

Volume X



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**6-10-1949
to
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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

Tuesday, the 11th 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.

CONDOLENCE ON THE DEATH OF MR. AZIZ AHMAD KHAN

Mr. President : It is with great regret that I have to mention to the House the death of one of our Members—Mr. Aziz Ahmad Khan, of Bareilly. He was a Member of the U.P. Legislative Assembly for a long time, and then he came to this House. He had been ailing for some time and he expired a few days ago. Honourable Members will show their respect to his memory by rising in their places and permit me to convey to his family our deep sympathy.

(The Members stood up in silence.)

DRAFT CONSTITUTION—(Contd.)

Article 311—(Contd.)

Mr. President : We shall now proceed with the consideration of the article which we were considering yesterday—article 311. Mr. Naziruddin Ahmad can move his amendment No. 146.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I wish to move my amendment No. 146:

“That in amendment No. 9 of List I (Second Week), in the Explanation to clause (1) of the proposed article 311,—

- (i) for the words ‘the Constituent Assembly’ the words ‘membership of the Constituent Assembly’ be substituted;
- (ii) for the word ‘includes’ the words ‘shall include’ be substituted.”

With regard to my first amendment, it seems to be necessary on a Consideration of the context. The expression occurs in the Explanation. The Explanation says that “For the purpose of this clause, the Constituent Assembly of the Dominion of India includes the members from the States” and other things. The objection to which the context is open to is this. It is said that the “Constituent Assembly” includes certain “Members”. I think that a Constituent Assembly is an abstract term. It is a mere legal conception. The Constituent Assembly cannot include Members, but rather the “membership to the Constituent Assembly” shall consist of members. I will leave the matter to the Drafting Committee for consideration.

With regard to the second part of the amendment, it is also of a drafting nature, and consequential upon the first.

Speaking generally on the article, I agree with Mr. Kamath that the simple term “Constituent Assembly” has been expressed in a very verbose and round about manner, namely, “the body functioning as the Constituent Assembly of the Dominion of India immediately preceding before the commencement of this Constitution”. For this long expression, the mere term “Constituent Assembly” would have been enough. That is a well-defined and well understood expression and was brought into being by the Independence of India

[Mr. Naziruddin Ahmad]

Act, and did not require further amplifications. But I do not quite agree with Mr. Kamath when he says that this provision is totally unnecessary. There is a provision in the Independence of India Act which says that the powers laid down under the Government of India Act as modified, shall be exercised by the Constituent Assembly, apart from its duty of framing the Constitution. That power is confined to carrying on all the duties under the Government of India Act as adapted by the Governor-General. But this article 311 empowers the Constituent Assembly to carry on the powers “under this Constitution” as distinguished from being under the Government of India Act as so adapted. The Government of India Act and this Constitution are essentially different Acts, and an article like this is absolutely necessary in order to enable the present Constituent Assembly to function and do the work under “this Constitution” until the new Houses of Parliament are duly constituted after a general election.

There is the other amendment of mine, the one relating to clause (3). That is No. 158.

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words ‘within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly’ be added at the end.”

This also seems to be necessary under the altered circumstances in which we would be placed after the Constitution is passed. Clause (3) says that those who were members of the Provincial Assemblies as well as of the Constituent Assembly shall cease to be members of the Constituent Assembly. And what is important, every such vacancy shall be deemed to be a casual vacancy. This expression—casual vacancy—has not been defined anywhere in this Constitution. The only reference to casual vacancy appears in the Rules of Procedure and Standing Orders of the Constituent Assembly—Rule 5, sub-rule (1). So far as the Rules of Business and Procedure and Conduct of Business in the Legislative side of the Constituent Assembly is concerned, so far as I can see, there is nothing like casual vacancy mentioned in those rules. They are mentioned, I believe, exclusively in our rules of the Constitution, section. If we say that they should be regarded as casual vacancies, we should really explain the expression ‘Casual vacancy’ with reference to the rules. Otherwise it will be difficult to find out what the casual vacancy means. We have nothing like it in the Constitution which we have passed so far, and immediately after the Constitution is passed, on the 26th January at any rate, this House sitting as the Constituent Assembly in the “Constitution” section will cease to exist. I fear that the Rules of Procedure and Standing Orders of the “Constitution” section would then be inoperative and will not be applicable at all. So, the expression ‘casual vacancy’ will remain absolutely unrelated to any enactment or rule. With regard to casual vacancies which may occur after the general election it seems to me that they will be covered by rules framed under the Constitution; but at present there is nothing like this expression anywhere except in our present Rules. I should think that it should be made clear that it is a ‘casual vacancy within the meaning of our present rules’. That would save from natural death. Our Rule 5 which alone would seem to be applicable in the circumstances of the case.

With regard to the Rules under the Constituent section and the Legislation section, there will be a clash as to which rule will apply. It would be far better to clearly specify the enactment or the rule within the meaning of which the words ‘casual vacancies’ will come. This amendment is of a drafting nature and may be considered by the Drafting Committee.

Shri V. I. Muniswamy Pillay (Madras: General) : Mr. President, Sir, I move :

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘of any State or other territory’ the words ‘of a Governor’s Province or Indian State’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘not represented’ the words ‘not adequately represented’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words ‘commencement of this Constitution’ the words ‘having due regard to the proper representation of the Scheduled Castes’ be inserted.”

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:—

‘(d) the election of a Speaker or Deputy Speaker for the Parliament’.”

Sir, when this article was introduced in this House by my honourable Friend, Dr. Ambedkar, he told the House that it dealt with double membership. Sir, on a perusal of the article I find that there are many other things therein which required the attention of this House and also of the President who will be the ultimate authority in deciding who ought to be the members that are to be chosen from the States or other territories to take part in the provisional Parliament. Also, in the explanation it is clearly stated in clause (2) that with regard to filling casual vacancies in the said Assembly, the President shall have power to make rules for the representation in the provincial Parliament functioning under clause (1).

Here I would bring to the notice of the House the grave injustice that has been done to a section of the community in India, *viz.*, the Scheduled Castes. Sir, according to the Statistics of Population that has been prepared and furnished to us, out of a population of 330 millions, the Scheduled Castes number about 50 millions in India. The total membership of the provisional Parliament has been accepted is 320. Out of this, the quota for the Scheduled Castes must be about 55 to 60. If this is so, the provisional Parliament must have at least 55 members of the Scheduled Castes. I do not find that it has been made clear in this explanation No. 2, whether the Scheduled Castes would have that much representation. It is with that object I have suggested in one of these amendments that the future authorities or President who will make rules for the representation of the various communities in the provisional Parliament should give due representation to the Scheduled Castes.

Sir, after the Constituent Assembly started functioning, several Indian States and other territories have been brought under the purview of the Constituent Assembly for the purpose of representation. But, from a casual observation whether Scheduled Caste members had been chosen from those States we find that not a single member of the Scheduled Castes has been returned to the Constituent Assembly, except one from the State of Mysore. This I think is a very vital point in this article that requires the attention of the President and also the Members of this Constituent Assembly.

As far as the future Central Assembly and the provincial assemblies are concerned, we have already passed certain articles providing for the representation of the Scheduled Castes on the population basis. But I do not find any such formula for the representation of the Scheduled Castes in the provisional Parliament that will be set up after 26th January 1950 when this body ceases to function.

The other amendment of mine, No. 152 seeks to provide that the matters concerning the selection of the Speaker or the Deputy Speaker may be left to

[Shri V. I. Muniswamy Pillay]

be decided by rules to be made by the President who will be functioning after 26th January 1950. The reason why I have moved this amendment is that in an earlier article we have provided for the Speakers of the Assemblies and the Presidents of the Legislative Councils, wherever there will be double chambers, to come into office just after the commencement of the Constitution. We have not said anything there about the Deputy Speakers or Deputy Presidents where they continue in office after 26th January 1950. So I feel that even the matter of election of the Speaker or Deputy Speaker for the provisional Parliament must be left in the hands of the President so that those elections may be regularised.

The other amendment that I have moved, No. 156, I find will not fit in with the new amendment No. 195 introduced by the Honourable Dr. B. R Ambedkar yesterday. But I would like to move my amendment to amendment No. 195, paragraph (3) as follows:

“A member in two assemblies shall resign his membership in the legislature of a Governor’s Province or an Indian State thirty days prior to this Constitution coming into effect.”

Dr. Ambedkar argued yesterday that this article deals with double membership. Due to circumstances, though the Constituent Assembly came into existence for constitution-making, it has been decided that the Constituent Assembly can function as a legislative body also, but due to a convention, Sir, It was possible for members who are also members of provincial legislatures to stay back and take part in their own legislatures; thereby those members as a matter of fact were not functioning as members of the Central Legislature. It may be that at present both these functions are done by this body, but my view is that when this Constituent Assembly changes itself into the provisional Parliament, all members of the provincial legislatures who have been returned to this House also should be told that they cannot take part.

Further, Sir, if you accept this article, it does not give to members discretion either to choose functioning in the provisional Parliament or in their own Legislatures. We have already passed an article whereby this Constitution states in unequivocal terms that a member cannot be a member in the Central as well as the provincial legislature. So, I feel strongly that this matter must be left to the choice of the Members themselves, and I know that members having a sense of responsibility, will not choose to sit in both Houses. There are Members who have been chosen for this Constituent Assembly who are able jurists and who have special knowledge of matters connected with the administration of this country. There may be many Members who may find it necessary to be in the provisional Parliament. We do not know how long this provisional Parliament will function.

Secondly, Sir, as far as the matter of reservation for the Harijans was concerned, it was said that it would continue for ten years from the commencement of the Constitution. We do not know for how long this provisional Parliament will function. It has not been made clear in this article whether the reservation would start from the 26th January 1950 or from the commencement of this Constitution in right earnest after two or three years. Now, nobody knows whether the life of this provisional Parliament will be two years or ten years according to circumstances. So, I feel honestly that this matter of deciding whether a Member likes to function in the Central Assembly or in the Provincial Assembly should be left to the Member concerned. With

these few words, Sir, I am hopeful that the Drafting Committee will consider what I have said about these Amendments and do the necessary things so that Members may have discretion in deciding where they should work.

Mr. President : You are not moving amendment No. 150?

Shri V. 1. Muniswamy Pillay : I have already moved it, Sir.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, I rise to move amendments Nos. 153 and 157 which stand in my name. I move:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words and figure ‘sixth day of October 1949’ the words ‘date of commencement of this Constitution’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words beginning with ‘ as from the date of commencement’ and ending ‘casual vacancy’, the following be substituted:

‘at the expiration of one month from the date of the commencement of this Constitution, that member’s seat in the legislature of a former Governor’s Province or an Indian State shall become vacant unless he has previously resigned his seat in the Constituent Assembly’.”

Now, so far as my amendment No. 157 is concerned, I have carefully looked into the matter and it can fit in also with the improved clause (3) as it is now moved by the Honourable Dr. Ambedkar. Sir, there is a vague impression that some how or other this double membership which have been a feature of this Constituent Assembly is a thing which ought to be dispensed with at the earliest possible moment, and I have no doubt that in no constitution of the world will you find double membership of this type. There is a usual provision in all Constitutions that if a person happens to be elected to both the legislatures, the higher and the lower one, or the Central and the provincial one, then the option is left to the member whether he will sit in the Central or the provincial legislature; and if he does not exercise his option, then that individual loses his seat in the Lower House and not in the Upper House. On that principle was based the present clause (2) of Section 68 of the Government of India Act of 1935.

Sir, there is a history to this double membership and I shall only take a short time of this House in telling them as to how it occurred. When our Constituent Assembly was first elected, there was a Central Legislature functioning under the old Act in this country. Naturally at that time the only purpose that Members of the Constituent Assembly were expected to fulfill was that of framing the Constitution, but they were elected on a definite basis, viz., that there was to be one representative for every ten lakhs of people. Compared with that, the Central Assembly that existed then was a less representative body, as it was elected under the old Act and even consisted of nominated members. Therefore, Sir, naturally the two bodies were expected to work in the beginning separately, but things moved very fast in the political field in the country and the British decided to partition the country and quit. Power had to be transferred to some authority. Naturally the old Central Assembly was found as compared with this Constituent Assembly, to be not as representative as this body was. At that time, the most representative body in the country was this Constituent Assembly. Therefore it was decided that power should be transferred to this Constituent Assembly, and then the Independence Act was passed. The Indian Independence Act made provision that while continuing their work of framing a Constitution for the country, this body should also function as a legislative body, and provision for this was made in Section 8 of the Independence Act. Section 8, clause (1) says:

“In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable

[Shri H. V. Pataskar]

in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.”

Then we have a further provision in sub-clause (e) of clause (2). Sub-clause (e) of clause 2 of Section 8 of the Indian Independence Act says:

“The powers of the Federal Legislature or Indian Legislature under that Act (that is the Government of India Act, 1935) as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under sub-section (1) of this section.”

It was under these circumstances that the Constituent Assembly came to be a body, not only for framing the Constitution but also to serve the purpose of the Federal or Central Legislature. Our own Government thought that it was necessary, and therefore they passed the Provisional Constitution Order by which sub-clause (2) of section 68 of the Government of India Act was deleted, because if it existed, then naturally double membership could not have continued we would have been required to exercise any option and if we had not exercised that option we would have continued to be members of the Central legislature and we would have lost our seats in the provincial legislature. It was thought then that in the interest of the administration both at the Centre and in the provinces it was not desirable that members of the provincial legislature should take part here in the work of the Central Assembly at the cost of their work which they had primarily to do as members of the provincial Assembly. Hence our leader issued a sort of letter of convention by which members of the provincial legislatures were asked not to take part ordinarily in the working of the Central legislature and I must say, so far as I know (I do not hold any office in the Constituent Assembly) that letter of convention has been to a very large extent adhered to by members of the provincial legislatures, because they were all expected to be responsible people and I think they have acted in that manner.

While framing the constitution we passed article 82 and clause I (a) of that article reads:

“(1a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule and if a person is chosen a member both of Parliament and of the Legislature of such a State then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.”

It is important to, note here that clause (1a) of article 82 closely follows clause (2) of the original section 68 in the Government of India Act, 1935 with this difference that while in the case of the provision contained in clause (2) of Section 68 if a person who happened to be elected to both Houses of Parliament did not exercise his option within the time decided by the Governor-General, as it was intended under, that Act, then he would automatically lose his seat in the lower House, whereas in article 82 (1a) somehow or other, for reasons best known to the Drafting Committee, they have chosen to follow a course different from the one which is usually followed, namely, that the member would automatically lose his seat in the Lower House and not in the Upper House. To me this is an abnormality: however we have already passed that article and I would not take up the time of the House over it and it is not proper to do it at this stage.

After having passed this article I fail to understand why there is any necessity for introducing an article of this nature, because under article 82 (1a) already passed as soon as the Constitution comes into force the Members who are members of the provincial legislature would automatically cease to be Members of this House. Of course he is given the option but if he does not exercise the option he loses his seat in the Constituent Assembly..... *(Interruption by the*

Honourable Shri K. Santhanam) Shri Santhanam interrupting says that article 82 would not come into force with the commencement of the Constitution. If the Constitution comes into force on the 26th January, I do not understand why this provision should not come into force then. If it is thought that it would not come into force I would submit that in any case it is not desirable that there should have been a provision like this made in the Constitution itself for the interim period. On account of circumstances which I have already described this House came to be a body which had some members who were members of the provincial legislatures also and if it was once thought that the best interests of the country and the provinces would be served by issuing a letter of convention I do not understand why it is necessary at this stage, for the sake of one year (which is what is left before the next elections), to make an abnormal provision of this nature in the Constitution. If it is thought that instead of having such a letter of convention it is desirable once for all to solve this question even for this short period the best course would have been to treat these gentlemen in a manner better than what is being done now and to give them the option, which would not have made much difference. Because I want to make it clear that most of the Member of this House were elected on the Congress ticket and if option is given to them it means not an individual decision of an individual Member but it means an exercise of option by the Congress Party itself. All the same the very same result could have been achieved. Such an option would have literally and virtually meant an option given to the Congress Party and tip to this time they have acted according to the party decision.

Under the circumstances I fail to see why when we have been carrying on well all this time, during the transitory period they should have thought it fit to bring forward a special provision for a short period of one year. The provision has a sting in it, for a Member shall have no option to resign from either body after the 6th October. It shows that there is a suspicion regarding many of the Members of this House. We have been carrying on our work for a long time on account of circumstances beyond our control and there is an impression in the press and outside the House that we have been carrying on so long because we want to earn Rs. 45 per day. There have been so many newspaper cartoons and other references. In the circumstances this provision would give the impression that those who are also members of the provincial legislature would prefer rather to be here and earn Rs. 45 per day than observe the rules of the party or serve the best interests of the country, which is very very uncharitable.

So, I fail to understand why this should have been mentioned here at all This provision should be deleted. There are many ways by which the same result could be achieved and they should be charitable to the members of the provincial legislatures, to say the least. I therefore oppose the provision, as there is no necessity for a provision of this nature. My amendment No. 157 means that the option should be given to the members to resign. I know the manner of exercising this option is inconsistent with article 82 (1a) which we have already passed. But it is consistent with the Government of India Act. 1935, and with the principles which are followed all over the world. You take any constitution in the world You Will find a provision that wherever a person happens to be an elected member of a higher and a Lower House if he does not exercise his option, then he automatically loses his seat in the Lower House and not the Upper House. It is on that principle that I have based this amendment of mine. There are ways and ways of achieving object we have in view.

My first submission is that the present arrangements should be carried on for one year more. In 1950-51 the elections are coming. It is therefore only a matter of one year. We have pulled on for so long and there is no reason why we cannot continue to do so for a year more. Even if it is not so, I think an option

[Shri H. V. Pataskar]

should be given to the Member. And an Option to a Member in this case means in a large measure option to the Congress Party, though there might be some who do not belong to this party. I do not think heavens are going to fall if this is not done. I regard this provision as a slur on the members of the provincial Assembly who happen to be returned here and to be double members, not because of their choice but because of circumstances beyond their control. That is why I resent this provision, particularly that we should be treated in this manner when we are reaching the end of our deliberations and that a provision should be made in the Constitution which suggests as if these people are likely for some ulterior reasons to persist in continuing here to the detriment of the administrations to which they primarily belong. It is for this reason I move my amendment. I hope honourable Members of the House will seriously take into consideration what I have said.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I beg to move:

“That in amendment 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words ‘a House’ the words ‘the lower House’ be substituted”.

I also move:

“That in amendment 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘(3a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor’s Province, then, as from the date of commencement of this Constitution that person’s seat in the said Assembly shall, unless he has ceased to be a member there of earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.’ ”

Sir, the whole idea is to obviate the necessity of by elections for more than hundred seats in the Constituent Assembly. If the Members are given the option to continue in the Constituent Assembly the result will be that many seats will fall vacant and a general by-election for more than a hundred seats will have to be conducted. I have got my own opinion as to how far that course is desirable. But at present in amendment No. 160 I am only suggesting that members of the Legislative Council should have the option: they should choose whether they want to sit here or in the Provincial Legislative Council. If they choose to remain here there will be no by-elections because they are nominated members. In the Provincial Legislative Councils the Congress Party has a majority everywhere and it will not be difficult for the Government to nominate any member whom they like. I cannot see any reason why this House and especially members of the Drafting Committee will not find it possible to accept this amendment of mine.

I have got nothing more to say as far as this amendment is concerned. But with your permission I would like to say a few general words on the articles that have been moved. I hold the opinion that Members of the House should have the option to remain here or to remain in the Provincial Assemblies. If there is no difficulty in having a general election in West Bengal. I do not see any reason why there should not be general by-elections for hundred seats more. I hold the opinion that events as they are shaping themselves will compel us to postpone the general elections under this Constitution for an indefinite period. Our relations with the Government of Pakistan, especially with reference to Kashmir, are deteriorating fast, and I hold the opinion that this transitional Parliament will continue for more than five or six years. After that period, whether it will be possible to implement the provisions of this Constitution, whether this Constitution will ever come into operation or not I am not clear in my own

mind. Personally I am inclined to hold the view that the provisions of this Constitution, barring the transitional provisions, will never come into operation. With that background I feel that it will be beneficial if we hold general by-elections for these hundred seats, because to continue a House without going to the electorate for more than six or seven years is not desirable. There is already a growing discontent in this country that we want to continue. We want to take a snap-vote; we want to know whether we have the confidence of the electorate or not. Therefore it is desirable that a general by-election should be conducted in this country.

If my belief is correct that there is not going to be a general election under the Constitution it will be a violation of the letter and the spirit of the Constitution to provide reservation of seats for any community in this country except Harijans and the Adibasis. Therefore I oppose draft article 312 F. It provides reservation of seats for all kinds of communities. In the Constitution we have made provision for reservation of seats for the Harijans and the Adibasis. With that provision I heartily concur, but for other communities there should not be any reservation because other communities must assimilate with the rest of the people of this country. If I had the slightest doubt in my mind that there will be general elections in the year 1950 or 1951, I would not have suggested the course which I am suggesting. But I am quite convinced in my own mind that there cannot be any general election during 1950 or 1951. Therefore why should we continue the legacy of the past? Why should we give reservation of seats to other communities?

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words ‘President may by rules’ the words ‘Parliament may by law’ be substituted; and clause (4) of that article be deleted.”

In this article we are providing for the Provisional Parliament and it is contemplated that this very Assembly should become the Parliament minus the Members who are also members of the various Provincial and State Assemblies. In this article in clause (2) provision is made for representation in the Federal Parliament, of States which are not at present represented in it. The only State that is not represented now is Hyderabad, so what is intended by clause (2) is that the President is given power to provide by rules representation for Hyderabad. Personally, I think that we will have the representatives of Hyderabad present here before this, Assembly dissolves. I have no objection whatsoever to representation being granted under rules but this Parliament should have the opportunity to discuss the representation which is given to Hyderabad. What is attempted by this clause is that whosoever is chosen to represent that State according to the rules made by the President, this Parliament will not have the power to discuss those rules. This I think is not proper. As a sovereign Parliament it should have the power to discuss who is being allowed to become its Member, who represents a particular territory and whether the rules made are what Parliament could approve of. I therefore think that it is not very happy that the President should be permitted by rules to provide for this representation and that this House should have no say whatsoever in the manner the rules are framed.

Then, who is this President ? It is said in article 312 F which has not yet come up before the House but which is there before us that until 26th January, for you Sir, shall be the President and you are given the right to frame rules for securing the representation. After that the President of the Republic shall be empowered to do it, which means the Cabinet. I think that this House should have the power in both the cases of discussing the rules. When we framed rules for representation of Kashmir, this House had an opportunity of discussing those

[Prof. Shibban Lal Saksena]

rules. The House has the right to have its say. But by this clause, by saying that the President shall do it by rules, you are depriving the Parliament of that right which is not proper and is wholly undemocratic. I do demand that whatever is decided about Hyderabad and in whatever way it is given representation, this Parliament should be the final authority as regards the rules under which they come to this House.

The second part of my amendment is that clause (4) be deleted. In article 311A we have said that this Constituent Assembly shall elect a President. Why, then, should it not elect a Speaker also? I see no reason for making a difference. I am sure the same President and the same Speaker will be re-elected by this House, but still it would have been far more democratic if we had said that this House shall re-elect them. If we have agreed to elect the President. Why should we not elect the Speaker? There should be no difference between the Speaker and the President; although the Personalities chosen may be the same as heretofore—as we ourselves will elect them there is no reason why they should be different—still I do feel that any differentiation as between the President and the Speaker in this matter is not proper. It is a sort of a discrimination that the House shall re-elect the President and not the Speaker. The House shall re-elect the President as well as the Speaker. The Constitution must have the same provision for both of them. That is logically necessary.

Some friends have spoken about the provisions of clause (3). That clause has been objected to, saying, that choice should be given to Members who are also members of provincial legislatures to choose whether they would prefer to be members of Parliament or the Provincial Assembly. I agree with that point of view. This Parliament should become the Parliament of the future as it is and the vacancies should not be created in this House but the seats of such Members should have been declared vacant in the Provincial Assemblies and the people should have been required to re-elect Members in their places. One hundred seats in the whole country is not a large number and those re-elections would also have shown whether the country was with the Congress or not. Also it would have been a more democratic way of doing things. It would have given some indication of how the public feels. Though I have not tabled an amendment, I am in sympathy with those friends who think that this House should have remained as it is and the vacancies caused by those Members who have membership in the Provinces should have been filled by direct election.

Sir, I also support some of the amendments made by My Friend Mr. Kamath to clause (1). The wording chosen by him is better. I think these amendments should be considered by the Drafting Committee and incorporated to make the draft more concise and better.

Shri Mahavir Tyagi (United Provinces: General): Sir, have I your permission to discuss generally the whole article ?

Mr. President : You may first move your amendments

Shri Mahavir Tyagi : I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:—

‘and shall be known as the Parliament of the Union of India.’ ”

I have other amendments, but now since Dr. Ambedkar has come out with his fresh amendments which cover many of my amendments, I do not intend to move the rest of my amendments.

In moving this amendment I have just one remark to make. Article 311 as proposed starts with the heading, "Provisions as to Provisional Parliament of the Union and the Speaker and the Deputy Speaker thereof." The words "Provisional Parliament" have been used for the first time in the heading alone. There is nothing in the body of the article to say as to what would be the provisional Parliament. Somewhere in the body of the article we should say that there shall be a provisional Parliament but this has not been stated. Only in the latest amendment of Dr. Ambedkar it is mentioned that after these casual vacancies are filled there will be a provisional Parliament. He has named it "Provisional Parliament" only casually. Therefore, in order to clarify this I wish to add in the very first clause the words—

"and it shall be known as the Parliament of the Union of India."

In this first clause he says—

"Until both Houses of Parliament have been duly constituted, and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

From this I construe the meaning that the Constituent Assembly of the Dominion of India will continue and that that body will carry out all the functions of the provisional Parliament. What a provisional Parliament is, has not been defined anywhere. I therefore submit that we may add, "and shall be known as the Parliament of the Union of India." I do not agree with the use of the word 'Provisional' either in the case of the Parliament or in the case of its officers or President or others. It must be "Parliament". With these remarks, I hope this amendment will be accepted.

Sir, speaking generally on the article, I am really sorry that. Dr. Ambedkar and the Drafting Committee had to come out with this proposal. I should have preferred a general election. The proposal to continue this Constituent Assembly and also to suggest that this Assembly shall function as the first Parliament is, to my mind, not very democratic. It would have been much better if we could have a direct election immediately before the commencement of the Constitution. We should have commenced with a new Parliament freshly elected through the general election. That would have been the proper course.

Shri L. Krishnaswami Bharathi (Madras: General): Under what franchise?

Shri Mahavir Tyagi : That would have been the proper course, because then, the Parliament would be in a position to know the trend of public thought and the people in power would be vested with the fullest confidence of the people when they would represent. Now, Sir, as it happens, we have come here through an indirect electorate, the legislative Assemblies of the Provinces, which were elected long ago in 1946 or so. It is long since we approached the electorate. From that point of view, this article, in my opinion, is the most reactionary type of an article that we are passing.

It seems there are difficulties in getting the electoral rolls ready as the franchise has become adult franchise and it would take time to get ready the electoral registers and therefore just to fill up the gap this article is being proposed. I also agree with my honourable Friend Mr. Santhanam when he suggests that a final date should be fixed by which time elections should be held. After all, there must be some limit within which these electoral rolls and all these formalities should be complete and the people, may really take over. If elections on adult franchise of general electorates were held, then alone, the Parliament could claim to be the representatives of the people. Since it is just to fill up the gap that this article has been proposed, I hope much time will not be lost in getting things ready for fresh general elections.

[Shri Mahavir Tyagi]

Then, there is another amendment which Dr. Ambedkar has been pleased to move that such members of this Assembly who are also members of the provincial Assemblies or provincial legislatures would be deemed to have vacated their seats here on the date immediately before the commencement of the new Constitution. But, those seats, though they will not be vacated till the commencement of the new Constitution, will be re-filled by election before the Constitution comes into force. Although those seats would not be physically vacated until before the commencement of the Constitution, the filling up of these unvacated seats, according to this amendment, will be done by elections much earlier than the seats will be really vacated. This is something which I really do not understand. It would have been better if he had said that those seats of the local M.L.A.'s will be deemed to be vacated a fortnight before the commencement of the Constitution. Within that fortnight, through indirect election, we should get those seats filled up so that at the commencement of the Constitution, this Assembly could be fully complete. That would have been the proper course. I would still suggest that the Drafting Committee might just consider the possibility of adding a few words which will change the meaning so as to enable the Government to have an election, say fifteen days before the commencement of the Constitution and also get these seats vacated before they are re-filled. That would have been more consistent.

The draft of clause (3) as now proposed is complete to a greater extent. In the previous draft only such members were debarred from continuing as members as were members of the local legislatures on the 6th October 1949. All such persons who became members of the local legislatures after the 6th October 1949 were not disqualified. Now, this new proposal is complete from that point of view as it lays down that if a member of the Constituent Assembly of the Dominion of India was on the 6th October or thereafter becomes at any time before the commencement of the Constitution a member of a House of legislature of a Governor's province or an India State Corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then, as from the date of the commencement of this Constitution, the seats of such Members in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. Now, Sir, although there will not be many cases, or there may be no case at all, this draft, however, covers the cases of only such Members as become members of the provincial legislatures during this period. What about those who are members of the provincial Assemblies and become members of this Assembly, in this period? Strictly interpreted, under this latest draft of Dr. Ambedkar, those members who are Members of this House and who become members, either on the 6th of October or thereafter, of the House, of legislature of a province, meaning thereby, members of the local legislatures, then, those member's seats will be deemed to be vacated—such Members only who are members of this House already and are also members, on the 6th of October or thereafter, of the provincial Assemblies. What about those who are not members of this House, but are members of the provincial Assemblies and become members of this house during this period? They will also get a double membership and their seats will not be deemed to be vacated.

Therefore, this article is still slightly incomplete. I would suggest that the cases of such Members should be also covered : persons who are not members of the Constituent Assembly today or who were not members of the Constituent Assembly on the 6th or thereafter, but were on the 6th October members of, say, the U.P. provincial legislature, one or many of them—the number does not matter—being elected during this period as members of the Constituent Assembly: their cases will not be controlled even by the latest proposed draft.

Shri L. Krishnaswami Bharathi : The word is intended to cover only such cases as the honourable Member has in view.

Shri Mahavir Tyagi : He was already a member of the Provincial Assembly and he becomes a member here thereafter. The case of a gentleman who becomes a member here during this period is not, strictly speaking, legally covered but perhaps such cases may not arise.

Another point I would like to bring to your notice is that the Drafting Committee has also provided for the continuance of the Speaker and the Deputy Speaker of the Assembly. This again is bad in spirit. After all when about one hundred or so of Members in the Assembly who enjoy the membership of the Provincial Assembly when their seats are declared vacant, their substitutes will be elected. Now, when one-third or so of the House is being changed, then why force the old Speaker and the Deputy Speaker on the House? We should have said only this much that till the first day of the meeting of the Parliament the Speaker or Deputy Speaker will continue. Thereafter, the Parliament must have the liberty to elect its Speaker or Deputy Speaker afresh. This has always been the custom whenever one Session of Parliament is over and the next comes after re-election. It is their first business to elect the Speaker and Deputy Speaker. Generally the old ones are re-elected, but then the formality is undergone afresh. I suggest this is bad, on principle that the present Speaker and the Deputy Speaker—without casting any aspersion on any persons; I hope they will be re-elected should be forced on the Parliament. The fact that we put it in the Constitution that they will continue does not speak well of that high office. There is an office endowed with a complete command of confidence of the House. It is not fair that this House should come between the Parliament and its free choice of officers. We should not interfere with the working of the House of Parliament. It will in itself be competent to elect its own Speaker, and the Deputy Speaker when it meets for the first time after the general elections.

Mr. President : You have taken more time.

Shri Mahavir Tyagi : I have nothing more to say except putting a question. What will happen in the case of such Members of the Constituent Assembly from a province where the Provincial Assembly is dissolved and re-election takes place? Suppose in Bengal or U.P. general election takes place and their representatives are there in this Assembly. We have already provided for their continuance here, but will they continue even after the general elections are over, or will they be required to seek the confidence of the newly elected Legislative Assembly in their respective provinces? This may also be clarified.

Shri Sita Ram S. Jajoo (Madhya Bharat): Sir, I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘an Indian State’ the words ‘or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government be inserted.”

My amendment is a very simple and short one. As a matter of fact the principles underlying this amendment have been already accepted by the Constituent Assembly in the Constitution in article 83 and I feel that this provision should be inserted in these transitional provisions to avoid any misunderstanding and ambiguity which may arise, after these transitional provisions are accepted and passed. Although we have already adopted that double membership is to be abolished by the provisions of article 82 in the Constitution but to avoid ambiguity we are doing it here as well. So I hope, to avoid ambiguity regarding the other part as well. the Honourable Dr. Ambedkar will accept this amendment.

Mr. President : Mr. Karimuddin-absent.

Mr. Guruv Reddy—absent.

Mr. Sidhwa—you had given notice of an amendment which I had promised might be taken along with this. I think it does not arise now.

Shri R. K. Sidhwa (C.P. & Berar: General): Yes.

Mr. President : There is no other amendment. The amendments and the article are now open for discussion.

The Honourable Shri Satyanarayan Sinha (Bihar: General): I request that question may be now put.

Mr. President : Some of the Members may like to speak. I will only allow one or two speakers who have not spoken. Does any Member wish to say any thing who has not moved any amendment ?

Mr. Mohd. Tahir (Bihar : Muslim): Mr. President, I find some difficulty in this article which I wish to place before the House. Clause (1) in this article is admittedly a substantive portion of this article. It says that—

“Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.”

This substantive portion of this article means that the body which is now functioning, which means that the body consisting of the Members now present in the Assembly, will be the body which will form the Parliament after the commencement of this Constitution.

Now, the substantive portion of the law means that it governs the following provisions of the article. That means that clause (1) which is the substantive portion of this article should govern the other provisions of this article, i.e. clauses (2) and (3). But here we find that the position is quite otherwise. It is topsy-turvy. Actually clause (3) governs the substantive portion of this article which in my opinion, is not legal, because clause (1) says that this body will function as the Dominion Parliament, whereas clause (3) dissolves this Constituent Assembly, not wholly but partly. In fact, clause (3) means the dissolution of this body in parts. Therefore I think clause (3) is redundant and should not be included or inserted in this article.

Now, the question will arise that after this House is converted into the Dominion Parliament ‘Members will find themselves in this position that some of them may be Members of this Dominion Parliament as well as of the Provincial Assemblies. For that, Sir, we have already adopted an article, and I refer the House to article 82 which, as has already been explained by one of my friends there, is the remedy for that, when Members are Members of this House as well as of the Provincial Legislatures. But to insert such a clause as has been done in the form of clause (3), I would say, really pollutes the whole Constitution. ‘the insertion of such a clause as clause (3) is polluting the constitution and I hope this will be considered by my Friend Dr. Ambedkar, that the substantive portion of the law should not be governed by the sub-clauses which are being entered in the article.

With these words, Sir, I close my remarks.

Mr. President : Dr. Ambedkar, have you anything to say ?

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, before I begin, I would like your permission to omit the word “becomes” in clause (3)

of amendment No. 195, occurring between “thereafter” and “at any time before.... The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adapt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312 F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is, that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference. It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. The reason why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.....

Shri H. V. Pataskar : My amendment gives the option to the Member.

The Honourable Dr. B. R. Ambedkar : That, I think, will create a lot of complication. If the Member is given the option, that will create complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

Shri Ram Sahai (Madhya Bharat): What about the amendment moved by Mr. Sita Ram Jajoo ?

The Honourable Dr. B. R. Ambedkar : We had anticipated the point raised by him, and we have modified my amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

Mr. President : I shall now put the amendments to vote one by one. The first set of amendments to clause (1) are Nos. 142 to 145 of Mr. Kamath.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, after the word ‘Until’ the words ‘such time as’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in the proposed article 311, the words ‘the body functioning as’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (second Week), in the proposed article 311, for the words ‘Constituent Assembly of the Dominion of India’ wherever they occur, the words Constituent Assembly of India be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words ‘immediately before the commencement of this Constitution shall, the words ‘shall itself’ be substituted.”

The amendment was negatived.

Mr. Naziruddin Ahmad : I would leave my amendment No. 146 to the Drafting Committee, Sir.

Mr. President : Now I will put amendment No. 194 of Mr. Tyagi to vote. The question is—

“That is amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:—

‘and shall be known as the Parliament of the Union of India’.”

The amendment was negatived.

Mr. President : These are all the amendments to clause (1) Now I will put the amendments to clause (2) one by one to vote. The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word ‘rules’ the words ‘which shall as far as practicable, conform to those adopted by the Constituent Assembly’ be inserted.”

The amendment was negatived.

Mr. President : Then we have a series of amendments moved by Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : In view of the assurance given by the Honourable Dr. Ambedkar I do not press any of my amendments.

Shri H. J. Khandekar (C.P. & Berar: General) : I do not want that these amendments of which I have also given notice should be withdrawn.

Mr. President : They were moved by Mr. Muniswamy Pillay. I shall put them to vote.

The question is:

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘of any State or other territory’ the words ‘of a Governor’s Province or Indian State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in sub clause (a) of clause (2) of the proposed article 311, for the words ‘not represented’ the words ‘not adequately represented’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words ‘commencement of this Constitution’ the words ‘having due regard to the proper representation of the Scheduled Castes’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:—

‘(d) the election of a Speaker or a Deputy Speaker for the Parliament.’ ”

The amendment was negatived.

Mr. President : Now I will put to vote the first part of the amendment (No. 178) of Prof. Shibban Lal Saksena to clause (2). The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words ‘President may by rules’ the words ‘Parliament may by law’ be substituted.”

The amendment was negatived.

Mr. President : Now we come to the amendments to clause 3. Amendment No 155 of Mr. Kamath.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘An Indian State’ the words ‘or Union of States’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words ‘within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly’ be added at the end.”

The amendment was negatived.

Mr. President : The next amendment to be put to vote is that of Mr. Muniswamy Pillay (No. 156) to amendment No. 195 moved by him in a slightly modified form.

The question is:

“That in amendment No. 195 delete all the words beginning with ‘and’ in the last line and add the following:

‘A member in two assemblies shall resign his membership in the legislature of a Governor’s province or an Indian State thirty days prior to this Constitution coming into effect.’”

The amendment was negatived.

Shri H. V. Pataskar : Sir, I beg leave to withdraw my amendments.

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

Mr. President : I shall now put the amendments of Shri Brajeshwar Prasad and Shri Sita Ram Jajoo to clause (3) to vote.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words ‘a House’, the words ‘the lower House’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘3 (a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor’s province, then, as from the date of commencement of this Constitution that person’s seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘an Indian State’ the words ‘or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government’ be inserted.”

The amendment was negatived.

Mr. President : Now I shall put the amendments to clause (4) to vote.

Shri H. V. Kamath (C. P. & Berar: General): Sir, in view of the assurance given by the Honourable Dr. Ambedkar that this discrepancy will be rectified I do not press my amendments Nos. 161 and 162.

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

Mr. President : Now I will put to vote the second part of the amendment moved by Prof. Shibbanlal Saksena No. 178.

The question is:

“That in amendment No. 9 of List I (Second Week), clause (4) of the proposed article 311 be deleted.”

The amendment was negatived.

Mr. President : All the amendments to article 311 have been disposed of. I will now put the clauses of the article to vote first.

Shri Mahavir Tyagi : My amendment has not been put to vote.

Mr. President : I put it; nobody voted for it.

The question is:

“That clause (1) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : The question is:

“That clause (2) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : Amendment No. 195 has taken the place of clause (3) of amendment No. 9. In the second line of amendment No. 195 the word ‘becomes’ is deleted and the rest remains as it is.

The question is:

“That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :—

‘3 (a) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor’s Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then as from the date of commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.’”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘3 (a) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred’.”

The amendment was adopted.

Mr. President : The question is:

“That clause (4) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : The question is:

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

The motion was adopted.

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

Article 312 F

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

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

‘312 F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 311 of this Constitution [including vacancies referred to in clauses (3) and (3a) of that article shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with elections such vacancies shall) be regulated—

Provisions as to this filling of casual vacancies in the provisional parliament and provisional legislatures of the State.

[The Honourable Dr. B. R. Ambedkar]

- (a) in accordance with such rules as may be made in this behalf by the President, and
- (b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union:

Provided that where any such seat as is mentioned in this article is, immediately before, it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a State for the time being specified in Part I of the First Schedule, the Person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same, community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote."

Then I am moving my amendment No. 205 to substitute a different explanation.

"That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312 F, the following Explanation be substituted:—

*'Explanation.—*For the purposes of this clause—

- (a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300A specifying the Scheduled Castes in relation to that corresponding State;
- (b) all the Scheduled Castes in any Province or State shall be deemed to be a single community—

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional Legislature of a State functioning under article 312 or article 312 C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating Such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessary. The provisions are quite clear. If any point is raised in the course of the debate, shall be quite prepared to offer such explanation as I could give.

Mr. President : There are four or five amendments to this. No. 179, Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Mr. President, Sir, there is some mistake in the printing. I will move my amendment this way—

"That in amendment No. 164 of List III (Second Week), (the first proviso to clause (1) of the proposed new article 312 F, be deleted."

I also move:

“That in amendment No. 164 of List III (Second Week), in clause (2) of the proposed new article 312 F, for the words ‘as the President may by order direct’ the words ‘as the Parliament may by law provide’ be substituted.”

Sir, this article makes provision for the filling of casual vacancies, and this proviso to clause (1) wants that the vacancies of members in this Assembly should be filled by members of the same community. I want the deletion of this proviso. My main reason for the deletion of the proviso is this: We have provided in our Constitution by the agreement of all the minorities themselves that all reservations shall go, except for the Scheduled Castes. Now, according to this proviso, the Scheduled Castes do not stand to gain, because I see that the Scheduled Castes according to their population should have about forty-five seats, whereas they have only about twenty-eight seats in this Assembly. If this proviso is strictly adhered to justice would not be done to them.

Then, Sir, for the rest, we have already decided that there should be no reservation in the general elections. To imagine that members of the legislatures in the provinces will not be generous and fair to them is something which I cannot understand. If they can trust the illiterate people in the whole country to be fair enough to return the minorities in their proper proportion, they must surely trust the members of the provincial legislatures to be much more fair to them. They will be men of knowledge, much more responsible, who will weigh the issues and who will try to see that the minorities are given not only their proper quota but even more than that. As most of the members of the provincial assemblies will be Congressmen and the Congress Parliamentary Board will give the list of candidates to be elected, I am sure that they will take care to see that justice is done to all minorities. Therefore, Sir, I do not want that our Constitution should be disfigured by this proviso. The Muslims, the Sikhs and the other minorities will surely get much better treatment at the hands of the Parliamentary Board of the Congress and the provincial assemblies than they can expect by this proviso, which will only limit them to the number of seats they hold now. For the Scheduled Castes it will be a sad thing, because these members of the Scheduled Castes can be returned to this Assembly only when scheduled caste seats become vacant. This would really perpetuate the injustice done to them by the Cabinet Mission, which gave them seats according to proportional representation in the legislatures. Hence this proviso to clause (1) must go, for it will not serve the purpose for which it is intended. I do not think that the Muslims and Sikhs feel that they will not get a fair deal in regard to the Central legislature in the by elections. Even the Scheduled Castes themselves do not want the number of seats given but they want more. That can be achieved only if this provision is deleted.

By my amendment No. 180 I want to substitute “as the Parliament may by law provide” for the words “as the President may by order direct”, in regard to casual vacancies. The reasons are the same as I have given regarding the previous amendment. I think in the matter of making rules for filling seats, the Parliament should be the final authority and not even the President should have absolute power in the matter. The same Parliament will continue which is making the Constitution and why should not they be permitted to approve the rules to fill casual vacancies ? I think that is fair and proper and in place of the President, Parliament should be substituted.

Shri V. I. Muniswamy Pillay : Sir, I beg to move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312 F, after the words ‘the Scheduled Castes or’ the words ‘Scheduled Tribes’ be Inserted.”

In the new amendment given by Dr. Ambedkar he has made it clear that he included all such castes, races, tribes or groups within castes. It would be more appropriate if Scheduled Tribes are also included after the words “Scheduled Castes” in the main article, so that what is said in the new amendment may be in consonance with the article itself. Speaking generally on this article I have made it clear, when we discussed article 311, as to the inadequacy of the representation of the Scheduled Castes in the new provisional Parliament and I am thankful to Dr. Ambedkar for making it clear that the President will consider the case of such inadequacy and allot the number of seats that is rightly due to the Scheduled Castes. I welcome the last sentence in the first proviso “unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community.” Originally it was thought that since we were selecting only for 28 seats in the Constituent Assembly only 28 members will be taken to the provisional Parliament. Later it was thought if a member of a particular community vacated the seat that community will be returned and here was a lacuna. The question was whether it would be possible to increase the number of representatives of the Scheduled Castes. With this amendment or with the provision that has been made I feel certain that the number required for the Scheduled Castes will be assured. With these observations I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava : (East Punjab : General): Sir I move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312 F, the words ‘or to the Muslim or the Sikh community’ be deleted, and for the words ‘be of the same community’ the words ‘belong to the Scheduled Caste’ be substituted.”

So far as the filling of casual vacancies is concerned I wish that the basic principles which we have adopted in regard to the legislatures of the provinces and the Centre are observed. We have ruled so far that general electorates shall take the place of separate electorates and that there shall be no reservation of seats for the Muslims or the Sikhs and that there will be reservation of seats for the Scheduled Castes and they shall also have the right to contest the general seats. If this principle were given effect to, the amendment which I seek to make will be fully justified. I can understand the argument that since the old House is being continued in the coming Assembly therefore the representation of the various communities should continue as before. But this argument is certainly not valid and at the same time this principle has been departed from. In the first place, the present members from the various communities were elected on the basis of separate electorate and this is given the go-bye in the second proviso, because it clearly says that every member of the Legislative Assembly of a State shall be entitled to participate and vote, which means that for the purpose of filling casual vacancies we have adopted the principle of joint electorates in place of separate electorates. If the proviso remains as it is, it would mean that the Muslims and the Sikhs will also have the right to contest the general seats in case of casual vacancies. In this matter also this proviso departs from the original principle. When we have made departure from two basic principles—that of separate electorates as well as allowing the Sikhs and Muslims to contest general seats—it passes one’s comprehension why the accepted principle of non-reservation for Sikhs and Muslims should not be given effect to. So far as reservation is concerned we know that in this House all right-minded Muslims and Sikhs themselves gave it up. It cannot be said that the Assembly coerced them to do so. There

were two sets of persons among the Muslims. Such of them as preferred separate electorates moved their motions here and did not willingly give them up. There were others who came forward and said that they did not want reservation. These persons will be very much hurt with this provision. The same was the case with regard to the Sikhs. They voluntarily gave up reservation and it would not please the Sikhs to depart from this accepted principle. If this Constitution had been framed in 1947 I know that these reservations must have remained for Muslims and Sikhs also, but the experience of the last two years should not be lost upon us. It is absolutely wrong now to continue this and I for one would beg the House to accept the principle which they accepted with regard to the coming elections, that there shall be no reservation for the Sikhs and the Muslims. If our friends the Muslims and Sikhs want that the seats falling vacant should be filled by members of the respective community, namely either Sikhs or Muslims, let it be arranged by convention. I am not opposed to any seats being given to them but it would be wrong to disfigure the Constitution any more by reference to the principle of reservation of seats which the Sikhs and Muslims themselves have given up.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, I move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, for the words ‘Muslim or the Sikh Community’ the words ‘Muslim, Christian, Sikh community or by a woman’ be substituted, and at the end of the said proviso the words ‘or sex as the case may be’ be added.”

Sir, I am conscious of a spirit of diffidence in moving this amendment and sometimes feel that in doing so I may be opening myself to a certain amount of ridicule. But, even at that cost I feel I should state my case. The proviso which we are now discussing provides that in respect of the casual vacancies which are to be filled hereafter for the provisional Parliament, those belonging to the Sikh or the Muslim community will be represented by persons of that community. My amendment seeks just to stretch that same provision for women. I wish to make it quite clear that women do not want any reserved seats for themselves, but nevertheless, I suggest to the House that in respect of the number of women who are now occupying seats in the Assembly, if any of them should vacate their seats they should be filled up by women themselves. We have had casual vacancies in this House before this. Three women have retired so far. One was our late lamented Shrimati Sarojini Naidu, the second was Mrs. Vijayalakshmi Pandit and the third was Shrimati Malati Chaudhuri. Three women Members for various reasons have had to leave this House. Mrs. Naidu who could never be replaced both from among men and women, Mrs. Vijayalakshmi Pandit who is so very highly talented and our friend Shrimati Malati Chaudhuri—all these three women have been replaced by men Members. I do not speak in disparagement of the honourable Members who may have been returned in their places and I am sure they are worthy and fit Members of this House. But I do hold that women could have also filled those places with equal merit and they should have been invited to do so. Since the entire basis of the State has changed and it is no longer a police state, certain social functions such as education and health now feature among the major items of the State’s development. I feel, that not only is the association of women in the field of politics essential but it is indispensable, and therefore I feel that this indispensable section of the people should be amply represented in this House and therefore my amendment proposes that in the casual vacancies which will occur women should at least be returned to the seats which they hold today, if not more. With these words, I move.

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

Shri H. V. Kamath : Mr. President, this article provides for the filling of casual vacancies in the provisional Parliament and in the provisional Legislatures of States. The provisions of this article are good as far as they go but I feel that they could be bettered. I would invite the attention of my honourable colleagues to certain issues and doubts that have been raised in my mind on a careful perusal of this draft article 312F. To start with I shall refer to sub-clause (b) of clause (1) of this article. This sub-clause (b) provides that the filling up of casual vacancies shall be regulated by the President of the Union after the commencement of the Constitution in so far as the modifications and exceptions to the rules already passed by us are concerned. I can understand the President of the Assembly not laying those modifications and exceptions before this Assembly before the enforcement or commencement of the Constitution. But I fail to understand why, once the Constitution has been inaugurated or has commenced and the provisional Parliament has started to function, any rules made by the President of the Union after such commencement should not be laid before Parliament for consideration. This House will remember that when certain rules adopted by us a couple of years ago were sought to be amended and altered, those modifications were brought before this House and the House duly approved of them. So in this case, where the President of the Union is concerned, after the Parliament has started functioning it is necessary and advisable from the purely constitutional and also democratic point of view that the decrees or the rules made by the President of the Union should be laid before the provisional Parliament for consideration. Before the Constitution commences there may be difficulty as regards time—there may not be time enough for the President to lay the rules before the House. But once the Constitution has commenced the President of the Union must lay the modifications and exceptions that he might make with regard to the rules before the provisional Parliament for their consideration and formal approval. That is the first point.

The second point arises out of the first part of the explanation to this article. It says that “all the Scheduled Castes in any State shall be deemed to be a single community”. I am rather reluctant to use the word “community” for the Scheduled Castes by themselves as a whole. I believe the House will agree with me when I say that we long ago decided that the Scheduled Castes are not a separate community by themselves but a part of the great Hindu community. This House has decided that point. This part of the explanation, I feel therefore, is a hang-over from the past. We have not been able to shake off this misconception about the Scheduled Castes as being a community. I think therefore that this explanation must be recast so as to delete the description of the Scheduled Castes as a community. Describe them as a sub-community, as a group of the Hindu community. On that I am sure all of us are agreed in this House. Therefore, I would request the Drafting Committee and also this House to amend this part of it suitably so as to describe the Scheduled Castes as a part of the Hindu community and not as a community by themselves.

Then there is the point raised by my Friend Pandit Thakur Das Bhargava. I feel there is much force in his contention that after the decisions we made recently with regard to the abolition of reservation for the Sikhs and the Muslims, it would not be in the fitness of things to retain this so far as the provisional Parliament is concerned. An adequate safeguard is there in this proviso to clause(1):

“..... unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise.....”

That safeguard is there. Of course he may provide in a particular case that the casual vacancy may be filled by a Member not belonging to that particular community, on the basis of joint electorates and non-reservation of seats for Sikhs and Muslims. But I hope this aspect of the matter will be borne in mind by the President of the Assembly and the President of the Union when occasions arise in the future for filling up of casual vacancies. We may, as a matter of fact, give more seats to deserving Muslims and deserving Sikhs than is warranted by their numbers in the population, but let us not perpetuate or let us not continue during this interim period this feature or this provision of reservation and separate electorates which we have already abolished. Therefore I would very much desire that the House would clearly express its mind today that so far as the casual vacancies in the filling of seats of Muslims and Sikhs are concerned there will not be any special consideration given with regard to the reservation on the basis of population or to separate electorate.

Shri Brajeshwar Prasad : There is no provision for separate electorates.

Shri H. V. Kamath : Article 311 which we passed yesterday says the President may by rule provide for the representation in the Provisional Parliament of States not represented, and so on and so forth. The House will remember that this House itself was elected on the basis of separate electorates: General, Muslim and Sikh. if we do not clearly and categorically lay down in an article here that this will not be followed in the filling of casual vacancies, it may give room for doubt that even in future, so far as the filling of casual vacancies is concerned, the old system of the Cabinet Mission Plan might be followed. Therefore it is very essential that we should provide in this article or elsewhere that separate electorates will have no place and that all elections in the future as regards the filling of casual vacancies will be on the basis of joint electorates.

Then there is the point raised by my Friend Shrimati Purnima Banerji. Though she has not pleaded for her own sex on the basis of special reservation, yet I feel that that is a point which may be easily conceded by this House. She went so far as to say that the seat formerly occupied by the late Shrimati Sarojini Naidu cannot perhaps be filled from among the ranks of men. I know not what she implied but I would not pick a quarrel with her on that point. As a matter of fact I would not mind, I would be quite happy, if there are more women in this House than there are today, but I do not think she should make an issue of that so far as this article is concerned. So far as the work of Government is concerned, if I heard her aright, she said that women should be given a greater chance more scope, in affairs of administration and government than they are being given today. The most common and the strongest objection so far put forward by political philosophers in this connection, that is to say as regards the capability of women for government and administration is that woman is ruled more by the heart than by the head, and where the affairs of Government are concerned, where we have to be cold and calculating in dealing with various kinds of men, women would find it rather awkward and difficult to deal with such persons and that the head may not play the part that it must play in the affairs of government. If the heart were to rule and the head to take a secondary place then it is felt by many thinking men, and thinking women too, that the affairs of government might go somewhat awry, might not fare as well as we might want them to be. However, I do not wish to dwell on this point further, but I think the House will not quarrel with Shrimati Purnima Banerji on this point that where a seat held by a woman Member is vacated that seat should normally go to another woman.

Lastly, there is a point arising out of explanation (2) to this article. That is with regard to the filling of casual vacancies in provisional Legislatures of the

[Shri H. V. Kamath]

States. It is true enough that so far as the State Legislatures are concerned, the Constitution has made provisions with regard to elections to these Legislatures as well. But as far as the interim period is concerned, considering that so many changes have occurred in the States recently, in the Governor's Provinces too, what on account of integration and merger and similar other changes, I feel that so far as this matter is concerned, namely the filling of casual vacancies in the State Legislatures during the interim period, I think nothing would be lost but everything gained by the President taking the Governor of the State or the Province into consultation with him so far as this matter is concerned. The Governor being advised by this Council of Ministers in the Provinces or the States would be well posted with the local developments, and being the man on the spot, he will be able to tender advice to the President in this connection. I feel therefore, that the House will be acting wisely if we provide that the President of the Union will in this regard consult the Governor of the State in so far as the matter referred to in explanation (2) is concerned. I hope, Sir that the point I have raised will be earnestly considered by the Drafting Committee and the House for incorporation in this article at this stage or subsequently when the Constitution comes up for Third Reading.

Shri H. J. Khandekar : Mr. President, Sir, the new article 311 deals with the provisions as to the filling up of casual vacancies in the provisional Parliament and provincial legislatures of the States. I support this article with certain observations.

The article that we have passed just now, that is article 311, asks the double Members to quit this House. It is an unfortunate feature of this House that the real representatives of the masses are to go away on the 26th of January 1950. As regards the Scheduled Castes, the same mistake is being represented here in this Assembly. In the beginning, we wanted our quota to be represented in this Assembly according to our population. There was a convention that for every ten lakhs of the population of harijans, one member will be returned to this Assembly. In this Assembly, now, there are 28 Harijan Members out of whom two are Ministers. According to the population of Harijans, we ought to have been here not less than sixty. But, unfortunately, according to the last article, 17 Harijan Members of this House out of these 28 are to go away. These Members are the tried leaders of the Harijans and the intelligentsia of the community. According to this article, these vacancies are to be filled in after the commencement of this Constitution. What I suggest is that when powers are given under this article to the President of the Union or the President of the Constituent Assembly for the filling up of casual vacancies. I propose certain things. My suggestion is that members cannot be found among the Harijan community because they are uneducated. You will not be able to get so many members to fill in these casual vacancies from amongst the Scheduled Castes. Therefore, my request is that it is necessary that the President, while considering the filling up of those casual vacancies, should consider the cases of those Members who are going out of this House being double members of this Assembly and the provincial Assembly to be re-elected. Because, as far as my province is concerned, I know that we shall not be able to get more suitable people—of course there are people among the Harijans, but they are already members in the provincial legislatures-. I think this will be the case in the other provinces also. Therefore, I earnestly suggest that the President of the Union or the President of the Constituent Assembly should consider this matter very seriously and while making rules for the filling up of the casual vacancies, he should give some option to the members of the Harijan community.

The other point is that this article says that as many members of the Harijans or Muslims or Sikhs as are here and go out, will be filled up by new members of the same community. We are 28 here; 17 are going out. According to this clause, 17 will be coming in. That means, the position will be the same. No more representation is being given to the Harijans, and as I said the last mistake is being repeated again here. What I suggest is this. The population of the Harijans in the Indian States is about one crore. I am very sorry to inform this House that when members were sent from the Indian States, not a single member was a Harijan except one from Mysore. I request you to take this fact into consideration. I do not know whether the Members from the States are resigning or not. If at all they resign, I suggest that in their places, Harijans should be elected. Moreover, I shall give you one instance. In Madras, our quota last time was eight according to the convention; but only seven members were elected. This one seat is still vacant or it was given to a Caste Hindu. That seat should be given to the Harijans. From the Central Provinces and Berar, our quota was three. Three people were elected. Afterwards one Harijan member resigned.

Shri S. Nagappa (Madras: General): Was made to resign.

Shri H. J. Khandekar : In his place a caste Hindu was elected. Of course, Dr. Raghuvira, a friend of mine, who was elected in the place of the Harijan member from the Central Provinces served here for the purpose of language. I do not know whether he resigns or not because he is not a double Member. The seat of anybody who resigns from the Central Provinces as a double member should go to the Harijans. My request is that the President of the Union or the President of the Constituent Assembly, whichever the case may be, while making rules or making provisions for the filling up of the casual vacancies, the Harijans should be given the proper quota, that is sixty. The Constitution will come into force from 26th January, 1950. We have adopted a provision in the Constitution that in the provisional Parliament the Scheduled Castes are to be given representation on their population basis. My request is that we must take into consideration this clause of the Constitution.

I support in full the explanation given in this article by my honourable Friend Dr. Ambedkar. It deals with the List of Scheduled Tribes and Scheduled Castes. As soon as this Constitution comes into force, the List of Scheduled Castes and Tribes given in the Act of 1935 goes away and for the interim period there is no list. According to the provisions of this Constitution, the President shall make the list and announce it. Of course he will do it with the consultation of the members of the Scheduled Castes or of the Parliament. That depends upon the President of the Union. But for the transitional period a list is required and as it has been covered by Dr. Ambedkar's Explanation. I fully support it.

Shri S. Nagappa : Mr. President, this article relates to the filling of casual vacancies that will be created when the double members vacate their seats. My honourable Friends Mr. Muniswamy Pillay and Mr. Khandekar made clear the position of Scheduled Castes. Now in this article it is said that the places vacated by the Scheduled Classes will be filled up by Scheduled Classes and the places vacated by Muslims will be filled up by Muslims and the places vacated by Sikhs will be filled up by Sikhs alone. In other words, the non-scheduled Caste Hindus will be returned intact. In that case, Scheduled classes have been done great injustice while filling up the vacancies in the beginning. That was explained by my friends, Mr. Muniswamy Pillay and Mr. Khandekar. But no doubt the President of the Union or the President of the Constituent Assembly empowered to do otherwise, *viz.* if he wants to bring, in the places of non- Sikhs and non-Muslims, any number of Scheduled Classes, he can do. But I want an assurance not only from the Chairman of

[Shri S. Nagappa]

the Drafting Committee but from the President of the Constituent Assembly who is here that the representation that was due to the Scheduled Classes on the population basis will be given and shall be given. No doubt what has happened has happened. Now the Provisional Parliament will be functioning from the 26th January. All these days so far as Harijans are concerned the representation was defective and I do not want that to be perpetuated in the new Republic also. It is brought to the notice of the country, the people and to the Government and I hope they will rectify it in order to justify the claims of the Scheduled Classes.

It is after all a fair demand—we are not going beyond our limits. We are asking for what is due to us. We do not want any weightage or anybody else's seat, nor do we want to claim that we are non-Hindus. I agree with Mr. Kamath that the word 'community' should not be used. But I want that a class distinction must be there. You have treated us as a different class, though not as a community. Our political right should not be taken away simply because we merge with you simply because we join with you, simply because we are here with you.

Mr. President : As I read this clause, it does not exclude Harijans being elected from other seats. It only assures that they will be elected surely from the seats, which they vacate. But it leaves open the question that they can be elected from other seats also. You started by saying that seats of the other Hindus get also reserved. That is not the case.

Shri S. Nagappa : In other words it means that. Supposing four Scheduled Classes vacate, four will come.

Mr. President : Supposing you have 27, at least 27 will surely be returned, under this. But 27 may become 54 and there is nothing to prevent that.

Shri S. Nagappa : If you confine yourself to this, it goes without saying that non-Scheduled Class Hindus will come in the same number.

Mr. President : It does not say that. It assures that 27 Scheduled Caste members will be returned. It leaves open the question as to how many more may come.

Shri S. Nagappa : My point is that the due quota of Harijans should come—whether they are to come from Sikh seat or Muslim seat I do not care. I want my number should be intact. That should be brought about and the new Republic should not begin to function with such a defective representation.

Mr. T. T. Krishnamachari (Madras: General): Question be now put.

Mr. President : Closure has been moved.

The motion is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carry over on the ground that the Muslims and Sikhs have surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My submission on this point is this, that whatever arrangements have

been made, those arrangements are made in respect of the permanent structure of Parliament which is to come, into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerji, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that certain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Muniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Muniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his amendment.

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

The question is:

"That in amendment No. 164 of List III, clause (1) of the proposed new article 312F be deleted."

The amendment was negatived.

Mr. President : No. 202.

Shri V. I. Muniswamy Pillay : I leave it to the Drafting Committee. I do not press it.

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

Mr. President : The question is:

"That in amendment No. 164 of List III in clause (2) of the proposed new article 312F, for the words 'as the President may by order direct' the words 'as the Parliament may by law provide' be substituted."

The amendment was negatived.

Mr. President : Then I put amendment No. 203—that of Pandit Thakur Das Bhargava.

The question is:

"That in amendment No. 164 of List III (second Week), in the first proviso to clause (1) of the proposed now article 312F, the words 'or to the Muslim or the Sikh community' be elected and for the words 'be of the same community' the words 'belong to the Scheduled Caste' be substituted."

The amendment was negatived.

Mr. President : Then I come to amendment No. 204.

Shrimati Purnima Banerji : Sir, I beg leave to withdraw the amendment I have moved.

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

Mr. President : Then I put the article as modified by the amendment No. 205. That is I put amendment No. 164, as amended by amendment No. 205 which amends the explanation.

The question is:

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

The motion was adopted.

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

Schedules IIIA and IV

Mr. President : Then we have to take up Schedule IIIA.

Shri T. T. Krishnamachari : Sir, Schedule III-A is not being moved. It can be taken out of the List. That is the idea.

Mr. President : So there is no question of amendments arising.

Shri Brajeshwar Prasad : But the proper procedure is that it must be moved What is the idea? Is it to be held over?

Mr. President : It is not in the Draft Constitution. It was given only as an amendment and when that amendment is not moved, there is no question of amendments to that amendment arising. So Schedule III-A goes, with all its amendments.

Then we take up Schedule IV.

Shri T. T. Krishnamachari : Sir, I move that Schedule IV be deleted.

Some Honourable Members : How can it be deleted?

Mr. President : So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendment to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

The Honourable Dr. B. R. Ambedkar : Mr. Krishnamachari will explain.

Shri T. T. Krishnamachari : Sir, the Fourth Schedule was necessary because certain provisions were put in the Constitution in order to describe the relations of the President and the Governors *vis-a-vis* the Ministers. It has now been felt that the matter should be left entirely to convention rather than be put into the body of the Constitution as a Schedule, in the shape of Instrument of Instructions, and, there is a fairly large volume of opinion which favours that idea. Therefore, we have decided to drop Schedule III B which we proposed as an amendment and also Schedule IV which finds a place in the Draft Constitution, because it is felt to be entirely unnecessary and superfluous, to give such direction in the Constitution which really should arise out of conventions that grow up from time to time, and the President and the Governors in their respective spheres will be guided by those conventions. As these schedules were felt to be superfluous I had moved that the second Schedule should be deleted.

Shri B. Das (Orissa: general): Sir, I am confused. I do not wish that the Schedule IV should be withdrawn bodily so soon. Let us pass all the Schedules dealing with the powers of the Governor-General and the Governor, and if the Drafting Committee think it necessary to drop any of them, then they can do so at a later stage. But now, at the fag end of the day, a sudden surprise

is sprung upon us with the motion that the Schedule IV be dropped. It is difficult for us to understand the position. I would like, for instance, to know what my Friend Pandit Thakur Das has to say on it. I am not a lawyer and so I would like to know what his opinion is. I think it would be better to take up the deletion of Schedules after we have passed all the articles that are left over. That is my submission.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here only to get one point clear. I do not understand why Schedule IV has been dropped altogether. Is it because it is thought that it would not be necessary to resort to any portion of that Schedule in future in the interval between now and the next general election. If that is so, I may point out that we are going to have general elections in West Bengal shortly and after that election is over, it will be necessary for the Governor to act under para. 2 of the Fourth Schedule. Para. 2 says:

“In making appointments to his Council of Ministers, the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature..... who will best be in a position collectively to command the confidence of the Legislature.....”

So, as soon as the elections are over in West Bengal the Governor there will have to exercise the powers referred to in para. 2 of this Schedule. Therefore for the temporary period, such provisions should be made, so that these powers may be exercised when the need arises. That is the point I want to get clear.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the States as to how they should exercise their discretionary powers that were vested in them. Now the Instrument of Instructions were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the instrument of Instructions issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these instruments of Instructions is carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister as the matter of the selection of Members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so, supposing the Prime Minister does not propose, for any special reason or circumstances, to include in his Cabinet members of the minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of to the fact that there is no discretion in the Governor and there is no functionary Instruction to Act in a particular manner. It is therefore felt, having regard under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such instrument of Instructions which really can be effective in a different set of circumstances

[The Honourable Dr. B. R. Ambedkar]

which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

Mr. President : The question is:

“That the Fourth Schedule be deleted.”

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

SECOND SCHEDULE

Mr. President : The House will now take up Schedule II.

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

“That for Part I of the Second Schedule, the following be substituted:—

PART I

Provisions as to the President and the Governors of States for the time being specified in Part I of the First Schedule.

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say :—

The President—10,000 rupees.

The Governor of a State—5,500 rupees.

There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor while discharging or for whom he acts, as the case may be.”

PART II

“That in the heading in Part II, after the word and figure ‘Part I’ the words and figures ‘or Part III’ be inserted.”

“That for paragraph 7, the following paragraph be substituted:—

7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.’

PART III

“That in paragraph 8, for the words ‘respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947’ the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before Such commencement be substituted.’

PART IV

“That for Part IV of the Second Schedule, the following be substituted:—

“PART IV

Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule

10. (1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice—5,000 rupees :

Any other judge—4,000 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a Pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as ‘a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe. (5) The rights in respect of leave or absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11. (1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say

The Chief Justice—4,000 rupees

Any other Judge—3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires,

- (a) the expression “Chief Justice” includes an acting Chief Justice, and a “Judge” includes an *ad hoc* judge,
- (b) “actual service” includes—
 - (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

[The Honourable Dr. B. R. Ambedkar]

- (ii) vacations excluding any time during which the judge is absent on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.”

PART V

“That in the heading of Part V, for the word ‘Auditor- General’ the words ‘Comptroller and Auditor-General’ be substituted.

‘That for paragraph 14, the following paragraph be substituted:—

‘14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

- (2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor- General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement’.”

“That in paragraph 15, for the word ‘Auditor-General’ in the first place where it occurs, the words ‘Comptroller and Auditor-General’ be substituted.”

With your permission, I will explain the provisions tomorrow.

Mr. President : The House stands adjourned till 10 O’clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.
