of India*”.

I submit that bill Passed by the Constituent Assembly cannot be the subject of assent by the Governor-General and the Governor-General does not come in so far as the Constituent Assembly is concerned. I submit that it will affect the sovereignty of this House.

**Mr. President:** That is really a question on the merits of the proposition. Is it a question of Order ? If the Honourable Member wishes to raise the question of merits he is entitled to do it. It does not arise as a point of order. The Motion has been moved. Mr. Santhanam's amendment is one for the substitution of the whole motion by another motion. So I would ask him to move that.

**Shri K. Santhanam:** I do not intend to move it but I want just to say a few words on this motion.

**Mr. President:** Then we shall take up the other amendments. The other amendments relate to each of the clauses and with regard to the wording of the clauses but in the first instance we have to take the motion as a whole as to whether these rules are necessary. Any member who wishes to speak on that may do so now.

**Shri K. Santhanam:** Sir, my own view is that the whole motion is wholly unnecessary and purposeless. It consists of two parts. One part is intended to amend the Indian Independence Act or the Government of India Act as adapted by the Indian Independence Act. I do not think this Constituent Assembly is going to exist till you can follow the procedure laid down. I think we are going to finish the business in the next two or three months and shut up our shop and I do not see why we should adopt a complicated procedure for amending the Indian Independence Act or the Government of India Act which will also cease to exist. If you want to make a provision for any stray wording, etc., it could be done by an ordinary motion. Regarding the other part intended to pass the Constitution, when the rules were made they were made to pass the Constitution. I am unable to understand Mrs. Durgabai's idea that these rules did not provide for passing the Constitution. When we made the Rules of the Constituent Assembly we made them solely for the purpose of considering and passing the Constitution. How is it that suddenly on this blooming day we have realized that our Rules did not provide for the passing of the Constitution? I do not think there is any basis for any such fear. On the other hand the introduction of these rules may mean that whatever principles we have adopted in the House according to the other Rules cease to be of any value, and that the new bill takes the place of everything else that the Constituent Assembly has done and that will reopen the discussions that we have already gone through.

If what you have done is to be effective, then the same procedure should be followed for the remaining parts of the Constitution also. We should have the same procedure of making a motion, then taking it up and considering it, clause by clause, then discuss the amendments moved. The Drafting Committee will present a report. And the Report comes up for discussion and so on. That was the procedure laid down after a great deal of discussion. The Rules Committee sat for many weeks and drafted these rules. And now the Steering Committee sits for a few hours and passes a complicated structure, and I may say many of the provisions in it are wholly defective. Take for instance the point referred to just now by one of the Members, the point about referring to the Governor-General in Council. I thought we had this Constituent Assembly so as to exclude him from this business of constitution-framing. And then another clause says that the Constitution should be submitted to the President. But if the Constitution is passed by this Assembly, then who will submit it to the President ? There is no authority whatsoever for doing that. Therefore the whole thing is very defective, and I am sorry the Steering



[Shri K. Santhanam]

Committee passed it. I have, however, no desire to move my amendment. I only submit that this may be adjourned for consideration at a later date.

**Pandit Thakur Das Bhargava:** \*[Mr. President, as regards this Motion, which in a way consists of two distinct propositions, I would like to point out that I cannot understand the reason of this distinction. One part of this Motion which extends up to clause K is connected with a Bill which concerns the Government of India Act or Independence Act, while the second part concerns the constitution. As regards the first part which extends up to Clause K, I would like to say that I could not follow as to why the Dominion Legislature has no power regarding the Bills which are connected with the Government of India Act and Independence Act respectively. The Constituent Assembly of India came into being for framing the Constitution of India. Therefore, it is permissible to hold that the Constituent Assembly is a sovereign body and the only body which can consider the Government of India or Independence Act. So far sovereignty is concerned, to my mind, the Dominion Legislature is the only sovereign body and the fact that in legislative matters it has to take the consent of the Governor-General does not alter its position. It is a sovereign body in this sense that it has right to frame any law in all matters which concern India. On the last occasion when the question of appeals to the Privy Council was discussed in the Dominion Legislature, our learned Law member had expressed an opinion that the Dominion Legislature cannot make any changes in the Government of India Act. At that time it was pointed out that in fact this view is not correct. In this connection, I would like to draw the attention of the House to section 6 (2), which runs thus :

“No law and no provision of any law made by the Legislature of either of the new dominions shall be void or inopportune on the ground that it is repugnant to the law of England or to the provision of this or any existing or future Act of Parliament of United Kingdom or to any order, rule or any regulation made under any such act, and the powers of the Legislature of each dominion include the power to repeal or, annul any such Act, order, rule or regulation in so far as it is part of the Law of the dominion.”

So far the question of Constitutional Law is concerned, on many occasions, the rules for changing any constitution are regarded as different from the ordinary rules. But I would like to submit that no flexible constitution has any such rule. If today any body in England wishes to make changes in the Law, he can do so; for the Legislature has the power to make such changes by a bare majority vote in the House of Commons. Dominion Legislature also is a parallel body of the Constituent Assembly; and in this connection I have to say only this much that the Legislature has every right to make any changes in the Independence Act. Just now, a member has expressed the opinion that the Constituent Assembly does not require Governor-General's consent for framing any law. If under clause 38(5), Governor-General's consent is considered to be unavoidable, then there is no difference between the rules which have been framed for amending the Acts and those ordinary laws which the Dominion Legislature has a right to frame. If Governor-General's, consent is unavoidable for such amendments, as also for the other Bills, then I would like to ask, how do you distinguish between the Dominion Legislature and the Constituent Assembly? It may be pointed out that as the powers of

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\*[ English Translation of Hindustani speech begins.

the Constituent Assembly are to be amended, therefore, it has such a right. In reply, I would humbly submit that there is no such law. There are many countries in the world, where Legislatures amend all kinds of Acts with the help of ordinary rules. Therefore, I would like to submit that so far the question of the privileges of Dominion Legislature is concerned, there is no reason why this Legislature should not have the power to amend those Bills which are connected with the Government of India Act and Independence Act respectively and make any changes it likes. Therefore, I beg to submit that the House should not accept Clause 38-K. Moreover we should determine that the Dominion Legislature is the only body where such Bills can be introduced and amended. The question of Constitution does not arise here. It is altogether a different question. Obviously our constitution is being framed under circumstances totally different from other places. In other places it was framed after a revolution. But our government was not established after revolution. It is a continuous body and we have inherited many laws from the past and we cannot escape its influences. It is known to us that the Governor-General's consent is not necessary for framing the constitution. For making amendments in the law, we have already accepted the principle that to make changes in the Government of India and Independence Acts respectively, Governor-General's consent is necessary. But it is apparent from Article 6 that the Dominion Legislature has full power and on no account any such distinction should be made which should render the Legislature incapable of making any amendments in the Government of India Act and that the Constituent Assembly should be able to do it. In fact, both are sovereign bodies and so far the question of any amendments in a Bill or in Government of India Act and Independence Act are concerned, both have full power to do so. Also I would like to say that this Constituent Assembly is not a sovereign body in every way; for, save and except framing the constitution, it has no power to pass any Bill. On one occasion our Prime Minister had said that our Constituent Assembly cannot pass ordinary Bills. Therefore, I beg to submit that so far the amendment of Independence and Government of India Acts is concerned, the Dominion Legislature must have the power to do so and there is no law which can deprive the Dominion Legislature of this privilege. With these words, I would submit that clause 38-K should not be accepted; because this amendment reduces the powers of the Dominion Legislature and is derogatory to the prestige of the Constituent Assembly.]\*

**Mr. President:** The House will rise now to meet again at 2-30.

The Assembly then adjourned to 2-30 in the afternoon.

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] \*English Translation of Hindustani speech ends.

The Assembly re-assembled after lunch at half past two of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the chair.

**Mr. R. K. Sidhwa** (C.P. and Berar: General) : Mr. President, on a point of information...

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER.

**Mr. President:** There is one Member who has to present the Credentials and sign the Register.

The following Member presented his Credentials and signed the Register:—  
Shri Krishna Chandra Sharma (United Provinces : General) :

—————  
ADDITION OF NEW RULES 38-A TO 38-V—*contd.*

**Mr. R. K. Sidhwa:** For the purpose of expediting the debate I want to know whether this House is competent to discuss this motion or is it the other House that is competent to do so? The Governor-General is part and parcel of the Independence Act and this subject cannot be dealt with by this Assembly.

**Mr. President:** On the point of order raised, I may say that it is perfectly clear that this House can deal with this question.

**Maulana Hasrat Mohani:** (United Provinces : Muslim) : \*[Mr. President, when the Union Constitution was presented, then it was decided that the consideration of its three clauses be postponed. But in this connection, I find that whatever was said during the discussion, has been omitted in the printed proceedings. I would like to know, whether this omission is deliberate or by mistake?]\*

**Mr. President:** \*[I could not follow. What has been omitted?]\*

**Maulana Hasrat Mohani:** \*[This contains amendments to several clauses. Then it was decided after a good deal of discussion that the point raised would be taken up. Pandit Nehru had also said, "I will produce a modified constitution afterwards at the next meeting of the Constituent Assembly".

The report, which you have published contains thirty clauses, and that includes everything. But in the Report no mention has been made of the discussion that had followed on the first three clauses. It contains nothing pertaining to that. I want to enquire the reason for that.]

**Mr. President:** \*[Whatever you wish to say please give in writing for I shall have to enquire about it. I will see what it is. Does anyone else wish to speak?]\*

**Mr. Naziruddin Ahmad:** Sir, I submit that Clauses 38-A to 38-K will not be necessary to be passed by this House. I do not consider that this House has no jurisdiction in the matter. It has full jurisdiction to deal with the matter. But so far as this House is concerned, it is concerned directly with the business of Constitution-making. I submit that the other House, with reference to the

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\*[ ]\*English Translation of Hindustani speech.

legislative aspect of the Assembly, is fully competent to deal with this. This was referred to in an earlier debate in the legislative Assembly. But it requires further clarification. I submit, while I agree with Pandit Bhargava, that, so far as changing the Government of India Act is concerned, it can be done up to the 31st March next by the Governor-General under section 9 (1) (c) of the Independence Act. In these circumstances there is no hurry about creating a machinery for amending the Government of India Act. Then the Governor-General has the power up to 31st March under section 5(9) of the Independence Act. So far as the competence of the legislative side of the House is concerned, I submit that power is given under section 6(1) of the Independence Act. It is laid down there that the legislature has 'full power to make laws' and so on and so forth. In sub-section (2) of section 6 it is specifically mentioned that the legislature can pass laws and amend, alter or absolutely repeal any Act of the British Parliament which has been passed or may be passed hereafter including orders, rules, regulations etc. So, under section 6(1)(2), the legislature is competent to effect the necessary changes in this direction. This has been made clearer by sub-section (2), Proviso, which says : 'All powers of the legislature for the time being shall be discharged by the Constituent Assembly'. So, the Constituent Assembly exercises all the functions of the Legislature and the Legislature, under section 6, is competent to pass any law or make any changes or alterations in any Statute, passed by the British Parliament or rules and regulations made thereunder. So, I submit that this clause which deals with the setting up of a particular machinery to deal with British Acts, Regulations or orders made thereunder, should be left to the other House, or rather the other aspect of the House, which is particularly meant for it. There is no need to trouble this House about these routine matters. This House as constituted should have its attention solely directed towards the framing of the Constitution which is its most essential function. After the framing of the Constitution this House will, I believe, cease to function. In these circumstances if the machinery is really set up for the Constitution section to make the amendments, it should be remembered that this House will cease to function very soon and the Legislative section will act in its place. So the life of the rules made here would be transitory, would be unnecessary, and would be burdening this House with the duty which is not its primary duty, though I fully admit that this House has jurisdiction, but it is not the proper function of this House and probably these rules are attempted to be amended as it seems that there is an unfounded fear that the other House has no jurisdiction. I submit that the Rules 38-A to 38-K should be omitted from consideration or their consideration be postponed.

With regard to the remaining clauses, they are perfectly necessary. In order to facilitate the passing of the Constitution Act and other matters connected therewith these rules are necessary and I therefore support the suggestion of Pandit Bhargava in this respect.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General): Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the

[The Honourable Dr. B.R. Ambedkar]

motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realize that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not exhausted by that particular motion if the House decided in favour of that motion. There are further stages which have to be gone through and it is therefore very necessary that the further stages of a motion of this sort should be regulated by specific rule. I think if my friend Mr. Santhanam had referred to the Constituent Assembly (Legislative) Rules he could have seen that the provision which has been made in the new rules which was moved by Shrimati Durgabai was modelled on the provisions contained in the rules and the standing orders of the Constituent Assembly. For instance, he will find that analogous to Rule No. 24 in the rules of the Constituent Assembly there is Standing Order No. 30 worded exactly in the same terms as Rule No. 24. Notwithstanding that, there is a further Standing Order *i.e.* No. 37, which provides for bills and which lays down what further motions can be moved in the House with regard to them and therefore, on that footing the proposal made for adopting the new rules is in line with the procedure adopted by the Constituent Assembly in its legislative capacity. I should think that if the Constituent Assembly rested purely on rule No. 24 for carrying out its business in so far as it related to legislation, there is not the slightest doubt in my mind that there would be utter chaos. If there was only Rule 24 there could be no limit as to the number of motions or the nature of motions that one could move. In the Legislative Assembly rules Honourable Members will find that after a Bill has been introduced there are only three motions which are permitted. One is motion to circulate, motion to refer the Bill to a Select Committee or motion to pass the bill. If we had nothing but Rule 24 to govern our proceedings it would be open for any member to move any sort of motion which he may fancy. Indeed it would be necessary in certain cases not to allow freedom to move anyone of these three motions, In our procedure for the purpose of passing the bill embodying our new constitution we have curtailed the list of motions that could be moved by a member. In the new rules proposed we have not permitted a motion for the circulation of the constitution because we think that would be dilatory. In short what is important to bear in mind is that unless these rules were adopted, it would be quite impossible to control the further stages of the Bill and therefore the point raised by Mr. Santhanam is, I think a point without Substance.

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules which requires the assent of the Governor-General to the passing of a Bill adopted by the Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts one part related to the making of the *future* constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has

no place. His assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessary, but even the assent of the President is not required by the Rules now prepared. The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution.- It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The question that arises is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it, what harm can there be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

**Shri K. Santhanam:** May I know why then you want the bill at all?

**The Honourable Dr. B. R. Ambedkar:** The answer is simple, After all, the power of adaptation will be exhausted by the 31st of March, What is to happen thereafter if the necessity for amending the existing constitution arose? Of course if the power of adaptation comes to an end, on the 1st of April and if our future Constitution also became operative on the 1st of April, the problem would not arise at all. There would be the new Constitution taking complete possession of the territory occupied by the existing Constitution. But, we are not quite sure that such would not be the case. It may be there might be a time lag between the commencement of the new Constitution and the first of April 1948. It may be a month or two may elapse between the 31st of March and the commencement of the Constitution. It is also equally clear that the whole of the Constitution as framed and passed by this House may not come into operation all at once. It may come into operation in part. There may be transitional provisions, supplementary provisions for the purpose of defining constituencies for the purpose of giving effect to what are called incidental matters. All that requires undoubtedly some time. Consequently, time process of adapting the Constitution which will come to an end by the 31st March will have to be continued and it can be continued only by the known process of a Bill passed by this House.

In the light of this it will be clear that a provision for changing the existing Constitution by a Bill is necessary. Those who realize this fact and also realize that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises is, why should a Bill of amendment not require the assent of the Governor-General ? Certainly, there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision

[The Honourable Dr. B.R. Ambedkar]

contained in sub-clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-General. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean that the Assembly is bound to submit a Bill amending the existing Constitution to the Governor-General by virtue of the fact that he is endowed with the power by the Independence Act to give his assent? We were not able to give any categorical opinion. We thought that notwithstanding feasibility of the argument that merely because of the existence of sub-clause (3) in section 6 there is no obligation to submit the Amending Bill to the Governor-General for his assent, a court of law may hold otherwise and declare an Act passed by this Assembly, not submitted to the Governor-General for assent, as being *ultra vires* and we did not want that legislation passed by this Assembly should be put in that sort of jeopardy. It is therefore out of abundant caution and also out of the feeling that there was nothing illogical in it that we inserted the new Rule. I hope the House will understand that whatever has been done by the Drafting Committee, to which this matter was referred, is perfectly in order and that the points raised by Mr. Santhanam and the friends who followed him have really no substance in them.

**Shri H. V. Kamath:** Sir, with due deference to my honourable friend Dr. Ambedkar and the host of the best lawyers whom he mentioned in his speech, I am constrained to say that I remain unconvinced as regards the need for this rule 38-V, that is to say, the need for submitting a Bill passed by this Assembly to the Governor-General for his assent.

Dr. Ambedkar said that if it were open to this Assembly to do anything it likes, then one fine morning any member could move that the consideration of the Constitution be suspended. It is perfectly valid, for I believe any member who gets such a motion passed by this Assembly will see that the consideration of the Constitution is suspended. I think that one of our Rules is even to the effect that this Assembly can dissolve itself provided the motion secures a two-thirds or a three-fourths majority. Either this Assembly is sovereign or it is not. I submit that at this time of the day nobody, especially no lawyer or constitutionalist, will contend that this Constituent Assembly of India is not a sovereign body. If it is a sovereign body, it follows as a natural consequence that there cannot be any outside authority whether it be the Governor-General or the British Parliament, or anyone else who can be called upon to give his assent to or ratify any Bill passed by this Assembly. Therefore, if we are all agreed,—I am sure we agree on this point, that this Assembly is a sovereign body,—then, the need for this, rule 38-V clearly does not arise. This rule says that the Bill referred to in Rule 38-A on being passed by the Assembly shall be submitted to the Governor-General for his assent.

If the Governor-General is brought into the picture for ratification of or assent to any Bill, then it clearly means that this Assembly is not sovereign, so that if we want to bring in the Governor-General then certainly we cannot get this Bill passed here and the only place for getting such a Bill passed would be the other Assembly, namely, this very Assembly functioning as Legislature where at present the Governor-General is a part of that body. I therefore feel that this Section 38-V which has been incorporated in the motion brought forward by my Honourable friend, Shrimati Durgabai, is somewhat ill-conceived and would, if adopted by this Assembly, detract from its sovereignty and as such

I would submit to the House that this particular clause be deleted from the motion.

**Maulana Hasrat Mohani:** \*[Sir, I am also of the opinion that Governor-General's consent is not necessary for any motion brought before this Assembly and the basic reason for that is that as yet ours is a dominion status and the Governor-General is the representative of Britain and not of the Indian public and hence, for anything, his consent should not be taken.]\*

**Mr. President:** Before I put the motion to vote, I would like to ask the Mover whether she would like to say anything in reply.

**Shri M. Ananthasayanam Ayyangar:** Before that, Sir, I beg your permission to interrupt for a little while. I would like to ascertain from the Honourable Dr. Ambedkar whether he has considered the consequences that would follow if this motion is adopted, because, under Section 32 of the Government of India Act as adapted, the Governor-General has the right either to give or withhold his assent when a Bill is referred to him. Are we contemplating that so far as a Bill seeking to amend the existing constitution is concerned, the Governor-General shall have the power either to give or withhold his consent?

**The Honourable Dr. B. R. Ambedkar:** He is a constitutional Governor. He acts on advice.

**Shri M. Ananthasayanam Ayyangar:** Another point which requires elucidation is this. It is laid down that when the Dominion Legislature passes a Bill, that Bill will require the assent of the Governor-General. But does this apply in so far as amendment of the present constitution is concerned, because we are not sitting here as Dominion Legislature, but as the Constituent Assembly of India which is a sovereign body? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new constitution is not going to be referred to the Governor-General, the amendment of the existing constitution also need not be referred to him?

**Mr. President:** That is a point which Dr. Ambedkar has answered in his own way. Whether the member is satisfied or not is a different question. I shall now call upon the Mover if she wishes to say anything in reply.

**Shrimati G. Durgabai:** Mr. President, Sir, I do not think there is much left for me to say in reply, because Dr. Ambedkar has very kindly taken upon himself to explain the whole position as well as answer the points raised by my Honourable friends. I think he has sufficiently met them and clarified the whole position, but I appreciate that much has been said by some of the members about the provision retained here about the assent of the Governor-General with regard to Bills referred to in 38-A. Dr. Ambedkar dealt with that point also, so I need not say much about it. But I would like to remind Honourable Members of this fact that we are governed today by the 1935 Act as adapted which still retains that provision.....

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\*[ ]\* English Translation of Hindustani speech.



**An Honourable Member:** Not as far as this Constituent Assembly is concerned.

**Shrimati G. Durgabai:** Sir, the fact that the Bill is passed by this Constituent Assembly. I think, does not dispense with such assent unless the Constituent Assembly makes a provision contrary to that. So if you like to eliminate this provision, by all means do it, but make a provision contrary to that; otherwise, you cannot eliminate it altogether and arbitrarily. What I would like to impress upon Honourable Members is firstly this, that if the Governor-General is to continue to hold the existing position unchanged in the existing constitution, he must be consulted and his assent cannot be dispensed with, and secondly, that it is not necessary to eliminate this, since he acts on the advice of our own Ministers. For both these reasons, there is practically no fear that the assent will be unduly withheld. Another consideration is also this, that in the absence of a second Chamber to revise or rectify any defects, it also further provides an opportunity for the Ministers to go through the whole thing if necessary and if occasion demands it. Therefore, bearing in mind all these points, I would request Honourable Members to accept my motion without any fear by the retention of this provision regarding assent of the Governor-General.

**Mr. President:** The motion is that the amendments to the Constituent Assembly Rules be taken into consideration. I shall put clause-by-clause later; now the general motion is before the House.

The motion was adopted.

**Mr. President:** I would take up the clauses one by one. Members may kindly go through each of these as quickly as possible, because we have got three more resolutions and we have not much time.

**Shrimati G. Durgabai:** I move Rule 38-A (1):

38-A.(1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made thereunder, or to the Government of India Act, 1935, as adapted under the said Act may move, for leave to introduce a Bill for the purpose, shall give notice of his intention and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

**Shri M. Ananthasayanam Ayyangar:** May I make a suggestion? Barring some amendments which seek to rectify minor errors, there is no substantial amendment. Of course, Mr. Naziruddin Ahmad's amendments are there which add a word here and a word there. I suggest these may be left to the office to take care of. We may proceed with clauses.

**Mr. President:** I would suggest that such of the amendments as are acceptable to the mover may be accepted now and the motion may be moved in the amended form so that there may be no discussion and the whole thing can be gone through quickly instead of leaving it to the Office to make the changes. The first clause if amended by Mr. Naziruddin's amendments would read as follows:—

“Any member desiring to move any amendment to the Indian Independence Act, 1947 or an order, rule or regulation made thereunder, or to the Government of India Act, 1935, as adapted by the Indian Provisional Constitution shall give notice of his intention, and shall together with the notice submit a copy of the bill for the purpose and may move for leave to introduce the Bill.”

If you accept these amendments it would read like that.

**Shrimati G. Durgabai:** I cannot accept the amendments.

**Mr. President:** Then let Mr. Naziruddin Ahmad read his amendments one by one.

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

“That in sub-rule (1) of the proposed rule 38-A, for the words ‘desiring to propose’ the words ‘desiring to move’; for the words ‘rule, regulation or other instrument’ the words ‘rule or regulation’ and for the words ‘adapted under the said Act’ the words ‘adapted by the Indian (Provisional Constitution) Order, 1947’ be substituted.”

The other amendment I wish to submit is that I beg to propose—

“That in sub-rule (1) of the proposed rule 38-A, the words ‘may move for leave to introduce a Bill for the purpose’ be omitted; after the words ‘submit a copy of the Bill’ the words ‘for the purpose’ be inserted; and the words ‘and may move for leave to introduce the Bill’ be added at the end”.

The object of these amendments is quite clear. I have merely transposed the motion condition after notice to keep the sequence. The others are mere verbal amendments.

**Shrimati G. Durgabai:** Sir, I do not accept the amendment. The language proposed in 38-A (1) is quite alright. I do not think it requires any amendment.

**Mr. President:** The mover of the motion is not prepared to accept any of the amendments. I put the amendments to vote.

The amendments were negatived.

**Mr. President:** We go to 38-A (2).

**Shrimati G. Durgabai:** Sir, I move—

“(2) The period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice.”

**Mr. Naziruddin Ahmad:** Sir, I beg to move—

“That in sub-rule (2) of the proposed rule 38-A, for the words ‘President allows’ the words ‘President in his discretion allows’ be substituted.”

This condition of the President allowing it in his discretion appears in the other clauses in pages 4 and 7 of the list of amendments.

There are two places in which the same phrase appears and in order to bring the whole thing to a uniformity, I submit my amendment may be accepted.

**Shrimati G. Durgabai:** I do not think, Sir, that it is necessary to accept this amendment.

**Mr. President:** The Mover is not prepared to accept this amendment. The amendment seeks to add the words “in his discretion” after the word ‘President’. I shall put it to the House.

The question is:

“That in sub-rule (2) of the proposed rule 38-A, for the words ‘President allows’ the words ‘President in his discretion allows’ be substituted.”

The motion was negatived.

**Mr. President:** Then I put the whole clause, 38-A (1) and 38-A (2).

38-A. (1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made thereunder, or to the Government of India Act, 1935, as adapted under the said Act, may move for leave to introduce a Bill for the purpose, shall give notice of his intention, and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

(2) The period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice.

The motion was adopted.

**Mr. President:** Now we pass on to 38-B.

**Shrimati G. Durgabai:** Sir, I move:

38-B. If a motion for leave to introduce a bill is opposed, the President. after.....

**Haji Abdul Sattar Haji Ishaq Sait** (Madras: Muslim): May I suggest, Sir, that the whole clause need not be read? It has already been circulated and it need only be moved.

**Shrimati G. Durgabai:** Sir, I move clause 38-B.

38-B. If a motion for leave to introduce a Bill is opposed, the President, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may without further debate put the question.

**Mr. President:** Mr. Naziruddin Ahmad can move his amendment.

**Mr. Naziruddin Ahmad:** Sir, I would suggest that instead of my moving my amendments to each clause, it would be better and more satisfactory if they are all dealt with by the Government draftsmen. Otherwise, I find it is useless for me to move them, because I find the sponsors of the motion are not in a mood to listen to them or to consider them. But I consider them necessary and that is why I have brought them forward. They are not of a frivolous or dilatory nature. In these circumstances I respectfully seek your advice as to what I should do. If I decline to move my amendment that will be hardly respectful to the House.

I beg to move—

That in the proposed rule 38-B, for the words “introduce a Bill” the words “introduce such a Bill” be substituted.

Sir, this amendment is necessary because the Bill is qualified in the earlier part of the clause and the addition of the word “such” will make it very clear.

**The Honourable Dr. B. R. Ambedkar:** Sir, if I may reply to this point. If the Honourable Mover will only refer to the heading of the chapter he will see that the chapter is called “Legislation for making provision as to the Constitution of India.” These rules relate to no other Bill except the Bill amending the Constitution. Therefore the word “such” is absolutely unnecessary.

**Mr. Naziruddin Ahmad:** After this clarification, Sir, I beg leave to withdraw my amendment.

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

**The Honourable Dr. B. R. Ambedkar:** Sir, if I may make a suggestion with a view to economise time. These are all drafting amendments. If this House were to pass a resolution that all these amendments should be taken into consideration by the official draftsmen and incorporated wherever he thinks necessary, that will be better. If we were to take up the amendments one by one, it will take more than a whole day. After all different people use different language for the purpose of conveying the same thought. It is better to leave it to the draftsmen who are particularly qualified in this matter than laymen who merely want to exercise their time in this matter.

**Mr. President:** Before I come to that, I will put Rule 38-B to the House.  
Rule 38-B was adopted.

**Mr. President:** As regards the suggestion made by the Honourable Dr. Ambedkar, I would make a request that if Mr. Naziruddin and Shrimati Durgabai and any other Member interested would sit together separately and decide about these amendments, we could, in the meantime go on with the other resolutions. We can take up these clauses, after, say three-quarters of an hour.

**Mr. Naziruddin Ahmad:** But then, I have other amendments to other resolutions also. Sir, no Member had the time to go through these clauses and amendments and that is why we feel this difficulty now. Especially after the lunch our everybody seems to be in a happy mood and is not able to apply his mind to technicalities.

**Mr. President:** I think the Mover of the Motion, Shrimati Durgabai, may consider these amendments and see which of them she could accept and we might take up this item a little later. In the meantime we could go on with other items.

Diwan Chaman Lall may now move his resolution.

#### ADDITION OF RULE 59-A

**Diwan Chaman Lall:** Sir, the resolution that I beg leave to move is as follows—

That the following amendment to the Constituent Assembly Rules be taken into consideration:—

*New Rule 59-A.* After rule 59 insert the following new rule:—

59-A. (1) The Credentials Committee or the Election Tribunal shall, for the purposes of an inquiry into an election petition, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908.

(2) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of these rules and the standing orders made by the President, be deemed to apply to every such inquiry.

Sir, the subject of election petitions is to be found in Chapter 10 of the Rules of Procedure adopted by this Assembly. The general basis is as follows. An election can be called into question only by means of an election petition. Any candidate or elector can file this election petition. If the petition is in order, then the President, if he is satisfied that there is sufficient ground

[Diwan Chaman Lall]

shall refer the petition to the Credentials Committee. The Credentials Committee thereupon shall enquire into the election petition and go into the charges contained therein and as quickly as possible submit a report. The Credentials Committee, if they think fit, may recommend to the President that an Election Tribunal should be appointed to enquire into the Election Petition. Therefore, we have a dual procedure. The Credentials Committee can either recommend to the President to appoint an Election Tribunal or report to the President. If it comes to the appointment of the Tribunal, the President shall appoint an Election Tribunal consisting of one or more members to go into the merits of the petition. Now, there is a lacuna, some doubt as to the procedure after handing over the election petition to the Election Tribunal.

According to rule 43(5), the President may make Standing Orders for the conduct of the business of the Credentials Committee. It is doubtful whether he can also make rules for the purpose of compelling witnesses to appear before the Election Tribunal or compel their attendance, summon them, enforce their attendance or compel the production of documents. Therefore the necessity has arisen for this particular Rule 59-A to be inserted granting power to ask for the attendance of witnesses and for the production of documents.

There are two aspects of this power. The procedure will be, as far as possible, the same as is adopted in Civil suits under the Civil Procedure Code. Secondly, subject to the standing orders and rules of the Assembly the Evidence Act shall apply to the evidence that is produced before the Election Tribunal.

I do not think that long speeches are necessary to persuade Honourable Members to see the need for this amendment. I may mention that, so far, five or six election petitions are still pending and for the due despatch of these petitions it is necessary that this doubt should be resolved and this rule accepted.

**Mr. President:** Mr. Naziruddin Ahmad may move the amendment he has given notice of.

**Shri K. Santhanam:** On a point of order, Sir, I do not think any rule of this Assembly can have the force of law. If you want this compulsion, it should be done by a Bill in the Legislature duly introduced and passed. Then only will the civil authorities recognise it. The civil courts will not take legal cognisance of the rules of this Assembly. So I think it is *ultra vires*.

**Shri M. Ananthasayanam Ayyangar:** Under the Indian Independence Act, this Assembly has been recognised as the Dominion Legislature with all powers. Therefore, whether you call it a rule or a law, it has the force of law.

**Mr. President:** I think I will take the view put forward by Mr. M. Ananthasayanam Ayyangar.

**Mr. Naziruddin Ahmad:** Sir, I beg to move—

(1) that in sub-rule (1) of the proposed rule 59-A, after the figures '1908' at the end, the following be inserted:—"V of 1908".

(2) that in sub-rule (2) of the proposed Rule 59-A, for the words "standing orders", the words "Standing Orders" be substituted.

The two are self-explanatory. The first one merely gives the Statute No. and the second one puts in capitals the first letters of the words 'standing orders'. The amendments are of a very formal character and may be accepted.

**Diwan Chaman Lall:** I accept the amendments.

The amendments were adopted.

The motion, as amended, was adopted.

#### AMENDMENT OF RULES 51, 53, 60, 61 AND NEW RULE 67

**Shri P. Govinda Menon:** Mr. President, the motion which I propose is of a formal character. Chapter X of the rules adopted by this Assembly lays down the procedure to be adopted for the decision of doubts and disputes with regard to election of Members of this Assembly. But a perusal of the definition of the words 'Candidate' and 'Returned candidate' in rule 51 in that Chapter will show that these rules do not apply to members returned from Indian States. With respect to Members returned from Indian States, Standing Orders have been framed by the Honourable the President and it is under these Standing Orders that the matter is being dealt with at present. The attempt made by this motion is to incorporate these Standing Orders in the rules themselves. Sir, I move that in Rule 51—

(1) After clause (a), insert the following new clauses—

“(aa) ‘representative’ of any Indian State or States means the person who is chosen as a representative of such State or States in the Assembly in accordance with the provisions contained in the Schedule to these Rules”.

(ii) Add the following at the end of clause (b):—

“and includes a candidate whose name has been reported by or on behalf of the Ruler or Rulers of any Indian State or States to the President in the manner provided in the Schedule to these rules as a duly chosen representative of such State or States.”

**Mr. President:** There is no amendment to this motion.

The motion was adopted.

**Shri P. Govinda Menon:** Sir, I move—

In clause(1) of sub-rule (1) of Rule 53, for the words 'in the case of the first election to the Assembly' substitute the words 'in the case of election to the Assembly held before the publication of these Rules.'

In clause (ii) of sub-rule (1) of Rule 53, for the words “in the appropriate official Gazette”, substitute the words “in the Gazette of India or in the Official Gazette of the Province concerned.”

**Mr. President:** There is no amendment to this motion.

The motion was adopted.

**Shri P. Govinda Menon:** Sir, I move—

In sub-rule (1) of Rule 60, after the words 'Indian Legislative Assembly Electoral Rules' insert the words and figures “as in force on the 1st day of August, 1947”

**Mr. President:** There is no amendment to this motion.

The motion was adopted.

**Shri P. Govinda Menon:** Sir, I move—

Add the following at the end of rule 61 :—

“and the orders so issued shall be final and shall not be questioned in any court.”

**Mr. President:** There is no amendment to this motion.

The motion was adopted.

**Shri P. Govinda Menon:** Sir, I move—

After rule 66 insert the following new rule:—

“67. If any question arises as to the interpretation of these rules otherwise than in connection with an election held thereunder, the question shall be referred for the decision of the President and his decision shall be final.”

**Mr. President:** There is no amendment to this.

The motion was adopted.

**Shri P. Govinda Menon:** I beg to move—

*Schedule.*—Insert the following Schedule at the end of the rules.—

#### THE SCHEDULE

(See Rule 51)

1. The seats allotted to Indian States in the Statement shall be allocated among the various States and groups of States as in Annexure A, generally on the basis of one seat for one million of the population, fractions of three-fourths or more being counted as one and lesser fraction being ignored in the case of individual States, and fractions of more than half being counted as one and lesser fractions being ignored in the case of groups of States.

\*2. The President may, on the application of any State or States concerned, by order amend Annexure A to this Schedule so as to—

- (a) alter the representation allotted to the States, individual or grouped;
- (b) alter the grouping of the States by the division of a group into more than one group or the transfer of any State, or States from one group to another or otherwise;

Provided that—

- (i) no such alteration shall affect the total representation of all States or of the group or groups of States concerned; and
- (ii) in making any such alteration the population basis shall not be departed from and the geographical proximity, economic considerations, and ethnic, cultural and linguistic affinity shall be duly kept in view.

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\*These provisions (2 & 2-A) are new, having been substituted for the original paragraph 2.

\*2-A. When the representation allotted to the States, individual or grouped, or the grouping of the States is altered by an order made under paragraph 2, the President may, on application made in that behalf by the States affected by such order, declare the seats of the members of the Assembly representing the States so affected to be vacant.

3. Not less than 50 per cent of the total representatives of the States in the Assembly shall be elected by the elected members of the States' legislatures, or where, such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the Rulers of the States concerned. The States shall endeavour to increase the quota of elected representatives as much above 50 per cent of the total number as possible. Accordingly at least one half of the number of seats allotted to any State or group of States shall be filled by election in accordance with the provision made in that behalf by the Ruler of the State or States concerned.

4. The Conveners, in respect of the various groups of States specified in column 1 of the Annexure A, shall be the rulers specified in the corresponding entries in column 4 of that Annexure. The Secretary may in consultation with the States in the group make any such changes in the said column 4 as he may deem necessary or desirable.

5. On the completion of the election or nomination, as the case may be, the Ruler of the State concerned shall make a notification as far as may be in the following form +stating the name or names of the person or persons elected or nominated as representative or representatives in the Constituent Assembly and cause it to be communicated to the President of the Constituent Assembly. Where the selection has been made by a group of States, this notification shall be made by the convener for that group.

+FORM

BE IT HEREBY KNOWN THAT [here enter the name of the representative(s)] ..... has/have been duly chosen as (a) representative(s) of [here, enter the name(s) of the State(s)]...... in the Constituent Assembly of India. In testimony whereof this notification is issued under my signature and the Seal of my State.

State(s).....

Date.....

Ruler of.....

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\*These provisions (2 & 2-A) are new, having been substituted for the original paragraph 2.



## ANNEXURE A

*Single State*

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
I	Hyderabad .....	16	..
II	Mysore .....	7	..
III	Kashmir .....	4	..
IV	Gwalior .....	4	..
V	Baroda .....	3	..
IX	Travancore .....	6	..
IX	Cochin .....	1	..
X	Udaipur .....	2	..
X	Jaipur .....	3	..
X	Jodhpur .....	2	..
X	Bikaner .....	1	..
X	Alwar .....	1	..
X	Kotah .....	1	..
XI	Indore .....	1	..
XI	Bhopal .....	1	..
XI	Rewa .....	2	..
XII	Kolhapur .....	1	..
XIV	Patiala .....	2	..
XIV	Bahawalpur .....	1	..
XVI	Mayurbhanj .....	1	..
	20	60	

**Frontier Groups**

			Ruler of:—
VII	Sikkim .....	1	Cooch Behar State.
XV	Cooch Behar .....		
XV	Tripura .....	1	Tripura State.
XV	Manipur .....		
XVII	Khasi States .....		

**Interior Groups**

VIII	Rampur .....	1	Rampur State
	Benares .....		
X	Bharatpur .....	3	Bundi State
	Tonk .....		
	Dholpur .....		
	Karauli .....		
	Bundi .....		
	Sirohi .....		
(13 States)	Dungarpur .....		
	Banswara .....		
	Partabgarh .....		
	Jhalawar .....		
	Jaisalmer .....		
	Kishengarh .....		
XI	Shahpura .....		

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener	
1	2	3	4	
(26 States)	Datia .....	}	Panna State.	
	Orcha .....			
	Dhar .....			
	Dewas (Senior) .....			
	Dewas (Junior) .....			
	Jaora .....			
	Ratlam .....			
	Panna .....			
	Samthar .....			
	Ajaigarh .....			
	Bijawar .....			
	Charkhari .....			
	Chhatarpur .....			
	Baoni .....			
	Nagod .....			
	Maihar .....			
	Baraundha .....			
	Barwani .....			
	Ali Rajpur .....			
	Jhabua .....			
	Sailana .....			
	Sitamau .....			
	Raigarh .....			
	Narsingarh .....			
	XVII XII			Khilchipur .....
	Kurwai .....			
(17 States)	Cutch .....	}	Nawanagar State.	
	Idar .....			
	Nawanagar .....			
	Bhavnagar .....			
	Junagadh .....			
	Dhrangadhra .....			
	Gondal .....			
	Porbandar .....			
	Morvi .....			
	Radhanpur .....			
	Wankaner .....			
	Palitana .....			
	Dhrol .....			
	Limbdi .....			
	Wadhwan .....			
	Rajkot .....			
	Jafrabad .....			
(14 States)	XII-A	Rajpipla .....	}	Rajpipla State.
	Palanpur .....			
	Cambay .....			
	Dharampur .....			
	Balasinor .....			
	Baria .....			
	Chhota Udepur .....			
	Sant .....			
	Lunawada .....			
	Bansda .....			
	Sachin .....			
	Jawhar .....			
	Danta .....			
	XIII	Janjira .....		

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener		
1	2	3	4		
XIII	Sangh .....	}	}		
	Savantvadi .....				
	Mudhol .....				
	Bhor .....				
	Jamkhadi .....				
	Miraj (Senior) .....				
	Miraj (Junior) .....				
	Kurundwad (Senior) .....				
	Kurundwad (Junior) .....				
(17 States)	Akalkot .....			2	Miraj (Junior) State.
	Phaltan .....				
	Jath .....			}	}
	Aundh .....				
	Ramdurg .....				
IX	Pudukkottai .....				
	Banganapallee .....				
	Sandur .....				
XIV	Kapurthala .....	}	}		
	Jind .....				
	Nabha .....				
	Mandi .....				
	Bilaspur .....				
(14 States)	Suket .....			3	Bilaspur State.
	Tehri-Garhwal .....				
	Sirmur .....				
	Chamba .....				
	Faridkot .....				
	Malerkotla .....				
	*Loharu .....				
XVII	Kalsia .....				
	Bashahr .....				
XV	Sonepur .....	}	}		
	Patna .....				
	Kalahandi .....				
	Keonjhar .....				
	Dhenkanal .....				
	Nayagarh .....				
	Talcher .....				
	Nilgiri .....				
	Gangpur .....				
	Bamra .....				
(25 States)	Seraikela .....			4	Bundi State.
	Baud .....				
	Bonai .....				
XVII	Athgarh .....				
	Pal Lahara .....				
	Athmalik .....				
	Hindol .....				
	Narsingpur .....				
	Baramba .....				
	Tigiria .....				
	Khandpara .....				
	Ranpur .....				
	Daspalla .....				
	Rairakhol .....				
	Kharsawan .....				

\*By special arrangement Loharu is represented by the representative of Bikaner State.

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
XVI-A	Bastar .....	}	Baud State.
	Surguja .....		
	Raigarh .....		
	Nandgaon .....		
	Khairagarh .....		
	Jaipur .....		
(14 States)	Kanker .....		
	Korea .....		
	Sarangarh .....		
XVII	Changbhakar .....		
	Chhuikadan .....		
	Kawardha .....		
	Sakti .....		
	Udaipur .....		
XVII	All other States .....	4	Baghat State.

**Mr. President:** There is no amendment to this motion.

The motion was adopted.

**Mr. President:** We have come to the end of the Agenda. We will now go back to the remaining item, *viz.*, the resolution to be moved by Shrimati Durgabai.

#### ADDITION OF RULES 38-C TO 38-V

**Shrimati G. Durgabai:** I beg to move Rule 38-C.

38-C. As soon as may be after a Bill has been introduced, the Bill shall, unless the President otherwise directs, be published in the Gazette of India.

**Mr. President:** There are two verbal amendments given notice of by Mr. Naziruddin Ahmed, that in the proposed Rule 38-C, for the words "after a Bill" the words "after the Bill", and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

**Shrimati G. Durgabai:** I accept that amendment.

**Mr. President:** Mr. Naziruddin Ahmed, She has accepted the amendment.

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

That in the proposed rule 38-C, for the words "after a Bill" the words "after the Bill," and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

**Shrimati G. Durgabai:** I have accepted the amendments.

The amendments were adopted.

**Mr. President:** I put Rule 38-C, as amended, to vote.

Rule 38-C, as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-D:

38-D. When a Bill is introduced, or on some subsequent occasion, the member who has introduced the Bill may make one of the following motions in regard to the Bill, namely:—

- (a) that it be taken into consideration by the Assembly either at once or on some future day to be then specified; or
- (b) that it be referred to a Select Committee;

Provided that no such motion shall be made until after copies of the Bill have been made available for the use of members and that any member may object to any such motion being made, unless copies of the Bill have been so made available for three days before the day on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

I accept the amendment that in the proposed Rule 38-D, for the words "When a Bill" the words "At the time when the Bill" be substituted.

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

That in the proposed Rule 38-D for the words "When a Bill" the words "At the time when the Bill" be substituted.

**Mr. President:** She has accepted that amendment. I put the Rule, as amended, to vote.

Rule 38-D as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-E (1).

38-E (1) On the day on which any such motion is made; or on any subsequent day to which the discussion thereof is postponed, the principles of the Bill and its general provisions may be discussed, but the details of the Bill must not be discussed further than is necessary to explain its principles.

**Mr. Naziruddin Ahmad:** I beg to move amendment No. 9—

That in sub-rule (1) of the proposed Rule 38-E, for the words "postponed, the principle" the words "adjourned, only the principles" be substituted.

With regard to this, the technical language which is used is not "postponed". "Postponed" means postponed for ever. Adjourned means adjourned for further consideration. The word "adjourned" is more suitable.

I also move amendment No. 10—

That in sub-rule (1) of the proposed Rule 38-E, for the words "the Bill must not" the following words be substituted:—

"The Bill shall not."

**Shrimati G. Durgabai:** Sir, I do not accept amendment No. 9. I accept amendment No. 10.

**Mr. Naziruddin Ahmad:** Sir, I beg the leave of the House to withdraw amendment No. 9.

**Mr. President:** May I take it that the House gives leave to withdraw amendment No. 9 ?

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

**Mr. President:** Amendment No. 10 has been accepted by the mover. I shall put Rule 38-E (1), as amended, to vote.

Rule 38-E (1), as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-E (2).

38-E (2) At this stage, no amendments to the Bill may be moved, but if the member who has introduced the Bill moves that his Bill be taken into consideration, any member may move as an amendment that the Bill be referred to a Select Committee.

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

That in sub-rule (2) of the proposed Rule 38-E, for the words "any member may" the words "any other member may" be substituted.

The point is that the member who moves cannot move an amendment. So the question of amendment must be left to any other member than the person who moves. That is why I think this amendment is necessary.

I also move—

That in sub-rule (2) of the proposed Rule 38-E, the words "or be circulated for eliciting public opinion thereon" be added at the end.

**Shrimati G. Durgabai:** I do not accept the amendment No. 11. I oppose amendment No. 12 also.

**Mr. Naziruddin Ahmad:** Sir, I beg the leave of the House to withdraw both these amendments.

**Mr. President:** I take it that the House gives leave to the withdrawal.

The amendments were, by leave of the Assembly, withdrawn.

**Mr. President:** I now put Rule 38-E, as amended, to vote.

Rule 38-E, as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-F.

38-F. (1) The member who has introduced the Bill shall be a member of every Select Committee, and it shall not be necessary to include his name in any motion for appointment of such a Committee.

(2) The other members of the Committee shall be appointed by the Assembly when a motion that the Bill be referred to a Select Committee is made.

(3) The committee shall choose a member of the Committee to be their Chairman, and in his absence may choose another member of the Committee to preside and exercise the power of the Chairman.

(4) The Chairman shall not vote in the first instance but, in the case of an equality of votes, shall have a casting vote.

(5) The Select Committee may bear expert evidence and representatives of special interests affected by the measure before them.

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

That in sub-rule (1) of the proposed rule 38-F, after the words "of every Select Committee" the words "to which the Bill may be referred" be inserted.

These words are necessary to complete the sense.

**Shrimati G. Durgabai:** He will please move all the amendments to Rule 38-F.

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

That in sub-rule (2) of the proposed rule 38-F, for the words "shall be appointed", the words "shall be elected" be substituted.

[Mr. Naziruddin Ahmad]

The word "election" is more proper in the case of selection by the legislature.

I beg to move also—

That in sub-rule (3) of the proposed rule 38-F, for the words "The Committee shall choose a member of the Committee" the words "The members of the Committee shall choose one of them" be substituted.

Sir, this is only a verbal amendment. The proposed Rule says that the 'members of a Committee' should choose a 'member of the Committee' as Chairman. Instead of repeating the same expression, I have said, choose 'one of them'.

My next amendment is:—

That in sub-rule (3) of the proposed rule 38-F, the words "of the Committee" after the words "may choose another member" be omitted.

The next amendment is:—

That in sub-rule (3) of the proposed rule 38-F, for the word "the powers of the Chairman" the words "the powers of the Chairman during his absence" be substituted.

The object of this amendment is this. The power of the person chosen to preside in the absence of the chairman can only be exercised during the absence of the Chairman. The Rule as it stands would mean that the man who is chosen to preside can continue to do so even when the Chairman returns and joins the meeting.

**Shrimati G. Durgabai:** Sir, I oppose all these amendments. All members of the Select Committee are "appointed" not "elected". That is the language used and it has been rightly adopted here also.

Sir, I would like to move a small amendment myself, namely:

that in sub-clause (1) of clause 38-F, for the word "every" before the words "Select Committee" the word "the" be substituted.

**Mr. Naziruddin Ahmad:** Sir, I beg leave to withdraw all my amendments, Nos. 13 to 17.

Amendments Nos. 13 to 17 were, by leave of the Assembly, withdrawn.

**Mr. President:** Now I put Rule 38-F as amended by the Mover to the vote.

Rule 38-F, as amended, was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-G.

38-G. (1) At the time of the appointments by the Assembly of the members of a Select Committee the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be fixed by the Assembly.

(2) If at the time fixed for any meeting of the Select Committee, or if at any time during any such meeting, the quorum of members fixed by the Assembly is not present the Chairman of the Committee shall either suspend the meeting until a quorum is present or adjourn the Committee to some future day.

(3) Where the Select Committee has been adjourned in pursuance of sub-rule (2) on two successive days fixed for the meeting of the Committee, the Chairman shall report the fact to the Assembly.

**Mr. Naziruddin Ahmad:** I do not move amendment No. 18 to this Rule, standing in my name.

**Mr. President:** So there are no amendments to this rule. I put it to vote.

Rule 38-G was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-H.

38-H. (1) When a Bill has been referred to a Select Committee, the Committee shall make a report thereon.

(2) Reports may be either preliminary or final.

(3) If any member of a Select Committee desires to record a minute of dissent on any point, he must sign the report stating that he does so subject to his minute of dissent, and must at the same time hand in his minute.

**Mr. President:** There are no amendments to this Rule. So I put it to vote.

Rule 38-H was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-I.

38-I (1) The report of the Select Committee on a Bill shall be presented to the Assembly by the Chairman of the Committee.

(2) In presenting a report, the Chairman shall, if he makes any remarks confine himself to a brief statement of facts, but there shall be no debate at this stage.

**Mr. President:** To this Rule also there are no amendments. So I put it to Vote.

Rule 38-I was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-J.

38-J. The Secretary shall cause every report of a Select Committee to be printed, and a copy thereof shall be made available for the use of every member of the Assembly. The report, with amended Bill shall, unless the President otherwise directs, be published in the Gazette of India.

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

That in the proposed rule 38-J, for the words "with amended Bill" the words "with the amended Bill" be substituted.

I think, Sir, this amendment should be accepted for obvious reasons.

**Shrimati G. Durgabai:** Sir, I accept this amendment.

**Mr. President:** I hope the House gives leave to accept this amendment.

The amendment was adopted.

**Mr. President:** I shall now put the Rule as amended.

Rule 38-J, as amended, was adopted.

**Shrimati G. Durgabai:** I move Rule 38-K.

38-K. (1) After the presentation of the final report of a Select Committee on a Bill, the member who has introduced the Bill may move—

(a) that the Bill as reported by the Select Committee be taken into consideration:

Provided that any member of the Assembly may object to its being so taken into consideration if a copy of the report has not been made available for the use of members for three days, and such objection shall prevail unless the President in his discretion allows the report to be taken into consideration; or



[Shrimati G. Durgabai]

(b) that the Bill as reported by the Select Committee be re-committed either:—

- (i) without limitation; or
- (ii) with respect to particular clauses or amendments only; or
- (iii) with instructions to the Select Committee to make some particular or an additional provision in the Bill.

(2) If the member who has introduced the Bill moves that the Bill be taken into consideration any member may move as an amendment that the Bill be recommitted.

**Mr. President :** There are no amendments to Rule 38-K. So I put it to vote.

Rule 38-K was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-L.

38-L. (1) The provisions of rules 38-A to 38K shall not apply to the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947 (hereinafter referred as “the Constitution”), and any member may introduce the Constitution after giving notice of his intention and it shall not be necessary to move for leave to introduce the Constitution.

(2) The period of notice for introducing the Constitution under this rule shall be five days unless the President allows the Constitution to be Introduced at shorter notice.

**Mr. Naziruddin Ahmad:** Sir, I have several amendments to this Rule. First, I beg to move,—

That in sub-rule (1) of the proposed rule 38-L, for the words “the Draft Constitution” the words “consideration of the Draft Constitution” be substituted.

Secondly I beg to move—

That in sub-rule (1) of the proposed rule 38-L, the words and brackets thereafter referred to as “the Constitution” be deleted; and for the words “referred as” the words “referred to as” be substituted.

On this amendment, Sir, I wish to say this. There is a distinction between the ‘Constitution’ and the ‘Draft Constitution’. Here the Draft Constitution is subsequently termed as the “Constitution”. The word ‘Constitution’ has been used to mean the ‘Draft Constitution’ and the terms are not interchangeable. This is certainly a shortened expression but it gives a different sense. That is why I have tabled this amendment. The latter part of the amendment removes a clerical error.

Next, Sir, I beg to move—

“That the following be omitted from sub-rule (1) of the proposed rule 38-L:—and any member may introduce the Constitution after giving notice of his intention and it shall not be necessary to move for leave to introduce the Constitution.”

Then, next I beg to move—

“That after sub-rule (1) of the proposed rule 38-L, the following new sub-clause be inserted:—

“(1A) The Draft Constitution shall, as soon as practicable, be published in the Gazette of India.

(1B) Any member may introduce the Draft Constitution after giving notice of his intention but it shall not be necessary to move for leave to introduce the same”.

Sir, I have attempted here to interpose a sub-rule (1-A) for the publication of the constitution of India in the Gazette of India. This is to ensure that the people at large should get notice of what was happening.

I think this is an obvious necessity. Publicity is the essence of democracy and the constitution should be published. As regards 1(B) it is nothing but the last part of sub-rule (1) made into an independent sub-clause just to interpose the publication clause in the Gazette.

I further beg to move—

“That in sub-rule (2) of the proposed rule 38-L and in the proposed rules 38-N, 38-O, 38-P, 38-Q, 38-R, 38-S and 38-T, for the word Constitution, Wherever it occurs, the words ‘Draft Constitution’ be substituted.”

This amendment is only consequential upon what I have submitted.

**Shrimati G. Durgabai:** Sir, I oppose all the amendments to Rule 38-L, except the latter part of the amendment No. 21 *i.e.*, for the words ‘referred as’ the words ‘referred to as’ be substituted. The publication is deliberately omitted as after the Constitution is drafted the President will take such steps as he likes to publish the same.

**Mr. Naziruddin Ahmad:** In that case I would ask for leave to withdraw all the other amendments.

**Mr. President:** The mover has accepted only one amendment *i.e.*, for the words ‘referred as’ the words ‘referred to as’ be substituted. That is accepted by the House. All other amendments are withdrawn.

Rule 38-L, as amended, was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-M.

38-M. When the Constitution is introduced the member introducing the Constitution may move that it be taken into consideration by the Assembly.

Provided that no such motion shall be made until after copies of the Constitution have been made available for the use of members, and that any member may object to any such motion being made unless copies of the Constitution have been made available for three days before the date on which the motion is made, and such objection shall prevail, unless the President in his discretion allows the motion to be made.

**Mr. President:** There is no amendment to 38-M.

Rule 38-M was adopted.

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

“That after the proposed rule 38-M, the following new rule be inserted, namely:—

“38-MM. When a motion is made that the Draft Constitution be taken into consideration, any other member may, on giving two days notice, move that it be circulated to elicit public opinion thereon or that it be referred to a Select Committee constituted by the President.”

In this matter as in the other motion it is desired that the greatest amount of publicity should be given to what is being done in connection with the Constitution but if it is your desire to take such action as you, Sir, in your wisdom think fit in this direction, then in that case I shall be prepared to withdraw the amendment but, as I have said, I think publicity is the very essence of democracy.

**Mr. President:** My own idea is that as soon as the Drafting Committee gives me the final draft I shall have it published in the Gazette and I shall also have cheap printed copies made available so that everyone who is interested may get copies and study and offer such suggestions as he may wish and I shall also see that a printed copy is made available to the members of the Constituent Assembly well in advance of the meeting when it will be considered.

**Mr. Naziruddin Ahmad:** That, I beg to submit, will more than satisfy the object of these amendments and I beg leave of the House to withdraw my motion.

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

**Shrimati G. Durgabai:** Sir, I move clause 38-N.

38-N. When a motion that the Constitution or a Bill be taken into consideration has been carried, any member may propose an amendment of the Constitution or the Bill, as the case may be.

**Mr. Naziruddin Ahmad:** Sir, I move—

“That in the proposed rule 38-N, for the words ‘has been carried’ the words ‘has been agreed to’ be inserted; for the word ‘any member’ the words ‘any other member’ and for the words ‘amendment of’ the words ‘amendments to’ be substituted”.

With regard to the first part of the amendment the word ‘agreed to’ is the recognized word in the Legislature rather than ‘Carried’. With regard to the second part of the amendment for ‘any member’ the words ‘any other member’ has been suggested to distinguish between the member who moves the motion and the rest. The last part is only a drafting amendment.

**Shrimati G. Durgabai:** I oppose this amendment, because ‘carried’ is the recognized word in the Assembly Rules. ‘Any member’ means ‘and other member’ and so I do not accept his amendment.

**Mr. Naziruddin Ahmad:** I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Rule 38-N was adopted.

**Shrimati G. Durgabai:** I beg to move clause 38-O.

38-O. (1) If notice of a proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall, prevail, unless the President in his discretion allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every notice of a proposed amendment to be printed, and a copy thereof to be made available for the use of every member.

**Shri H. V. Kamath :** Mr. President, my knowledge of the English language is very meagre and it is therefore with considerable trepidation that I submit that the mandatory ‘shall’ and the conditional ‘if’ go ill together and their juxtaposition, one in the main and the other in the subordinate clauses of this sub-rule, might do violence to the rules of syntax. But if our wise linguistic experts here hold otherwise, then I do not desire to press this amendment. I move the amendment:—

“That in sub-rule (2) of the proposed rule 38-O, for the words ‘The Secretary shall, if time permits, cause’ the following be substituted:—

“The Secretary may, if time permits, cause”.

or alternatively,

“The Secretary shall cause.”

**Shrimati G. Durgabai:** I oppose this amendment.

**Mr. President:** Then I put Mr. Kamath’s amendment to the House.

The amendment was negatived.

**Mr. President:** Then I put Rule 38-O.

Rule 38-O was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-P.

38-P. Amendments shall ordinarily be considered in the order of the clauses of the constitution or the Bill to which they respectively relate; and in respect of any such clause a motion shall be deemed to have been made “that this clause stand part of the Constitution” or “that this clause stand part of the Bill”, as the case may be.

**Mr. President:** There is no amendment to this Rule. So I put it to the House.

Rule 38-P was adopted.

**Shrimati G. Durgabai:** Sir, I beg to move Rule 38-Q.

38-Q Notwithstanding anything in these rules, it shall be in the discretion of the President, when a motion that the Constitution or a Bill be taken into consideration has been carried, to submit the Constitution or any part of the Constitution, or as the case may be, the bill or any part of the Bill, to the Assembly clause by clause. When this procedure is adopted, the President shall call, each clause separately, and, when the amendments relating to it have been dealt with, shall put the question. “That this clause (or, as the case may be, that this clause as amended) stand part of the Constitution (or, as the case may be, the Bill)”.

**Mr. Naziruddin Ahmad:** Sir, I beg to move that for the proposed Rule 38. for the words “has been carried” the words “has been agreed to” and for the words “or as the case may be, the Bill or any part of the Bill” the words and brackets “(or, as the case may be, the Bill or any part of the Bill)” be substituted.

Sir, with reference to the first part, I think it has already been disposed of. So I do not press for changing the words “has been carried” by the words “has been agreed to”. But with regard to the second part of my amendment, the words “as the case may be” occur in line 5, and also at the end. But at the end they are inside the brackets and not at the place which is the subject of the amendment. Therefore, to ensure uniformity, I have brought in this amendment.

**Shrimati G. Durgabai :** I consider the first part of the amendment unnecessary. The second part, of putting the words in brackets, I accept.

**Mr. President:** The Mover has accepted the second part and I now put the Rule; as amended, to the House.

Rule 38-Q, as amended, was adopted.

**Shrimati G. Durgabai :** Sir, I beg to move Rule 38-R.

38-R. (1) When a motion that the Constitution be taken into consideration has been carried and all amendments to the Constitution moved have been considered, any member may move that the Constitution be passed;

[Shrimati G. Durgabai]

Provided that the President may, before allowing the motion to be made, refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Constitution as may be required.

(2) When the Constitution has been so referred to the Drafting Committee and the Committee has presented its report, any member may move that the Constitution has revised by the Committee be passed.

(3) To a motion made under sub-rule (1) or sub-rule (2) no amendment may be moved which is not either formal or consequential upon an amendment made after the Constitution was taken into consideration.

**Mr. Naziruddin Ahmad:** Sir, I do not move the first part of my amendment about substituting the words "agreed to" for the words "has been carried". But I move :—

That in the proviso to sub-rule (1) of the proposed rule 38-R, commas be inserted after the words "to the Drafting Committee" and the words, "in sub-rule (1) of rule 38-L".

I also move—

That in the proviso to sub-rule (1) of the proposed rule 38-R, after the words "such re-numbering of the clauses" the words "and such revision of punctuation" be inserted.

With regard to these amendments, the rule proposes that, after the Constitution is adopted by this House, to refer the Draft Constitution to the Drafting Committee for certain corrections and changes. But the revision of the punctuations is not provided for, though in the Legislative Rules of Business this power is given to the Secretary. But that rule is not being followed so far as the Constitution is concerned. Therefore the question of the revision of punctuations should also be given to the Committee.

I also move my amendment No. 32—

That in sub-rule (2) of the proposed Rule 38-R, after the words "referred to the Drafting Committee" the words "under the proviso to sub-rule (1)" be inserted.

**Shrimati G. Durgabai:** I accept amendments Nos. 30 and 31. But I oppose amendment No. 32.

**Mr. Naziruddin Ahmad:** Sir, then I would beg leave to withdraw my amendment No. 32.

**Mr. President:** I hope he has the leave of the House to withdraw his amendment No. 32.

Amendment No. 32 was, by leave of the Assembly, withdrawn.

Amendments Nos. 30 and 31 were adopted.

**Shrimati G. Durgabai:** Sir, I have two verbal amendments to propose. One is that in line 2, the word 'all' in 'and all amendments' may be changed to 'the'. The second is, to insert the words 'if any' between the words 'Constitution' and 'moved' in line 3.

**Mr. President :** Then I put the rule 38-R (1), (2) and (3) as amended, to the House.

Rule 38-R as amended was adopted.

**Shrimati G. Durgabai:** Sir, I move rule 38-S.

38-S. (1) Where a motion that a Bill be taken into consideration has been carried and no amendment to the Bill is made, the member who has introduced the Bill may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail, unless the President in his discretion allows the motion to be made:

Provided that the President may, before allowing the motion to be made refer the Bill as amended either to the Drafting Committee referred to in sub-rule (1) of rule 38-L, or to another *ad hoc* Committee consisting of members of the Assembly appointed by him with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Bill as may be required.

(3) Where the objection prevails, a motion that the Bill be passed may be brought forward on any future day.

(4) When the Bill has been so referred to the Drafting Committee or the Committee appointed under the proviso to sub-rule (2) and the Committee has presented its report, any member may move that the Constitution as revised by the Committee be passed.

(5) To a motion made under sub-rule (2), sub-rule (3) or sub-rule (4), no amendment may be moved which is not either formal or consequential upon an amendment made after the Bill was taken into consideration.

**Mr. Naziruddin Ahmad:** My amendment No. 33 seeks to substitute "has been agreed to" for the words "has been carried". But that has already been disposed of and so I do not move it. I move amendments Nos. 34 and 35.

That in the proviso to sub-rule (2) of the proposed rule 38-R, 38-S, after the words "renumbering of the clauses" the words "and such revision of punctuation" be inserted.

That in sub-rule (4) of the proposed rule 38-S, for the words "that the Constitution" the words "that the Bill" be, substituted.

Sir, so far as rule 38-S is concerned, it deals with a Bill alone as distinct from the 'Constitution'. In some of the rules, the words 'Constitution' and 'Bill' are used. But so far as this particular rule is concerned, I carefully looked into it and find that it deals with only Bill. Therefore, the word 'Constitution' is, I take it, clerical error, and the word 'Bill' should be used.

**Shrimati G. Durgabai:** Sir, I accept No. 34, but No. 35 is not necessary as the clerical error has been corrected since.

**Mr. Naziruddin Ahmad:** But the difficulty is the original motion was as it was then printed and not with the correction. So it will have to be moved again along with the correction.

**Shrimati G. Durgabai:** Sir, I move that the word 'Bill' may be substituted for the word 'Constitution'.

**Mr. Naziruddin Ahmad:** That is exactly my amendment.

**Mr. President:** That means both the amendments are accepted by the mover.

**Shri M. Ananthasayanam Ayyangar :** Sir, in sub-rule (1) it is stated "that a Bill be taken into..... etc." In sub-rule (4) we have "When the Bill has been etc." In the last but one line, the word "Constitution" is used. Is that the one to be changed to "Bill"?

**Mr. President :** The word "Bill" has to be used for "Constitution" all through.

Rule 38-S, as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-T.

"The member who has introduced a Bill may at any stage of the Bill move for leave to withdraw the Bill, and after such leave is granted, no further motion may be made with reference to the Bill."

**Mr. Naziruddin Ahmad:** I move—

“That in the proposed rule 38-T, for the words ‘and after such’, the words ‘and if such’ be substituted.”

This is only a verbal amendment.

**Shrimati G. Durgabai:** I accept the amendment.

The amendment was adopted.

Rule 38-T, as amended, was adopted.

**Shrimati G. Durgabai:** I beg to move Rule 38-U—

“When the Constitution is passed by the Assembly, it shall be submitted to the President who shall authenticate the same by affixing his signature thereto.”

**Shri M. Ananthasayanam Ayyangar:** A small error has crept in here. The clause says: “When the Constitution is passed by the Assembly, it shall be submitted to the President.....” There is no agency for that submission. Instead of this, we may amend the clause as follows:

“When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto.”

**Shrimati G. Durgabai:** I accept the amendment, Sir.

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

“When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto.”

Rule 38-U, as amended, was adopted.

**Mr. Naziruddin Ahmad:** I move New-Rule 38-UU I have given notice of. It runs :

After the proposed rule 38-U, the following new rule be inserted :

“38-UU. The Draft Constitution as so authenticated by the President shall be published in the Gazette of India and shall thereupon constitute the Constitution of Free India.”

**Shrimati G. Durgabai:** I do not accept this new rule. This matter has already been dealt with.

**Mr. Naziruddin Ahmad:** In view of the fact that this is only a routine matter I beg leave to withdraw this motion.

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

**Mr. Naziruddin Ahmad:** I have to apologise to the House for speaking so often. But it was due to the desire to improve the rules in my own humble way that I have done so. I am afraid I have tired out the patience of the House I am sorry for it. But since these defects came to my notice I thought it my duty to raise them before the House.

**Mr. President:** The Honourable Member need not apologise to the House for that. I am sure we are thankful to him.

**Shrimati G. Durgabai:** I move clause 38-V—

“When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for

his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be Published in the *Gazette of India*."

**Shri H. V. Kamath:** Sir, I would suggest in this connection that, as this Rule 38-V has come in for a good deal of adverse criticism, it may be referred back to an expert committee for re-examination in the light of the objections raised here.

**Shri M. Ananthasayanam Ayyangar:** Regarding this rule, at the time of the consideration stage, I myself raised two points for clarification by the Honourable Dr. Ambedkar. I do still think that his reference to the Governor-General and his assent is not necessary. Though I may not agree to the rule being referred back to the Committee, here and now it is possible to change it if the Mover, with the advice of Dr. Ambedkar, changes her opinion. I will be very glad if she does so. I consider that these rules provide for the passing of the new Constitution for India and also the same set of rules, with the exception of one, apply to the modification of the existing Constitution. Other Acts will be brought forward to empower the executive to make rules and regulations to the Indian Union in the Constituent Assembly (Legislative Section). Therefore, so far as these other bills are concerned, they are regulated by the Government of India Act as adapted. Clause 32 lays down that these rules must receive the assent of the Governor-General and it is open to him to withhold his assent and remit for re-consideration either wholly or with reference to particular sections and so on. But so far as this section is concerned, do we want the Governor-General to exercise this power? I do think that because of some errors that might have crept in we are clothing him with this power.

Therefore the errors are no argument for clothing the Governor-General with this power. There was another point raised. Under the existing law, under the Independence Act passed by Parliament of Britain, the Governor-General has been given the power to adapt the 1935 Act to suit the changed conditions. But that power continues only till 31st March 1948. If because he is given that power, he modifies the Act, he will become a super-legislature so far as the Act is concerned. If any further change has to receive his assent that power will lapse after 31st March 1948. There is no likelihood of the Government of India Act hereafter being changed. So, hereafter, when the Government of India Act as adapted will be no more there, why should we re-clothe the Governor-General with this power? Further, it is not in the Legislative side of the Dominion legislature that we are trying to modify the Constitution Act. It is only on this side, which deals with the new Constitution for India that we have taken power to modify the existing Acts. Therefore these two, the modifications of the existing Act and the preparation of a new Constitution differ fundamentally and for the latter there is no need to get the assent of the Governor-General. When we are making a law, let us not fall into that error. In some advice that was given by Dr. Ambedkar he said that it is open to this Assembly to modify the provision for reference to the Governor-General. Therefore he is not wedded to that opinion. It is open to Dr. Ambedkar to change his mind. I would appeal to him to reconsider this matter. We are trying to lift ourselves from the old curse under which we have been living for 150 years. We have struggled against it for a long time. Why should we again submit our neck to the Governor-General, whether he is our nominee or any other? Therefore, instead of re-committing this to the Committee we may make the modification straightaway.

**Shri H. V. Kamath:** Sir, I submit that so far as this Assembly is concerned, you are the supreme authority and no bill or resolution adopted by this Assembly should be submitted for ratification by or assent to any outside authority, and as such this clause is not necessary.



**Mr. President:** Does any other Member wish to speak about this clause? There is no amendment unless I take Mr. Kamath's suggestion as an amendment that it be referred back to the Committee.

**Shri H. V. Kamath:** I would request you to treat it as an amendment.

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

That the proposed Rule 36-V be referred to the Drafting Committee.

The amendment was adopted.

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ANNOUNCEMENT BY PRESIDENT *re* NEXT SESSION

**Mr. President:** We have come to the end of the agenda and there is one thing which has to be done before we adjourn, and that is to give me power to convene the next session of the Assembly at a suitable time. Under the rules, I cannot call it after a limited time, but in this case I suppose it would be a pretty long time before the next session is called for considering the draft Constitution. So I wish you to give me the power to call it at a suitable time.

**Seth Govind Das** (C.P. & Berar: General) : \*[Mr. President, I propose that the authority for the calling of the next session of the Assembly should be given to the President.]\*

**Mr. President:** Is there any amendment to this ?

The motion was adopted.

**Mr. President:** I will give the House an idea of the time-table that I have in my mind. I expect the drafting Committees to give me the final draft about the middle of February and as soon as the final draft is received, it will be printed and it will be sent to the Press and it will also be published in the Gazette and otherwise publicised and when the Legislative Session is over, which will be. I expect some time towards the end of March or beginning of April, I shall fix a suitable date, sometime in April, for the next session of the Constituent Assembly for considering the Draft Constitution and we shall sit as long as it is necessary to complete the consideration and final adoption of the Constitution.

**An Honourable Member:** Will there be any interval between the Legislative session and the Constituent Assembly session ?

**Mr. President :** I think I shall give a few days' interval but not a long interval.

**Mr. R. K. Sidhwa:** We will require a fortnight at least.

**Mr. President:** I shall give a short interval, but I do not know how much it will be.

**An Honourable Member:** Not less than two weeks.

**Mr. President:** I shall consider that it all depends upon when the Legislative session ends.

**An Honourable Member:** It is due to end on the 4th April.

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\*[ ]\*English Translation of Hindustani speech.

**Mr. President :** Every year it is stated that the session will end on such and such a date, but then it is extended beyond that date. It is not possible to fix a date today, but I shall give some time after it.

The Assembly then adjourned to a date to be fixed by the President.

## STATE-WISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA

(As on 23 August, 1949)

### PROVINCES—235

	<i>No. of Members</i>
1. MADRAS	49
2. BOMBAY	21
3. WEST BENGAL	21
4. UNITED PROVINCES	55
5. EAST PUNJAB	16
6. BIHAR	36
7. C.P. AND BERAR	17
8. ASSAM	8
9. ORISSA	9
10. DELHI	1
11. AJMER-MERWARA	1
12. COORG	1

### INDIAN STATES—72

1. MYSORE	7
2. KASHMIR	4
3. BARODA	3
4. JODHPUR	2
5. JAIPUR	3
6. BIKANER	1
7. KOLHAPUR	1
8. MAYURBHANJ	1
9. SIKKIM-COOCH BEHAR	1

	<i>No. of Members</i>
10. TRIPURA, MANIPUR AND KHASI STATES	1
11. RAMPUR-BANARAS	1
12. ORISSA STATES	4
13. C.P. AND BERAR STATE	3
14. MADRAS STATES	1
15. BOMBAY STATES	4
16. HIMACHAL PRADESH	1
17. UNITED STATE OF KATHIAWAR (SAURASHTRA)	4
18. UNITED STATE OF MATSYA	2
19. UNITED STATE OF RAJASTHAN	4
20. UNITED STATE OF VINDHYA PRADESH	4
21. UNITED STATE OF GWALIOR-INDORE-MALWA (MADHYA BHARAT)	7
22. PATIALA AND EAST PUNJAB STATES UNION	3
23. UNITED STATE OF TRAVANCORE AND COCHIN	7
24. CUTCH	1
25. JUNAGADH	1
26. RESIDUARY STATES	1