

Friday, 7th October, 1949

Volume X



सत्यमेव जयते

**6-10-1949
to
17-10-1949**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed at JAINCO ART INDIA, New Delhi.

THE CONSTITUENT ASSEMBLY OF INDIA

President:

THE HONOURABLE DR. RAJENDRA PRASAD.

Vice-President:

DR. H.C. MOOKHERJEE.

Constitutional Adviser:

SIR B.N. RAU, C.I.E.

Secretary:

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

Joint Secretary:

MR. S.N. MUKHERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

CONTENTS

Volume X—6th October to 17th October 1949

	PAGES		PAGES
Thursday, 6th October 1949—		New Article 67A considered	
Adjournment of the House	1	Programmes <i>re</i> Third Reading.	
Meeting time for the House	1—2	Friday, 14th October 1949—	
Friday, 7th October 1949—		Draft Constitution—(<i>Contd.</i>)	229—264 266—288
Taking the Pledge and Signing the Register	3	[Articles 296, 299, articles re-opened 48, 62, 67, 109, 112, 119, 135, 144, 149, 230, 303 and first schedule considered]	
Draft Constitution—(<i>Contd.</i>)	3—32	Statement <i>re</i> Report of Minorities Advisory Committee	265—266
[Articles 306, 309, 310-A and B, 311-A and B, 312, 312-A to E, 312-G and H and 313 considered]		Saturday, 15th October 1949—	
Monday, 10th October 1949—		Constituent Assembly Rules (Amendment)	289—312
Taking the Pledge and Signing the Register	33	Draft Constitution—(<i>Contd.</i>)	312—324
Draft Constitution—(<i>Contd.</i>)	33—84	[First Schedule considered]	
[New articles 283-A, articles 307, 308, 310 and 311 considered]		Sunday, 16th October 1949—	
Tuesday, 11th October, 1949—		Draft Constitution—(<i>Contd.</i>)	325—383
Draft Constitution—(<i>Contd.</i>)	84—118	[Articles 264A, 274DD and 302AA considered]	
[Articles 311, 312F, Schedules IIIA, IV and Second considered]		[Schedule III and Articles 13, 16, 27, 42, 280A, 85, 111, 112, 203, 122, 130, 169, 213A and 215A considered]	
Wednesday, 12th October 1949—		Monday, 17th October 1949—	
Draft Constitution—(<i>Contd.</i>)	119—174	Motion <i>re</i> Allowances of Members	385—388
[Second Schedule and Part VI-A-considered]		Draft Constitution—(<i>Contd.</i>)	388—457
Thursday, 13th October 1949—		[Articles 59, 62, 147, 175, 13, New Article 302AAA, Schedule IIIA, Part XVIII, 315, 306A and Preamble considered].	
Draft Constitution—(<i>Contd.</i>)	175—228		
[Part VI-A—Articles 235, 236, 274DD, 274DDD, 302A, 306B, 267, 270A, 197, 235A and 267A considered]			
[Articles (reopened)—3, 47, 55, 67, 83, 92, 100, 248B, 263, Seventh Schedule and Article 270 considered]			

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 7th October 1949

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

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:—

Shri Samaldas Laxmidas Gandhi : (Junagadh).

DRAFT CONSTITUTION—(Contd.)

Article 306

Mr. President : We shall now proceed with the consideration of the articles relating to transitory provisions.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

“That for clauses (a), (b) and (c) of article 306, the following clauses be substituted:—

- “(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.”

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause (a), it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause (a) is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present decontrolled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub-clause (b) of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c), Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

Mr. President : May I enquire of Dr. Ambedkar? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have considered that.

The Honourable Dr. B. R. Ambedkar : This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-clause (a), I certainly have no objection.

Mr. President : I speak from my experience which is now rather out of date.

The Honourable Dr. B. R. Ambedkar : I think it is rather desirable to include that item.

Dr. P. S. Deshmukh (C.P. & Berar: General) : That may be done in consultation with the Agriculture Department.

Mr. President : That is what I suggest.

The Honourable Dr. B. R. Ambedkar : I think we shall add that. I can put in, foodstuffs including cattle fodder.

Mr. President : Cattle fodder including oil cakes and other concentrates.

There are certain amendments to this. Amendment No. 2. Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I move:

“That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words ‘State in the words ‘State with respect to be substituted.”

“That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words and brackets coal (including coke and derivatives of coal)’ the words ‘coal, coke and derivatives of coal be substituted.”

These are more or less of a drafting nature, although the first one that I have moved would make some difference if my wording is preferred. However, I do not wish to press them and I am prepared to leave them for the consideration of the Drafting Committee.

Mr. President : There is an amendment printed in Volume II in the name of Pandit Kunzru.

Shri Brajeshwar Prasad (Bihar: General): I have an amendment Sir.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad : Sir, I move:

“That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Volume II) in article 306, for the word ‘five’ the word ‘fifteen’ be substituted.”

The members of the Drafting Committee are of opinion that they will be able to tide over the economic difficulties with which we are confronted in the transitional period within a period, of five years. That is the only purpose why article 306 has been brought in this Draft Constitution. I am of opinion that within five years they will not succeed in their venture. The economic crisis with which we are confronted is not only of a national character. It has an international bearing. I am of opinion that, as a result of the economic structure of the capitalist society and as a result of the war, the whole structure of human society is crumbling down and India especially is passing through a period of decadence and decline. The entire fabric of our society is in the melting pot. I feel that revolution is knocking at our doors. Matters like foodstuffs and minerals should have been kept within the purview of the Government of India, but now the only thing that we can do is to keep these under the Government of India at least for the transitional period. The period of transitions will cover a period of fifteen years and not five years.

But no crisis can continue for a longer period and if it continues longer, it will mean the end of the State. Either we tide over the crisis or the crisis will tide over us. It will bring utter chaos such as we are witnessing in China today if the crisis continues for more than fifteen years. So we must surmount these difficulties within this period.

The basis for this Constitution is federal in structure. I hold the opinion that centrifugal forces will become so strong that the process of amendment will have to be resorted to in order to change this Constitution. We must take into consideration the political facts of our life. With this background in view article 306 ought to be modified. My amendment is very reasonable., In the concluding portion of article 306 it has been said that all laws passed under this article to the extent to which they are inconsistent with the main provisions of this Constitution will cease to operate. I think this is unnecessary and undesirable. The work of centralization which will be achieved within five years should not be undone. The provincial Governments must accept the laws passed within this period of five years or fifteen years if the House accepts my amendment. The scope of article 306 is also limited from another point of view. We have given powers to Parliament to deal with production, supply and distribution etc., of these commodities. The entire gamut of these subjects ought to have been brought within the purview of the Government of India. Why this limited sphere ? This limited power is not desirable. I think fissiparous forces ought to be circumvented if we are to become a powerful nation.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, I move:

“That in clause (a) of article 306 after the word ‘coal’ the words ‘charcoal, firewood’ be inserted.”

I am sure the House is well aware that under the Defence of India Act the prices of charcoal and firewood were controlled. But for the power delegated to the provinces by the Government of India the provinces would not have been in a position to control the prices of these two articles. The Defence of India Act is no longer in force and it is therefore desirable to amend clause (a) of the article placed before us by Dr. Ambedkar in order to include these two things. I understand that after the Defence of India Act expired these things continue to be controlled by the Government of India under the provisions of an Act amending the Government of India Act, 1935, passed by Parliament in 1946. There is no mention of charcoal or firewood there. But it is believed that they are included among the derivatives of coal. I am totally unable to accept this explanation. No one has challenged the action taken by the authorities in fixing the prices of charcoal and firewood but had anybody done so, I doubt whether any Court would have accepted the plea that charcoal or firewood was a derivative of coal. What we understand by coal, generally speaking is anthracite. Charcoal is the derivative of wood, and certainly not a derivative of coal. Neither charcoal nor wood can be regarded as a derivative of coal. It is, therefore, necessary to provide for the control of the Government of India expressly in respect of both these things. The common man is concerned with them. When we are providing for the control of the Government of India over a number of other things, it is both desirable and necessary that we should think of the needs of the poor man too, and take power in the Constitution to control the prices of those articles also, that affect his household budget. We all know how serious the position was during the war, in respect of these articles, and we also know how high their prices still are. We usually think of the high prices of foodstuffs, and few people realise that the high prices of charcoal and firewood are matters of as much anxiety to the poor man as the high prices of the foodstuffs.

[Pandit Hirday Nath Kunzru]

As Dr. Ambedkar is in a mood to consider suggestions to amend the clauses placed before him, I hope that he will take this matter too into consideration and take power to see that the clause (a) is so amended as to give complete power to the Government of India to control trade in charcoal and firewood also.

Mr. President : These are all the amendments. Does anyone wish to say anything about the original proposition or any of the amendments ?

Prof. Shibban Lal Saksena (United Provinces : General): Mr. President, Sir, in this article, we have provided that certain subjects which normally form part of the State List should be in the Concurrent List for the first five years. At present also there is a similar provision in the Government of India Act (Adaptation) 1946 which is intended to tide over the present period. But the period fixed here in this article seems to me to be too short. This article says that for the first five years these items which are mentioned in the State List, it may be necessary to have in the Concurrent List so that necessary action may be taken by the Parliament. I would in this connection commend the amendment moved by my Friend Shri Brajeshwar Prasad to the effect that this period of five years is too short and that it should be for a longer period. If found unnecessary, we may cut it short, but there is no harm in having provision for a longer period in the Constitution.

Secondly, Sir, I would have liked that the Subject of relief and rehabilitation too had been mentioned in this list of subjects to be put in the Concurrent List. I do not know if it is the intention to omit this Subject from the Concurrent List. If not here, this subject should be mentioned somewhere else in the Constitution so that Parliament may be able to make proper laws for the relief and rehabilitation of millions of people who have been.....

Mr. President : Entry 33 B of Concurrent List includes Relief and Rehabilitation of persons displaced from their original places on account of the partition. So, you will see, it has been provided.

Prof. Shibban Lal Saksena : Sir, I am glad it has found a place in the Constitution. I will not say anything further about it. I shall withdraw my suggestion, But I feel that the period of five years should be extended.

Mr. President : Does anyone else wish to speak? Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

Mr. President : And the Ministry of Agriculture also. You may consult that Ministry also.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will consult the Ministries concerned.

Mr. President : Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4?

Dr. P. S. Deshmukh : I am not moving it.

Mr. President : Then I put No. 5-amendment of Shri Brajeshwar Prasad.

The question is:

“That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Vol. 11), in article 306, for the word ‘five’ the word ‘fifteen’ be substituted.”

The amendment was negatived.

Mr. President : Then I put tile amendment moved by Dr. Ambedkar.

The question is:

“That for clauses (a), (b) and (c) of article 306 the following clauses be substituted:—

- ‘(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned ill clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court’.”

The amendment was adopted.

Mr. President : Then I put the article as amendment by Dr. Ambedkar’s amendment.

The question is:

“That article 306, as amended, stand part of the Constitution.”

The motion was adopted.

Article 306, as amended, was added to tile Constitution.

Article 309

Mr. President : Then we take up article 309.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Shri Brajeshwar Prasad adding a new article 307A.

Mr. President : But shall we take it up now?

The Honourable Dr. B. R. Ambedkar : It may be kept back.

Shri T. T. Krishnamachari (Madras: General) : ‘The new article suggested by Pandit Thakur Das Bhargava in amendment No. 3303, Volume II may, I think be disposed of.

Mr. President : Well. Pandit Thakur Das Bhargava? He is not in the House. There are two others who have given notice of it. Lala Achint Ram?’ Shri Deshbandhu Gupta? None of them is moving the amendment. The amendment of Mr. Brajeshwar Prasad also cannot be moved.

I will put article 309 to vote. There is no amendment to it.

The question is :

“That article 309 stand part of the Constitution.”

The motion was adopted.

Article 309 was added to the Constitution.

Articles 310-A and 310-11

Shri T. T. Krishnamachari : The next article 310 'Is linked to article 308. These two may be considered together.

Mr. President : Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

The Honourable Dr. B. R. Ambedkar : Sir, with your permission I move amendment No. 12 in a slightly amended form, thus:

"That after article 310, the following new articles be inserted:—

307 A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement".

310 B. (1) The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members."

Sir, these articles merely provide for the continuance of certain incumbents, of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General. There is no matter of principle involved in these articles.

Dr. P. S. Deshmukh : Sir, I move

"That in amendment No. 12 of List I (First Week), in the proposed new article, 310 B, after the words 'commencement of this Constitution' wherever they occur, the words 'whose services have not, for any reason, been terminated' be inserted."

I intended to move a similar amendment to article 310 also. My difficulty is that in case the proposed new article stands as it is, the question will arise as to whether every one who happens to be a member of a Service Commission of State even when the States have one combined Commission will have to be continued as a member of the Commission for the group of States. According to the article as it is worded, there will be no power left to the Government but to continue every single individual who is holding any post on the Commission at present even after the commencement of the Constitution. If a member whose services could be terminated on the formation of a joint service commission for a number of States could not be so terminated if the wording of the article is to remain as it is. There is no provision there to terminate the services of some members. Every one would have automatically to be kept on. I think it will lead to considerable expenditure of money. I therefore propose that the words I have suggested may be included so as

to reduce the number of persons who happen to be there in a particular area as members of the public service commission of that area.

The Honourable Dr. B. R. Ambedkar : I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

Mr. President : I will first put the amendment of Dr. Deshmukh to vote.

The question is:

“That in amendment No. 12 of List I (First Week), in the proposed new article 310 B, after the words ‘commencement of this Constitution’ wherever they occur, the words ‘whose services have not, for any reason, been terminated’ be inserted.”

The amendment was negatived.

Mr. President : I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

The question is:

“That after article 310, the following new article be inserted:—

‘310-A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement.’

The motion was adopted

Mr. President : ‘The question is:

“That after article 310 A, the following new article be inserted:—

310 B. (1) The members of the public Service Commission for the Dominion of India holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.’ “

The motion was adopted.

Articles 310-A and 310-B were added to the Constitution.

Article 311A

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

“That after article 311, the following new article be inserted:—

‘311A. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office,

[The Honourable Dr. B. R. Ambedkar]

- (2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President’.”

Mr. President : There are two amendments to this. One is for the deletion of the word “provisional” before the word “President”:

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

“That in amendment No. 28 of List IT (First Week), in clause (1) of the proposed article 311A the word ‘provisional’ be deleted.”

“That in amendment No. 28 of List 11 (First Week), in clause (2) of the proposed article 31 1 A, for the words ‘provisional President’ in the first place where they occur the words ‘President so elected by the Constituent Assembly of the Dominion of India,’ be substituted.”

“That in amendment No. 28 of List It (First Week), in clause (2) of the proposed article 31 1 A, for the words ‘the Provisional President’ in the second place where they occur, the word ‘President’ be substituted.”

Dr. P. S. Deshmukh : Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

Mr. President : The article and the amendments are now open to discussion.

Shri R. K. Sidhwa (C. P. & Berar: General): I have an amendment standing in my name:

“That in amendment No. 13 in the proposed new article 31 1 B for the word ‘provisional’ wherever it occurs, the word ‘first’ be substituted.”

I am glad, Sir, that Dr. Ambedkar has agreed to leave out the word “provisional” before the word “President”, because I cannot see how you can have a provisional President. The House, duly constituted, will elect the President. He may be the first President, but you cannot call him “provisional”. The word “provisional” will mean that somebody has nominated him. I do not want any aspersion cast on our first President and I therefore thought that the word “first” will be more appropriate. Under the Government of India Act of 1935 when Orissa was separated from Bihar and N.W.F. Province was created into a separate province, and when Sind was separated from Bombay and constituted as a separate province, during the transitory period, the Governors of these provinces were called the first Governors although they were nominated. I think that the word “provisional” will be unjustified and unfair to use in connection with our first President whom we shall be electing under the provisions of this Constitution. I am therefore glad that the Drafting Committee has omitted the word “provisional”. I would prefer the word “first” but the omission of the word “provisional” serves my purpose, and I have no objection to it. With these words, I commend the amendment for the acceptance of the House.

Prof. Shibban Lal Saksena : Mr. President, Sir, clause (2) of article 311A as moved by Dr. Ambedkar says that in the event of the occurrence of any vacancy in the office of the Provisional President, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution. My point is that Parliament should not be called “provisional”. I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the word “provisional” before the word “Parliament”, as he has done in the case of the President.

The Honourable Dr. B. R. Ambedkar : I do not think there can be any great objection to the retention of the words “provisional Parliament” I do

not propose to make any change in that. It would not be called the “Provisional Parliament” but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

Shri R. K. Sidhwa: But I thought that Dr. Ambedkar has agreed to omit the word “Provisional”.

Mr. President : No, this is with reference to the Parliament. Mr. Shibban Lal Saksena wanted that the word “Provisional” should be omitted before the word “Parliament”.

Dr. P. S. Deshmukh : If that is so, I would like to move my amendment for the deletion of the word “Provisional” in the other place also.

Mr. President : Does your amendment refer to Parliament also ?

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

Mr. President : Mr. Shibban Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is:

“That in amendment No. 23 of List 11 (First Week), in clause (1) of the proposed article 311A the word ‘provisional’ be deleted”.

The amendment was adopted.

The Honourable Shri K. Santhanam (Madras: General): Does it mean the word “Provisional” will be deleted before the word “Parliament” also ?

Mr. President : No; that comes later on.

The question is—

“That in amendment No. 28 of List 11 First Week), in clause (2) of the proposed article 311A, for the words ‘provisional President’ in the first place where they occur, the words ‘President so elected by the Constituent Assembly of the Dominion of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words ‘the provisional president’ in the second place where they occur, the word ‘President’ be substituted.”

The amendment was adopted.

Mr. President : Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal Saksena.

The question is:

“That in clause (2) of the proposed new article 311 A, the word ‘provisional’ occurring before the word ‘Parliament’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That article 311 A, as amended stand part of the Constitution”.

The motion was adopted.

Article 311A, as amended, was added to the Constitution.

Article 311-B

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

“That after article 311-A the following new article be inserted:—

‘311 B. Such persons as the provisional President may appoint in this behalf shall become members of Council of Ministers of the provisional President.	the Council of Ministers of the provisional President under this Constitution, and until appointments are made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under the Constitution.’ “
---	---

Dr. P. S. Deshmukh : Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move:

“That in amendment No. 13 above, in the proposed new article 31 1B, the word ‘provisional’, wherever it occurs, be deleted.”

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

Mr. President : I take it that Dr. Ambedkar accepts the amendment.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I do.

Prof. Shibban Lal Saksena : Sir, I cannot understand this provision. On the day the new Constitution comes into force the present ministry ceases to exist and a new Council of Ministers should be sworn in. There should not be a provision as:

“all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under this Constitution.”

I think the first act of the new Constitution must be the swearing in of the new Council of Ministers. When the new Constitution comes into being it is but meet and proper that the President should call in the new Ministers to their office. If we want to provide for something, we should provide for a care-taker ministry. Let the old Ministry not be called the Ministry of the new President. I would therefore suggest that this article should be amended. You may say that until the President appoints the new Ministry the old ministry shall continue as a care-taker ministry. It looks odd that the old ministers should automatically become the Council of Ministers of the new President. There is some lacuna which should be remedied so that on the 26th January 1950 when the new Constitution comes into force the old Ministers become care-taker Ministers till the new Ministers take charge of the Government that same day.

Shri H. V. Kamath (C.P. & Berar : General): Sir, there is some force in Mr. Saksena’s contention. The point that lie has sought to make out is that on the day the new constitution comes into effect the whole Council of Ministers must formally cease too, exist, and they might be sworn in again. I think this is very desirable when we are promulgating the new Republic and inaugurating this new Constitution. It may be necessary that the same Ministers should be sworn In on that day.

An Honourable Member : Not necessary.

Shri H. V. Kamath : It may not be necessary, but it is very probable that the same Ministers who were Ministers before the commencement of the new

Constitution may be sworn in. But from the point of view of constitutional propriety and decorum I think we will be acting wisely if the Council of Ministers bodily, en bloc, resigned on that day. The Prime Minister should submit the resignation of the Council of Ministers to the President and the President should call upon the Leader of the House to form a new Cabinet under the appropriate article of the new Constitution.

There is another point in this connection. Our Constitution has adopted an oath of office which believe is slightly different from the old oath under which ministers were sworn in. We have now an invocation of God in the oath, but if a minister happens to be an agnostic or atheist he may make solemn affirmation. Considering this matter from these various aspects I think it would be wise on our part to provide for this contingency, and to lay down that on the day the Republic is proclaimed and the Constitution inaugurated the Council of Ministers should resign formally and the President calls upon the Leader of the House to form his own cabinet again.

There is one more point which I would like Dr. Ambedkar to consider. It is a verbal objection. Are Dr. Ambedkar and the Drafting Committee quite sure that this expression "Ministers for the Dominion of India" is quite correct? I do not like it myself. I object to the word "for". Is it not more correct to say "Ministers of the Dominion Government of India" or "Ministers of the Dominion of India"? "For" is not quite appropriate, but if Dr. Ambedkar and other linguistic experts hold that "for" is all right, I have nothing to say.

Shri Brajeshwar Prasad : Sir, I had no intention of speaking on this occasion but since my two friends Messers Shibban Lal Saksena and Kamath spoke on the subject I take this opportunity to express my own views on the amendment. It would have been better if this word "Dominion" had been eliminated from this article. Personally I feel that with the advent of a new age and with the establishment of a Republic in India we should have a new Cabinet. I know that there are three figures in the Cabinet which are more or less indispensable. I refer to our great leader Pandit Nehru, the valiant Sardar and the greatest scholar of Asia, the great Maulana Saheb. These three figures are indispensable in the Cabinet. Other members of the Cabinet are more or less in the nature of migratory birds

Mr. President : I do not think the honourable Member is justified in making personal references to individual Ministers. We are not concerned with them. We are taking the ministry as a whole.

Shri Brajeshwar Prasad : I am sorry, Sir, if the word "migratory" means any reflection on our able Ministers. I thought that with the establishment of a real Republic in this country we should have men in the Cabinet who will command the enthusiastic support of young India as well. Therefore it is in the fitness of things that a wider range of choice is left in the President who may take new blood into the Cabinet which may be in accord with the needs of the hour. As far as the present members of the Cabinet are concerned I have nothing to speak against them personally, but I feel that with the new age new men are required. It is no use putting old wine in new bottles.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, the point, though a very short one, raises a question of constitutional form, I think when the Governor-General ceases to function and a new President comes to take his place, the Ministers should vacate and should be reappointed. This seems to follow logically from first principles. The first reason is that the existing Ministers hold office "during the pleasure of the Governor-General". The "Governor-General" means the Governor-General who is now functioning. This Governor-General would be defunct at the inauguration of the Constitution and would be replaced by some other official,—the Provisional President. There will therefore be a break on the 26th of January next, or whatever date is ultimately agreed upon, on which the new Constitution comes into effect.

[Mr. Naziruddin Ahmad]

As the Ministers appointed by the Governor-General and as they are constitutionally to hold office “during his pleasure”, as soon as the office of the Governor-General becomes defunct, he ceases to be subject to any pleasure or pain and therefore the Ministers will no longer continue to hold office during his pleasure. Somebody else’s pleasure—his successor’s pleasure—comes to occupy the field. Pleasure is a personal factor and the successor’s pleasure will not necessarily agree with that of his predecessor. Therefore the new President should appoint or reappoint the Ministers to indicate his own pleasure. Till the appointment is made, the old Ministry may at the most function as a Care-taker Ministry.

This is no doubt a matter affecting constitutional form, but it seems to me of fundamental importance.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, this article 310 B. is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other articles which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have commented upon the provisions of this article 311 B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a, positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the-test of no confidence or confidence before the 26th of January, 1950- assuming that to be the date for the operation of the Constitution-this article 311 B does not, take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311B. probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the New Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

Shri H. V. Kamath : The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

The Honourable Dr. B. R. Ambedkar : That will be taken undoubtedly. “Appointment” means taking the oath office. Otherwise there is no appointment.

Shri H.V. Kamath : On that very day?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. On that very day. “Appointment” includes oath of office.

Mr. President : I shall put Dr. Deshmukh’s amendment to vote-I take it that it has been accepted by the Mover.

The question is :

“That in amendment No. 13 above, in the proposed new article 311B, the word ‘provisional Wherever it occurs, be deleted.”

The amendment was adopted.

Mr. President : The question is:

“That the proposed article 311B, as amended, stand part of the Constitution.”

The motion was adopted

Article 311B, as amended, was added to the Constitution.

Article 312

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

“That for article 312, the following article be substituted :—

- ‘312. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.
- Provisions as to provisional Legislature in each State.
- (2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not come into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.
- (3) Any person holding office as Speaker of the Legislative Assembly or President or the Legislative Council of a Province immediately before the commencement of this constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.’

“ The provisions are quite clear and I do not think that they require any explanation.

Mr. President : Are there any amendments to this ? I do not see any.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not think that sub-clause (3) is at all necessary. When we have already said above that the Legislative Assembly of a State or the Legislative Council of a State will remain as it is, it is not necessary that we should also say that the Speakers or the Presidents of the respective Houses will also remain as they are, for, they go with the Houses. Secondly, what I feel is but I do not know Dr. Ambedkar always might again come forward with the plea that I being a layman, he does not take any notice of me—but what I feel is that the wording

[Shri Mahavir Tyagi]

perpetuates the Speaker and the President of the Houses. Why should we perpetuate them ? They are liable to be “no-confidenced” out from the Assembly, so to say, but we say they shall remain as Speaker and as the President. Will that not mean that they will be irremovable ? I do not want to emphasise further, I only want to point out these words:—

“Any Person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of the Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.....”

Why should we say that ? And then—

“..... of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article”.

So long as those Assemblies and Councils function, the Speakers and Presidents of those Legislative bodies shall remain. Will that not be construed to mean that, even if the Houses do not want them and want to change them, they will not be able to do so ? That is the only little doubt that I wanted to express.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir I am frankly apprehensive of these transitional provisions. I do not see any definite provision fixing a time limit for the duration of these provisional Assemblies and Parliament. When France decided to constitute a Constituent Assembly after the war to frame a Constitution and act also as a provisional Parliament, they fixed a time limit of seven months. They said, “It will enact the constitution within seven months. If it is not able to do so, that Constituent Assembly will stand dissolved and will be re-elected”. Now, if any such provision had been inserted in the constitution of this Constituent Assembly, I feel that this Constitution would have been finished long ago, but because there was no provision for the automatic dissolution of this Constituent Assembly we have now taken three years to frame this Constitution.

I do not know how many years the so-called provisional Parliament and Assemblies will take to conduct elections. I think it will be nothing short of a national disaster if these provisional Parliament and Assemblies perpetuate themselves. It may be *bonafide*, it may be *malafide*, it may be anything. We know what human nature is and faced with the elections on the basis of adult franchise there is quite a possibility that Members may be apprehensive of being not returned and would like to perpetuate themselves for six months, one year or two years.

Shri R. K. Sidhwa : What about Ministers? Are they not apprehensive?

The Honourable Shri K. Santhanam : Sir, Ministers depend upon Parliaments. If Parliaments are dissolved, Ministers will automatically go out. I cannot understand the logic of Members wanting to perpetuate themselves and saying only the Ministers.....

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, it is a bad reflection on the Members of the House to say that they are apprehensive of elections, It is a reflection which it is not necessary to make.

The Honourable Shri K. Santhanam : I am not speaking about any particular person, I am speaking about human nature as such. I am not speaking of Members of this House but of all the Provincial Assemblies. I think we are, here as the guardians of the people of India and we should care more for their interests than for anything else. I am speaking from the point of view of principle. If you give power to a body, you cannot say that they will not exercise it. The whole Constitution is full of checks and balances. We want to limit the

power of future Parliaments by the Supreme Court. We have put in the Fundamental Rights to restrict it. But here we are giving powers to these provisional Assemblies and Parliament to perpetuate themselves almost indefinitely. Therefore, we must take some measures. Either put it in the Constitution or pass a resolution or take some other measures to fix a final and definite limit for these provisional Assemblies so that the people of India will know that the new Assemblies under the adult franchise will come into operation within a reasonable time. I think it is essential to do so. I do not think any individual should take it as a personal reflection; we want it for the future of the country and for the future of the Constitution because if the coming into force of the real Constitution is unduly delayed it may become out of date and we do not know whether there will be constitutional chaos. I want to prevent any such long interregnum or chaos taking place.

Therefore I am anxious that the Constitution which we have framed should come into full existence within six months or one year at most from the commencement of the Constitution on January 26. We must give a sort of assurance to the people of India that by January 26, 1951 or some such date the new Constitution will come into force. I think this is a matter in which every Member of this House is as much interested as myself. Therefore I hope no one will take my remarks as a personal reflection on any particular people or set of people. I would like to ask Mr. Bharathi whether it is not his duty to give the assurance which I am speaking of to the people of India. I hope he will join with me in giving that assurance.

Shri L. Krishnaswami Bharathi : Sir, may I draw the Honourable Member's attention to the fact that in this very House I pleaded that the elections should be held as early as possible?

Prof. Shibban Lal Saksena : Mr. President, I am very glad that my honourable Friend Mr. Santhanam has drawn the attention of the House to this aspect of the question. I do feel that he is perfectly correct in saying that the Constitution should say after what time the new Assemblies shall come into power. It is really correct to say that unless we provide this thing, we may perpetuate ourselves for ever although I am sure this House will not do it. We have already passed a resolution that in 1950 we shall have elections. Still, that is only a sort of an advice. This Constitution should lay down a time limit. My honourable Friend has suggested one year. Well, it all depends on how soon our present Government and the new Ministry which will be appointed will be able to conduct the elections and complete the Parliament. Whatever time is fixed, let there be an upper limit, one year, one and a half years or two years at the most. Within these two years, the new Parliament and the new legislatures must be elected. If we do not want to put this in the Constitution, let there be a resolution which should say that by that date, the new Parliament shall be elected. It would be unfair for the country and for the people as a whole that they should not know how long it will take.....

Dr. P. S. Deshmukh : On a point of order, Sir, in the absence of an amendment to this effect, I do not think these remarks can have any consequence.

Prof. Shibban Lal Saksena : My honourable Friend Mr. Santhanam suggested.....

Mr. President : The honourable Member is entitled to speak generally on the amendments moved. He has drawn that conclusion from the amendment and he is commenting on it.

Prof. Shibban Lal Saksena : This article 312 does not say when the life of these legislatures will be over. If you read the article carefully, it says that they shall automatically become the new legislatures. You have not put in

[Prof. Shibban Lal Saksena]

any time limit. They may continue for ever. Therefore, I say that Mr. Santhanam has raised a correct point. We must fix some time limit either in the Constitution—I think that would be better—or by some resolution so that at the end of the upper limit, these legislatures should not have any power left and a new legislature should come into existence. This is necessary not only from the constitutional point of view, but for the people of the country, because they may say that there will be delay and so on and so forth. There must be something put down here that would work as a sort of an inducement to see that new legislatures are brought into existence as quickly as possible. I cannot say what limit should be put—one year or one and a half years or two years. Recently, new Unions of States have been formed and a period of one year may not be sufficient for making arrangements in them. At any rate, the period should not exceed two years. At the end of two years, we must have a new Parliament and new legislatures in every State.

Shri B. Das (Orissa: General): Sir, I was very glad to hear my honourable Friend Mr. Santhanam voice the view that he is very anxious that the Constitution should come into effect to a certain scheduled date. My experience of my own Congress Cabinet is that they never keep to schedule. They have avoided shouldering responsibilities which are not the responsibilities of this House or the Parliament, but the responsibilities of the Cabinet. If we fix a time limit, say January 1951, it is the responsible duty of the Cabinet Ministers and the Ministers in the Provinces to delimit the constituencies and to prepare the voters' rolls. Can my honourable Friend Mr. Santhanam or any member of the Cabinet here present tell me how far they have advanced to carry out the wishes of this august House? We the representatives of the people are to voice the conscious democratic opinion of the country. We have appointed these Cabinet Ministers and their Colleagues as the Executive to give effect to those constitutional aspects of the Draft Constitution. If they fail in their duties, it is no use asking this House to fix a certain date over dissolution. May I enquire, suppose the date is fixed as 1st January 1951, and suppose the Executive, be that our own Congress Cabinet here or the provincial Ministries, fail to discharge this responsibility, will my honourable Friend Mr. Santhanam or those other Ministers present here tell us how the Constitution will provide either in the Constitution or in that resolution that this House will have to pass eventually, that a certain enforcement must be enjoined on the Cabinet here and in the provinces? I can take the horse to the water; but I cannot make the horse drink. People can appoint the Ministers. But the Ministers must solve the problems for which they are appointed as the Executive head of the Government of India.

The past traditions of the Government of India and the provincial ministers do not show that they are in any hurry to do everything for democracy. I make no reflection on any Minister; but I say that their collective action to render social justice, to remove poverty, since August 15, 1947, does not show that they are very keen to give effect to those democratic principles which have been incorporated in this Constitution. It is for the members of the Government and the Cabinet and their colleagues the other Ministers to deliberate and to bring forward a resolution which this House will consider with great sympathy. In spite of my wish to dissolve this House on the 26th of January 1950, I have no confidence, I have no hope even that the present Cabinet and their colleagues and other Ministers have thought over the problems to give full effect to this Constitution. The burden is on the shoulders of the Cabinet Ministers inside and outside and not on the Members of this House. But I am ready to support him that the House must consider a resolution and pass it that the Constitution should not be delayed. The responsibility for that, the

implementation of that, is on the Cabinet Ministers here and in the provinces and not on ourselves, not on this democratic House.

Shri H.V. Kamath: Mr. President, with the speeding up of our railway trains in recent months, even of the notorious Grand Trunk Express, it was in the fitness of things that our Minister of State for Railways, Mr. Santhanam should come before the House and plead for the speeding up of the Constitution. It is inevitable, it is very desirable that he should do it, for all the Members of this House. But, even he cannot afford to forget that the Grand Trunk Express does not keep to schedule even today. Last Sunday when I arrived here, the Grand Trunk Express was five and a half or six hours beyond schedule.

An Honourable Member: The Punjab Mail also!

Shri H. V. Kamath : I do not know about the Punjab Mail; the Grand Trunk Express was six hours beyond schedule. I arrived at twenty minutes past two instead of at 8.10 or 8.15.

The Honourable Shri K. Santhanam: The honourable Member may remember that there were floods.

Shri H.V. Kamath: I am coming to that.

Shri R.K. Sidhwa: With new engines, the trains are late.

Mr. President : I hope Members will not go in to the question of floods, delays in railway timings, arrival of trains. We had better confine ourselves to the Constitution.

Shri H.V. Kamath: I was just coming to that. The point raised by my honourable Friend Mr. Santhanam....

Mr. President : He did not raise the question of railway timings and floods.

Shri H.V. Kamath: I hope, Sir, you have appreciated the illustration I have given. The point I sought to make out was that we make up our minds and pass very fine resolutions, but there are hurdles created somewhere by something or other. I may remind the House that there are higher powers that rule the destinies of men and things. I would like Mr. Santhanam as a Minister of State to bear in mind that something may happen somewhere in this wide world upsetting all our plans. Suppose a war breaks out tomorrow in Europe—God forbid—then under the Constitution everything will be suspended under Chapter 11 and there would be no elections. Suppose, again, there is disturbance or insurrection in the country, an emergency is proclaimed and the President will take everything into his own hands.

I yield to none in my desire for early elections. Let them be held even in February next if need be, but they should be on adult franchise, and not under the old scheme of the Cabinet Mission. We passed a resolution last year asking for the preparation of electoral rolls as early as possible so as to facilitate elections in 1950. Have we implemented that in letter and spirit? How far have the Governments of the provinces and States gone ahead with this task of preparing electoral rolls? Mr. Santhanam must throw some light on this before he comes to the Assembly to plead for a deadline for elections under the Constitution. I am not opposed to dissolution of this Assembly; but what is the point in holding elections under the old scheme of 1946? If at all there should be elections, certainly we should have them under the new Constitution.

Mr. President : Mr. Santhanam did not think of the old scheme.

Shri H. V. Kamath : He mentioned the dissolution of the Assembly, and holding fresh elections.

Mr. President : Not under the Cabinet Mission plan.

Shri H. V. Kamath : I am sorry, Sir. Then the only course open is to have them under this Constitution with which I am in agreement. But bearing in mind the difficulties that may arise, is he sure in his own mind that we will be able to hold elections if we fix a schedule? We can pass a resolution as a directive to the various Governments to get in trim for the elections. Mr. Santhanam referred to the French Constitution. I have not read the latest French Constitution but I can point out to him that the Bonn Constitution as well as the Italian Constitution—the latest—do not fix a date for elections to be held under the new Constitution.

Regarding Mr. Tyagi's point, I am inclined to be in agreement with him, that there is no need for incorporation of clause (3) in this article. It seems that by force of habit we have incorporated this. May I point out to Dr. Ambedkar and the Drafting Committee that Chapter 3 of Part VI refers to State legislatures? That is the main heading, and then officers of the State legislature is; only a part of it—a sub-chapter. When we are providing for the continuance of the entire legislature of the State as an interim measure, is there any sense for specially mentioning the Speaker, and if the Drafting Committee and Dr. Ambedkar think it necessary, then why not mention the Deputy Speaker and the Deputy President of the Upper House also? They have been referred to in this chapter 3 of Part VI. Otherwise, delete it altogether because they are comprised in the legislature as a whole, and clauses (1) and (2) of this article 312 refer to the State legislature as a whole, and therefore everything else, including conduct of business etc. is comprised in this chapter 3. If this clause is deemed necessary, why not make provision for the privileges and immunities of members, saying that they will continue as before the commencement of the Constitution or something similar to that? I suggest therefore that clause (3) may be deleted.

Mr. President : Mr. Bharathi, I think you had better cut short the discussion of this matter which really does not arise out of the article moved.

Shri L. Krishnaswami Bharathi : Very well, Sir. I had absolutely no intention of speaking and I shall very briefly bring to your notice and the notice of this honourable House what we have done. Mr. Santhanam's point of view is that, unless we put down a definite date, there might be an impression created that this House is likely to perpetuate itself and delay elections with all its disastrous consequences. I want to bring to your notice and to the notice of this House that this House has already passed a Resolution moved by the Honourable Pandit Nehru on the 8th January 1949 when the Vice-President was occupying the chair. I was only anxious to draw the attention to the aspect of the matter. The resolution reads thus:—

“Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.”

That is the resolution we passed on the 8th January 1949. Speaking on this Resolution Dr. Ambedkar has clearly indicated the scope of this resolution. I shall only read a portion.

“The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible election may be held, sometime in 1950, but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this Constituent Assembly desires that the election should take place in 1950, etc.”

Therefore we have already passed a resolution, and unless Mr. Santhanam thinks this a mere pious resolution without any intention to give effect to it and I think he will not give that interpretation—this Assembly means and it is the intention to

hold elections as early as possible. I am only anxious that there should not be an impression created outside that this Assembly would like somehow to perpetuate itself. Far be it from our minds, to delay the elections a minute longer than is absolutely necessary by circumstances of the case, but there is this practical difficulty. Suppose we put in a date, what does it mean? If due to some unforeseen circumstances, we are unable to hold the elections, what are we to do? Therefore, what I say is, let it not be understood that the omission to mention a date means that this House wants to perpetuate itself. We have already passed a resolution and we propose to stand by it and it is the intention of the House to hold the elections as early as possible. Sir, this is the only point that I want to bring to the notice of the House.

Mr. President : I do not think it is necessary to continue the discussion on this point. If I had notice that this point would be raised I would have got a report up-to-date with regard to the steps that have already been taken and if possible, I shall place before the House, if not today, the next day, a report showing what steps have already been taken and what progress has already been made with regard to the preparation of rolls and other matters in connection with the elections. As was pointed out, it was passed by this Assembly that steps should be taken in this direction, and it is the Constituent Assembly Secretariat Which has been in correspondence with the Provincial Governments with regard to 'the steps which have been taken. And steps have been taken. I only desire Honourable Members to remember this that we have decided to have adult franchise, and if we just consider what that implies, the tremendousness of the task with be apparent. With our present population, and with the information at our disposal based on the enrolment of voters, it seems our electoral roll will comprise anything between 170 and 180 million names. The mere act of printing this is such a big and tremendous job that the governments are being hard put to it, to find the presses which will undertake this big job. I was myself calculating one day the thickness of the volume of the electoral roll for all the provinces and I found that it will come to nearly three-fourth of a furlong. If we bear that in mind, you will appreciate that if there is delay, the delay will not be intentional on the part of either the Provincial or the Central Government, but because of the bigness of the job itself.

I think that should set at rest all speculations on that point. We are trying our best, and as at present advised, the information which has come to us from the Provinces leads us to hope that the elections will be held some time in the winter of 1950-51, that is to say, any time between November 1950 and February or March of 1951. That is what we are expecting. Of course, if unforeseen difficulties arise, we do not know what may have to be done at that time.

Shri R. K. Sidhwa : Sir, after what you have said, I do not want to make any speech. But I only want to say that the speech that Mr. Santhanam has made might create a very bad impression in the minds of the public outside this Hall. Therefore, I am very glad, Sir that you have clarified the position, I need only add that Mr. Santhanam, a responsible Minister should not have spoken in such an irresponsible manner. After this Constituent Assembly is over, who is to fix the election date? It is the cabinet. Let them fix it after six months, but it is for them to decide, and it is not proper for him to say that the House wants to perpetuate itself. I am very glad, Sir, that you have indicated the great interest you have taken to see that the elections do take place as early as possible. I was obliged to make this statement lest Mr. Santhanam's remarks should create any wrong impression. I am very sorry that he has made the statement that he has made.

Mr. President : I do not think he said so. I do not think that the remark is justified. I do not want any further discussion. I do not think it is necessary. If any Member wants to speak about the article he can do so.

Sri M. Ananthasayanam Ayyangar (Madras : General) : Sir, elaborate provisions have been made for the retention of the existing House or Houses of Legislatures, and there are provisions for the appointment of Ministers. But there is no provision for the dissolution of any House even in this transitory period, in case that becomes necessary. Sir, such a dissolution may become necessary, and from that point of view, Mr. Santhanam's suggestion becomes very necessary. Does anybody wish to prolong the life of this House? No. But having regard to the absence of provisions for the

Shri R. K. Sidhwa : Sir, you said there should not be any more discussion on this point. Is this relevant?

Sri M. Ananthasayanam Ayyangar : I am only referring to the absence of provisions for dissolution of existing Houses of Legislatures. I am glad Mr. Sidhwa has taken up the position of the President to say whether this is relevant or not relevant. I was only saying something about the absence of provisions for dissolution of Houses. If the House sits for three or four years, there should be some provision for its dissolution, if it becomes necessary. I therefore request honourable Members to consider this seriously. Are we to give a charter to the Legislatures, to the existing Houses to continue for over and for ever, even if it is not in the interest of the country? Many matters may happen which may require the Members going to the electorate. For instance, it may be a question whether prohibition should be introduced in some provinces where it is not introduced. Or it may be some other important matter on which we may have to go to the electorate. Then, what is to happen? That is a lacuna which must be filled up. I would urge even now that it is not too late to have a provision regarding dissolution of existing Houses.

Then as regards the privileges which my Friend referred to, I believe the existing Houses will continue to be governed and regulated by the existing provisions regarding the scope, subject matter etc. These will be governed by the Lists that are attached to this Constitution. In all other respects, such as the subject matter, the scope of jurisdiction and other activities, the rules and regulations under which they work, they will be governed by the Constitution. Therefore, whatever privileges are conferred upon the Members of Parliament in the earlier sections that we have passed, they will apply to the Members of Parliament. There is only this exception that there will not be election during the transitory period. All the other provisions regarding procedure in Parliament, and the powers of the legislatures in the Provinces will be regulated by the powers etc. which have been conferred by the Act.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I would like to get this clear. What dissolution is the honourable Member referring to?

Sri M. Ananthasayanam Ayyangar : The dissolution of House or Houses of Legislature. It may happen with regard to a particular matter. There may be serious difference of opinion, and they may have to go back to the country. The dissolution may be by the Prime Minister or the Governor may dissolve the legislature so as to have a better verdict from the people regarding an important matter.

Pandit Lakshmi Kanta Maitra : He means to say that in the interim period a chance should be given to the electorate to give its verdict on a particular matter?

Sri M. Ananthasayanam Ayyangar : Yes.

Pandit Lakshmi Kanta Maitra : Even during the interim period? And have a general election also ? Absurd.

Sri M. Ananthasayanam Ayyangar : It all depends how long the interim period lasts. If it is a short one, there may not be any need for the dissolution. But what if it is otherwise? We know every sitting Member will be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

The Honourable Dr. B. R. Ambedkar : Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

Shri H. V. Kamath : What about the clause concerning the Speaker?

The Honourable Dr. B. R. Ambedkar : That was there in the original draft.

Mr. President : I will now put article 312 to vote. The question is:

“That the proposed article 312 stand part of the Constitution.”

The motion was adopted.

Article 312 was added to the Constitution.

Articles 312A to 312E, 312 G and 312 H

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

That after article 312, the following new articles be inserted :—

312A. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter II of Part VI of this Constitution and has entered upon his office.

Provisions as to
provisional Governor
of Provinces

312B. Such persons as the provisional Governor of a State may appoint in this behalf shall become members of the Council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

Council of Ministers
of Provisional
Governors.

312 C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Provisions as to
provisional Legislatures
in State in Part III of the
First Schedule.

312 D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made all persons holding office as Ministers immediately before the commencement of this constitution in the corresponding Indian State shall become and shall continue to hold office as members of the Council of Ministers of such Rajpramukh under this Constitution.

Council of Ministers for
States in Part III of the
First Schedule.

[The Honourable Dr. B. R. Ambedkar]

For article 312E I propose amendment No. 21:

“That in amendment No. 16 above, for the proposed new article 312E, the following be substituted :—

‘312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything, contained in this Constitution, be determined in such manner as the president may by order direct.’ ”

“312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as, if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement.”

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word ‘provisional’ in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

Dr. P. S. Deshmukh : Mr. President, I move:

“That in amendment No. 16 above, in the proposed new article 312A, the word ‘provisional’, wherever it occurs, be deleted.”

“That in amendment No. 16 above, in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be deleted.”

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as ‘provisional’. I commend the amendments for the acceptance of the House.

Shri H. V. Kamath : I move:

“That in amendment No. 16 above, in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of parliament, direct’ be substituted.”

If my amendment is accepted by the House this new article 312E will read as follows:

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population

of India or of any part thereof may, notwithstanding anything contained in this Constitution, he determined in such manner as the President may, with the approval of Parliament, direct.”

This 312E is somewhat different from the draft of the new article as it reached us a day earlier. Anyhow my amendment would apply to this draft article as well. The issue that this proposed new article raises is that of the elections to be held under this Constitution.

I believe the House will agree with me when I say that elections are a matter with which Parliament is and will be very intimately concerned, and will be interested in. I see no reason why Parliament should be left out of the picture so far as determination of the population of India or of any part thereof is concerned. We have just adopted an article providing for various matters upon the inauguration of the Constitution and the Proclamation of the Republic, and there will be an interim Parliament also functioning with effect from that date. To my mind there is no inherent difficulty about consultation by the President with this Parliament. I have not sought to provide that these matters must be provided for by Parliament. I only want that whatever measures, whatever action, whatever steps, are taken by the President in this connection must be laid before Parliament. My amendment comes to this, that whatever measures are taken by the President in this regard must meet with the approval of Parliament.

I do not wish to dilate or expatiate upon the desirability or the soundness of the amendment which I have moved. I am sure it will commend itself to the House, considering the matter with which this article deals. In the determination of the population of India or any part thereof I do not want that the President should act on his own or on the advice of his Council of Ministers. It is a very vital matter concerning elections to legislatures and this House will do well to provide that any measures taken by the President in this regard should be laid before Parliament for its consideration, and approval or otherwise. Otherwise we will be striking at the very roots of the Constitution that we are passing, where normally the supremacy of Parliament has been recognised. We are providing for a sovereign democratic Republic, and I do not see why in this matter of elections Parliament should not be taken into confidence by the President. I cannot see any inherent difficulty in or objection of the President laying his measures before Parliament. The straightforward course will be for the President to lay his decrees in this connection before Parliament, seek its approval and obtain it.

Mr. President : There is no other amendment to this article; but there is an amendment of which notice has been given by Mr. Sidhva but that relates really to article 311 which deals with the Central Legislature. When that article comes up, that amendment will become relevant, but it is not relevant to this article which deals with the provincial legislatures. We shall hold it over until article 311 comes before the House for consideration. Does anyone else wish to say anything on this ?

Prof. Shibban Lal Saksena : Mr. President, Sir, this is an omnibus article which provides for the needs of the transitional period. I only want to comment on article 312E and here I support Mr. Kamath in so far as he wants that the population may be determined by the President but it must be approved by Parliament. In fact, the original article 312E was more comprehensive. The revised article 312E says—

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may be order direct.”

I think this too wide a power to give to the President. Here is this House which, it is proposed, will become the new Parliament. This House is passing a Constitution and we are providing here for the transitory period. If anything arises

[Prof. Shibban Lal Saksena]

during transitory period for which there is no provision in the Constitution, then this Constituent Assembly will still be there as the new Parliament. If there is any difficulty, it can be referred to Parliament and Parliament can make the necessary law for the purpose.

I therefore do not think that we should burden our Constitution with powers given to the President for things not provided for in the Constitution. It is quite possible that during the transitory period matters may arise for which there is no provision in the Constitution, but which we should not permit the President to be the authority to decide. This very Parliament will be there. If any lacuna is seen, the President can refer it to this House and this House can frame a law providing for that contingency. In fact, the members of the Parliament will be elected on the basis of population. For a population of not less than five lakhs and not more than seven and a half lakhs there will be one representative in this House. So, determination of the population becomes very important and this should not be left to the sweet will of the President, which means actually the advice of the Ministers. To leave such an important power in the hands of the President will, I think, be unfair to this House and to the country. The amendment moved by Mr. Kamath is very fair, and if there is any action taken by the President on such an occasion, it should be laid before Parliament.

Then, Sir, I do not see any provision here regarding constituencies. I would like Dr. Ambedkar to inform us whether there is any provision in the Constitution for the delimitation of constituencies. Or, does he want to leave it entirely to the Election Commission? Formerly, under article 312B the constituencies were also to be delimited by the President. I am glad that he has omitted the provision. I do want to know whether any provision is made in the Constitution for the report of the Delimitation Commission to be submitted to the Parliament for approval. It should in the normal course be submitted to the Parliament which will come into existence in the coming January.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. My Friends Mr. Kamath and Prof. Saksena have read a great deal into this article 312E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

Shri H. V. Kamath : Has Dr. Ambedkar any objection to the principle of my amendment?

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not

delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

Mr. President : The question is:

“That in the proposed new article 312A, the word ‘provisional’, wherever it occurs be deleted”.

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be ,deleted.”

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of Parliament, direct’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That proposed article 312A, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312A, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed article 312B, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312B, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed articles 312C. and 312D. stand part of the Constitution.”

The motion was adopted.

Articles 312C. and 312D. were added to the Constitution.

Mr. President : The question is:

“That proposed article 312E, as amended, stand part of the Constitution.”

The motion was adopted.

Article No. 312E, as amended, was added to the Constitution.

Mr. President : The question is :

“That proposed articles 312G and 312H stand part of the Constitution.”

The motion was adopted.

Articles 312G and 312H were added to the Constitution.

Articles 313

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

“That for article 313, the following be substituted :—

<p>313. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:</p>	<p>Power of the President to remove difficulties.</p>
---	---

[The Honourable Dr. B. R. Ambedkar]

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament."

This is a reproduction of the provision contained in the Government of India Act which is necessary for the transition period.

Dr. P. S. Deshmukh : Sir, there are four amendments standing in my name, which I beg to move:

"That in amendment No. 23 of List I (First Week), in the proposed article 313, in clause (1), the bracket and figure '(1)' and clause (2) be deleted."

"That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, after the words 'The President may' the words 'on being moved by Parliament or any Provincial Legislature in that behalf' be inserted."

"That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, for the words 'whether by way of modification, addition or omission' the words 'by way of modification,' be substituted."

"That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'for their approval' be added at the end."

The very nature of my amendments makes quite clear the intention in regard to these amendments of mine. The powers under this provision as it has been proposed in article 313 are certainly similar to those which were conferred on His Majesty by section 310 of the Government of India Act. But the powers so conferred by that Act were considerably limited and there was in any case a limiting period of six months provided for in section 310. There is no such provision here and it is also not at all ascertainable as to when the first meeting of the new Parliament may be held unless the proviso "Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution" means a meeting of this House continued after the 26th January, the date on which the new Constitution will come into effect. In that case I would not like to press my amendment.

But if these powers which are going to be conferred on the President are to continue till the new Parliament comes into being and starts functioning, as appears obviously the case, then I consider that the powers are extraordinarily wide and the mere limitation of these orders being placed before the Parliament would not be quite enough. For even apart from the powers that we have conferred on the President so far as the withdrawing of any of the provisions of the Constitution is concerned, this is a provision which is contemplated to be made specifically for the removal of difficulties. But if these provisions are meant to solve the difficulties, why should it not be possible to say that the proposal should emanate either from Parliament, or from the Provincial Legislatures? If that safeguard is there, then there will be no difficulty in allowing the President, not only by way of adaptations to modify, but to add or even omit provisions from this Constitution. So in one of my amendments I have suggested that these modifications or additions or omissions should proceed only on the recommendation of Parliament or on the recommendation or suggestion of any Provincial Legislature.

It is obvious that the amendments I have proposed are in the alternative. There are two sets of amendments. If it is possible to provide that the orders in this connection of the President shall be limited to such matters as would be suggested by Parliament or the Provincial Legislatures, then there would be no

need of the other sets of amendments. But if that is not acceptable then it would be necessary to provide that not only should the orders be laid before Parliament but they should also seek the approval of Parliament.

If it is possible for Dr. Ambedkar to throw any light on the observations I have made and to clarify the matter, I will see my way not to press these amendments. But I personally think that although it is based on section 310, there is no limitation so far as the time is concerned, and if we leave the provision as it is I think we are conferring very large and extensive powers of even omission and addition to the whole Constitution on the simple excuse that could be easily put forward that a certain provision leads to difficulties or certain other provision is necessary for the removal of a difficulty. There is no definition of the word “difficulty” and any difficulty which the President in his individual discretion considers a difficulty would be sufficient excuse for him to take advantage of this article and it will not be challengeable in any court of law. It is therefore capable of being misinterpreted to the detriment of the Constitution and the country. In view of that, I would suggest that this may be considered a little more carefully if possible or some explanation given so that I might decide whether to press my amendments or not.

Shri H. V. Kamath : Mr. President, there is an amendment in my name—No. 3320 in the printed list of amendments, volume II—but I do not propose to move it. I would, however, like to say this much, that I am afraid that the Drafting Committee has not quite accurately described this transition through which we are passing. The sankrant which has overtaken us is somewhat different. The transition referred to by the Drafting Committee in this proposed article refers to the period between the Government of India Act, 1935 and this Constitution. There has been a slip somewhere—the Drafting Committee to my mind has tripped, and has not accurately described the present stage of this transition. We are being governed not under the Government of India Act, 1935, but that Act of 1935 as adapted by the Indian Independence Act of 1947. So my friend Dr. Ambedkar who has got such an eye to constitutional forms and propriety, and the constitutional pandit that he is, would do well, to describe this transition more accurately than he has done. It would be more correct to say “the transition from the provisions of the Government of India Act, 1935 as adapted under the Indian Independence Act of 1947 to the provisions of this Constitution”. It is plain as a pike-staff that the original Act of 1935 has ceased to exist and we are governed by the adapted Act. It would be better for him and the Drafting Committee to amend this—it can be amended—and I hope we will find it in a different form at the Third Reading. The House, I am sure, will have no objection to this amendment. I have not given notice of it, but as Dr. Ambedkar moved it today it struck me that even he—it is said, “Homer nods” has failed to notice the inaccuracy or the impropriety of the description of the transition in which we are living.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is intended really to provide for any contingency which may arise during the transition from the Government of India Act, 1935, to the new Constitution. It is assumed that there might be some lacuna in the Constitution which we have drafted in regard to which the President should be empowered to make provisions during the transitional period. But I feel that the powers given to him in this article are very wide. It says “this Constitution shall.... have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient”. Therefore the President is empowered to alter the Constitution, to omit sections of the Constitution or to modify them on the plea that it is necessary for the transition from the Government of India Act to the New Constitution. Of course, that means that if the Constituent Assembly had foreseen that contingency it would have made provision for it. I suggest that

[Prof. Shibban Lal Saksena]

if the contingency should arise, which has not been foreseen and for which Dr. Ambedkar wants to empower the President with powers to modify, add or omit parts of the Constitution, this very House as Parliament should be able to do it. Why should not this very Parliament be then called upon to provide for the lacuna which may have been found.

I therefore think that this power is wholly unnecessary. What should be done is this: During this transitional period the Parliament should be empowered to provide for and fill any lacuna which may be discovered. To arm the President with power to omit something or to add something in the Constitution is something which is unparalleled in any other Constitution. It is most preposterous that the President should have this power even when this very Constituent Assembly will be there as the Parliament of the nation. This power for the President is wholly undemocratic and should not be allowed. The Parliament should be called upon to provide for and to fill any lacuna which may be found.

If Dr. Ambedkar insists on having it, then I would suggest that we accept the amendment of Dr. Deshmukh, amendment No. 33, so that if the President wants to make any modifications by way of additions or omissions then this Parliament should be called upon to approve them or disapprove them or modify them within a month or so. It must not be left entirely to the President to have such wide powers and the House should not arm him with these powers.

The Honourable Dr. B. R. Ambedkar : Sir, there seems to be considerable misapprehension as to the necessity of the provisions contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provisions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, it is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and up to what period these powers should be lodged in that particular authority. My Friend, Dr. Deshmukh, said that under section 310 of the Government of India Act, the power was to last for six months. I think he is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by article 313 would automatically come to an end on the day on which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to him under 313 a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this: whether this power should vest in the President or it should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likely to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and the Centre. On the 26th January next, when the Constitution

comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and therefore this matter should be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House accepting article 313.

With regard to the point made by my Friend Mr. Kamath, I think he will realise that there is no error on the part of the Drafting Committee in referring to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, "Government of India Act, 1935", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

Dr. P. S. Deshmukh : May I ask a question? If the Parliament is asked to approve the order passed by the President would there be any harm?

The Honourable Dr. B. R. Ambedkar : But 'approval' means what? It may nullify the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

Mr. President : I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.

The question is:

"That in Amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'each House of' be deleted."

The amendment was adopted.

Dr. P. S. Deshmukh : Sir, I beg leave to withdraw my Amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 23 of List I (First week), in clause (2) of the proposed article 313, the words 'for its approval' be added at the end."

The amendment was negatived.

Mr. President I shall now put article 313 as proposed as amended by Dr. Ambedkar's amendment to vote.

The question is:

"That proposed article 313, as amended, stand part of the Constitution."

The motion was adopted.

Article 313, as amended, was added to the Constitution.

Mr. President : I think we have no other item on the Order Paper. We have to adjourn now.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We may meet at ten o'clock on Monday.

Mr. President : We adjourn till Ten o'clock on Monday.

The Assembly then adjourned till Ten of the Clock on Monday the 10th October, 1949.
