CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Friday, the 25th November, 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.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President: The first thing today is to take up the Bill of which notice has been given by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move for leave to introduce a Bill further to amend the government of India Act, 1935.

Mr. President: The question is:

"That leave be given to introduce a Bill further to amend the Government of India Act, 1935."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I introduce the Bill.

Mr. President: The Bill is introduced.

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

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

Mr. President: Motion moved:

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

Shri Lokanath Misra (Orissa: General): Sir, I welcome this amending Bill but I wish to make a few observations.

The statement of objects and reasons says that on demand from certain Provinces to alter their names, this Bill has come before the House. I beg to submit that instead of changing the names of certain Provinces, the Government or the Governor General

should take steps to change the names of all the, Provinces as far as possible to fit in with our name Bharatvarsha. For instance, I have got a call from my own Province that the name may be changed from Orissa to Utkal. There are various cogent grounds for changing that name. Our University is called the Utkal University. You know, Sir, the Congress calls it the Utkal Province. Then again, our revered Rabindranath Tagore in his Jana Gana Mana also describes our Province as Utkal. Utkal is an ennobling word. It means high art and high apprehension. I therefore, submit, if my words could reach the Governor General, steps should be taken to change the name of my Province Orissa to Utkal.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, unfortunately, this Bill has been brought in this session for want of time. This subject really speaking relates to this Constituent Assembly and it should have been brought earlier. But, it is neither your fault, Sir nor the fault of the Drafting Committee nor the fault of the House, because we are working against time.

Therefore, the second best method is sought to be adopted by the Drafting Committee. Therefore, certainly I do not find fault with them.

However, I feel, Sir, that the matter of changing names of the Provinces is such an important matter that I do not desire that only the provincial Governments or even the Congress Committees should decide amongst themselves and send it to the Governor General, and the Governor General should ditto it. We have a little sad experience here. We desired in the last session when we dispersed that this subject being of very great importance, if the Provincial Congress Committees and Provincial Governments come to a decision, this House will take a favourable consideration. But what has happened? The U. P. Government and U. P. Assembly decided that the name should be changed into Aryavarta. That was seriously objected to by this House on the ground that Aryavarta relates to the whole of India. The U. P. friends are always very anxious to monopolise to themselves the name of India and therefore it was by an overwhelming majority of this House that the motion of my Friend Mr. Shibban lal Saksena was rejected and that is on record in this House. In the year 1938 when the Indian National Congress held its session in Cawnpore in the All-India Congress Committee my friends from U. P. brought a resolution that the name of the U. P. Congress Committee should be changed into Hindustan Congress Committee. The A. I. C. C. rejected it My friends being so enthusiastic brought it in the Open Congress and I had to oppose it and the Congress threw it out. It was in '1938 under the Presidentship of Pandit Jawaharlal Nehru and I was the person who strongly opposed it in the open Congress and I was glad that the Open Congress seeing the force of the argument stated that U. P. cannot usurp to themselves the name of Hindustan and it was rejected. My fear is therefore again after Aryavarta has been rejected they may suggest Hindustan. As the previous speaker stated, Orissa should be called Utkal just as C. P. has been called Madhya Pradesh. Why not U. P. be called Samyukt Pradesh ? If that is not acceptable there are other very fine names like Avadh, Ayodhya, Ganga, etc. Why should they usurp the name of the whole of India and tell us they are the people who are the only custodians of India ? I strongly resent their monopolising the name of India. Therefore I feel that it is very risky to give the power to the Governor-General. I have an amendment to that effect and when the time comes. I shall move that. Therefore while I give my qualified support to this, I do desire that this power should not be entrusted to the Governor-General as it is the right of this House and if this House has no time to decide this, then Parliament should ultimately decide not the

Governor-General.

Shri Mohan Lal Gautam (United Provinces : General) : Mr. President, I am not one of those who enter into these controversies which are in my opinion very small if not petty. People always choose their names and if their names are changed, they will create a row in this House. If the name of our Province U. P. was changed two years back when we achieved independence, I assure you that this House would not have come in the way and it would have been swallowed by all of us.

Honourable Members: Question.

Shri Mohan Lal Gautam: You may question me. You may call it Utkal or Kerala or Malabar or Kannada-nobody bothers about it but when this question came up here, people are raising these objections. My friend Mr. Sidhva said that U. P. is always in the habit of monopolising the name of the whole of India. I assure you that U. P. has a gift and it is perhaps the only province in the country which can claim that it has no provincialism.

Honourable Members : Question.

Shri Mohan Lal Gautam: You may question but I give you a challenge hen and now that in all the Provinces you are so provincial.

Honourable Members: No.

Shri Mohan Lal Gautam : That you will not tolerate other people. I give a challenge to all the other provinces to give me examples where you have elected people who do not belong to your province to the Constituent Assembly. I give you a challenge where you can quote me since 1919 how many Ministers you have taken into your Ministries who did not belong to your province.

Mr. President: I would request the honourable Member not to go into matters which are not strictly germane to the motion under discussion. It is a simple proposition which is before the House and he should confine his remarks to that.

Shri Mohan Lal Gautam: I bow to your ruling but I assure you that U. P. does not want any name that you object to. This function of Brahmins--of giving names ought to have some background. You say why not give it the name of Avadh. Avadh is one of the very important parts of U. P. but it is only a part. Avadh has a tradition of Nawabs and feudal lords which we do not want.

Mr. President: Let us not discuss the names because the names are before the House.

Shri Deshbandhu Gupta (Delhi) : U. P. is also part of Aryavarta and not the whole.

Shri Mohan Lal Gautam: I am conscious of it that U. P. is only a part of Aryavarta.

Mr. President : I think you had better confine yourself to the provisions of the

Bill.

Shri Mohan Lal Gautam : The justification of this Bill is that it is not very easy for this House without knowing the history of the Province, without understanding them, it is not possible for one or two Members to stand up and propose the names. Another difficulty arises that if You had given any name to this Province yourself we might have accepted it or we might have tolerated it, but you referred the matter to the provincial Government and the Provincial Government consulted the Provincial Congress Committee and in consultation they suggested some name which is not acceptable to you. (interruption) I am not prepared to answer any question of Mr. Sidhva because, the Chair has ruled that the names are not to be discussed so Mr. Sidhva need not take the trouble of suggesting some names here and now without understanding the implication of those names. Therefore the difficulty is that the name that was suggested is not acceptable to this House and no new name can be suggested on the spur of the moment. Therefore I am grateful to -the Drafting Committee and the President of the Drafting Committee. Dr. Ambedkar-to find a via media in suggesting this amendment to the, Government of India Act, 1935. This will solve the difficulty. The solution is that the Provinces must be consulted and it must be acceptable to all-India authority and the all-India authority is the President and the President means the President and the Cabinet. Cabinet means if the Cabinet is responsible to the Party in power, they can consult you therefore the power really is transferred from this house to the Congress Party in the Parliament. If you do not want it, you may suggest some via media but to reject it would be something absolutely different. Therefore I am thankful to the Drafting Committee and I whole-heartedly support this amendment, because it is a *via media* and I would request Members of the House not to insist on their opposition.

Mr. President: Do you want to speak, Mr. Pataskar ?

Shri H. V. Pataskar (Bombay: General) : No, I do not want to oppose the motion, but would like to offer some remarks.

Mr. President : You can do so when we take up the clauses. Well, I then put this motion.

The question is:

"That the Bill further to amendment Lao Government of India Act, 1935, be taken into consideration by the Assembly at once."

The motion was adopted.

Mr. President: Then we take up the clauses of the Bill.

.....

Clause 1; there is one amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

"That in sub-clause (1) of clause 1, for the words 'Fourth Amendment' the words Third Amendment' be

substituted."

Mr. President: Or, alternatively ?

Mr. Naziruddin Ahmad : No, Sir, I do not wish to move the alternative amendment.

Sir, I wish to point out what seems to be a glaring anomaly. We have already passed four Acts in this Constituent Assembly relating to the amendment of the Government of India Act. Though we have passed four Acts, yet the numbering is absolutely erratic. We have Act No. I Then we have Act No. II. Then we have Act No. III and then, by a big jump we have Act No. V, but it seems there is no Act No. IV. Sir, the usual or rather the accepted way of numbering Acts is serial. After Act III, we must have Act IV, and not Act No. V. There is thus, a gap in Act No. IV. I do not know whether this is the fact, but this is what I have understood as having happened here. So far as the amendments are concerned, of the four amendments, the first is called the Government of India Amendment Act, 1949. The second is called the Government of India Amendment Act Second, 1949, and the third Act is not numbered at all. So I submit that this Act should be called the Third Amendment. So, so far as the numbering of the Act is concerned, I do not know what will be the number of the present Act if it is passed.

Mr. President: I understand the Third Amendment Act related to evacuee property.

Mr. Naziruddin Ahmad: That may be, but that is another matter.

Mr. President: And so this is the Fourth.

Mr. Naziruddin Ahmad: But the point is absolutely different. My point is that in numbering the Acts, they must be consecutive. The numbering of the Acts should be consecutive, irrespective of the subject dealt with. Each Act passed by the Constituent Assembly must be numbered serially, as one, two, three, four and so on. The fourth Act has really been numbered Act No. V. This is the place to consider whether Act V should be considered as Act IV and whether this present Bill should be given retrospective effect, and be numbered IV, though it is passed after the fifth, or whether it will remain as it is, with a gap left in between. Should that gap be allowed to remain or should it be corrected at this stage ? These are the considerations which seem to me to be very important. There is some sort of lapse somewhere, and I beg to point this out so that it may be corrected by this House.

The Honourable Dr. B. R. Ambedkar : Sir, I am sure that there is some confusion in the mind of my friend Mr. Naziruddin Ahmad, as I find by reference to the various Acts that are passed by the Constituent Assembly the proposal in the Bill that it should be called the Fourth Amendment Act is the proper wording. The first Act that was passed by the Constituent Assembly is called the Government of India (Amendment) Act, 1949. The second one is called the Government of India (Second Amendment) Act, 1949, which deals with the removal of prisoners from one unit to another unit. The third Amendment Act, 1949, deals with evacuee property, and the Bengal election.

Mr. Naziruddin Ahmad: It is not called an Amendment Act at all, it has got a

different name.

The Honourable Dr. B. R. Ambedkar: If you look at Clause 1, there you will see, "This Act may be called the Government of India (Second Amendment) Act, 1949." The next one is called the Third Amendment Act, 1949, which deals with the custody management and disposal of evacuee property and the election in West Bengal.

The confusion, I think, has arisen from the fact that we have passed two other Acts in the Constituent Assembly, one relating to the Abolition of Privy Council Jurisdiction and another amending the Central Government and Legislature Act, 1946. Those Acts are not amendments of the Government of India Act, at all. Although those Acts may have indirect effect on the Government of India. Act, they are not amendments to the Government of India Act. We are, therefore, entitled to class this as the Fourth Amendment, because, so far as direct amendment of the Government of India Act, 1935 is concerned, this Assembly has passed only three Acts and no other.

Mr. Naziruddin Ahmad : But there, is. no Third Amendment Act, at all.

The Honourable Dr. B. R. Ambedkar: Of course there is. The third Act deals with the custody, management and disposal of evacuee property. I have got the Act here before me.

Mr. President: There seems to be a little confusion about this matter. Fourth is not the number of the Act. What is described here is the fourth amendment of the Act. That is not the number of the Act itself. The number of the Act is separate.

The Honourable Dr. B. R. Ambedkar: It is a description of the present Act. It is a short title.

Mr. President: It is only a description. The number will be Act No. 6 of 1949.

The Honourable Dr. B. R. Ambedkar: That is so. This is a short title.

Mr. President: The Constituent Assembly has passed five Acts up to now, in 1949 and this will be the sixth. But so far as amendments are concerned it is the fourth amendment to the Government of India Act, and therefore it is called the Fourth amendment.

Pandit Hirday Nath Kunzru (United Provinces: General): If out of the five Acts that we have already passed.....

Mr. President: This is the sixth.

The Honourable Dr. B. R. Ambedkar: We have passed in this Assembly five Acts. Out of them two have nothing to do with any amendment of the Government of India Act, 1935.

Pandit Hirday Nath Kunzru: Why were they placed before the Constituent Assembly if they were not of a constitutional character ?

The Honourable Dr. B. R. Ambedkar: The short title is quite different from the

purport of the Act.

Pandit Hirday Nath Kunzru : The question is whether the right of a litigant to appeal to the Privy Council could have been taken away without an amendment to the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar: The short title of the next Act was the Central Government and Legislature Amendment Act, 1949. That Act' sought to amend the India (Central Government and Legislature) Act, 1946 which is an Act of Parliament and not the Government of India Act, 1935. The other Act was the abolition of Privy Council Jurisdiction Act, 1949.

Pandit Hirday Nath Kunzru: But the earlier Act to which my honourable Friend has referred, namely, the Amendment to the Central Legislature Act was itself an amendment of the Government of India Act.

The Honourable Dr. B. R. Ambedkar: No, no. That is not. There was a separate Act passed by Parliament called the India (Central Government and Legislature) Act 1946. This amendment was an amendment to that Act. That Act was outside the Government of India Act, 1935.

Shri R. K. Sidhva: Perhaps Dr. Ambedkar will remember that the amendment to the Act from Cotton Seeds to Cotton was really an amendment to the Government of India Act, to which he has made no mention.

The Honourable Dr. B. R. Ambedkar: This would mean a sixth Act no doubt but the short title is something quite different to the number of the Act. We are discussing the short titles.

Shri T. T. Krishnamachari (Madras : General) : This is a matter of nomenclature and in fact in the previous Acts amended by Parliament, they have given different names for Acts which in purport amended the Government of India Act, such as the India-Burma Emergency Powers Act, 1942. The matter of nomenclature need not be pursued to its logical and bitter end. I suggest the House to proceed with the consideration of the Bill.

Mr. Naziruddin Ahmad : Is there any Act No. IV?

Mr. President : There seems to be

The Honourable Dr. B. R. Ambedkar: There is.

Mr. Naziruddin Ahmad : I have not got it.

The Honourable Dr. B. R. Ambedkar: If you have not a copy, what can we do ?

Mr. President: After all, nothing will turn upon the title!

The Honourable Dr. B. R. Ambedkar : I can give him the number also, if he

wants it.

Act No. I of 1949 is called by the short title of "The Government of India (Amendment) Act 1949."

Act No. II of 1949 is called "The Government of India (Second Amendment) Act, 1949."

Act No. III of 1949 is called "The India (Central Government and Legislature) Amendment Act, 1949."

Act No. IV of 1949 is called "The Government of India (Third Amendment) Act 1949."

Act No. V of 1949 is called "The Abolition of Privy Council Jurisdiction Act, 1949."

Acts III and V have nothing to do with the Government of India Act, 1935 and that is why we call this the Fourth Amendment of the Government of India Act.

Mr. President : The question is:

"That in sub-clause (1) of clause 1, for the words 'Fourth Amendment' the words Third Amendment' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That Clause 1 do stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

Clause 2

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

"That clause 2 be deleted."

Sir, I also beg to move :

"That in clause 2, the following statute reference be appended :

'52 & 53 Vict., C.63.' "

These amendments are of a formal character. So far as the last amendment is concerned, I move it because unlike the ordinary powers of the Secretary.....in ordinary legislation, we have in our rules no power given to the Secretary to make any changes in the Bill after it is passed. This statute reference is necessary and it should be given.

So far as my earlier amendment is concerned, namely, the deletion of Clause 2, it arises in this way. When the last Act was passed, namely, Constituent Assembly Act No. V. at that time there was no such thing as Clause 2 in that Bill. Clause 2 is to the effect "that the interpretation Act 1889 applies for the interpretation of this Act as it applies to the interpretation of an Act of Parliament." In the earlier Acts this clause appears but not in the Bill which really culminated in Act No. V. At that time I suggested that a clause like this would be necessary but Dr. Ambedkar told the House at the time that this clause was; not at all necessary. It was not necessary in the case of Act No. V, I suppose it would not be necessary in the case of this Bill too. There should, after all, be some kind of uniformity. In the earlier Acts we have this clause but not in the last. We should adopt a definite and settled policy as to drafting. It should not depend on the mood of the moment. I would therefore ask Dr. Ambedkar to consider whether he should link himself with the drafting of Act No. V or really go back to the earlier Acts so as to retain this clause ?

The Honourable Dr. B. R. Ambedkar : All that I can say is that this is the uniform clause that has been passed by this Assembly in the other Acts amending the Government of India Act. Therefore, in order to keep up the uniformity and to provide for the interpretation of this particular Act, Clause 2 is a very necessary part of the Bill.

With regard to the suggestion of my friend all that it means is that there should be a marginal note giving the chapter number of the Interpretation Act of 1889. That is a matter for the Draftsman to consider, and if he thinks such a marginal note is necessary, he will no doubt consider the matter. But this marginal note is not added against the clause of the other Acts which amend the Government of India Act of 1935.

Mr. Naziruddin Ahmad : Although Dr. Ambedkar says that in all the previous Acts this clause appears, yet I beg to point out that in Act No. V, there is no such clause. I pointed out the omission but I was over-ruled.

The Honourable Dr. B. R. Ambedkar : That was a self-contained Act. It required no reference to the Interpretation Act at all.

Mr. President : The question is :

(a) "That clause 2 be deleted."

(b) "That in clause 2, the following statute reference be appended :

'52 & 53 Vict. C.63.'"

The amendments were negatived.

Mr. President : The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Mr. Naziruddin Ahmad : This is only a punctuation amendment which, I think, the Drafting Committee would accept, though not openly, at least secretly.

Shri H. V. Pataskar : Sir, I move :

"That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed' be added."

Now, Sir, my reasons for moving this amendment are these. From the Statement of objects and reasons it appears that the present Bill has been brought in this House for three reasons : the first is that certain Provincial Governments have expressed their desire to alter the name of the province – that is exactly what is mentioned in the statement of objects and reasons. The second reason for bringing this Bill is that these provincial Governments have further desired that these names should be altered before the commencement of this Constitution, that is, before the 26th of January 1950. The third reason is that there is no provision for doing that in the present Government of India Act, 1935.

Now, Sir, it is true that there is no provision in the Government of India Act, 1935, for changing the name of a province. So far as the principle of my amendment is concerned, it is this that any change in the name should be effected after ascertaining the views of the legislature of the province whose name is proposed to be altered. I would like to draw your attention to article 3 which we have already passed. Article 3 makes provision for the alteration of the name of any state, which the provinces are going to be called hereafter. The proviso to article 3 reads :

"Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President."

Therefore, we have already provided for such a change; if it is to be made after the 26th of January it can be made only by the introduction of a Bill, and such a Bill can be allowed to be introduced only after ascertaining the wishes of the Legislatures of the

States concerned.

Now, it may be argued that the Provincial Government have already expressed their desire. I do not know which Provincial Governments have expressed their desire, because from the nature of the discussions over the name "Aryavarta", and the heat which it generated I do not think, changing the name of a province is going to be such an easy thing as it is sought to be made out.

It may again be argued that it is because of the Provincial Governments' desire that the names are going to be changed and therefore it practically amounts to ascertaining the views of the Legislature. I would here like to point out that the views of the Legislatures and the views of the Provincial Governments do not always coincide. It is one thing to ascertain the views of the Legislature which is composed of the representatives of the people, and another thing to consult the Provincial Governments which are concerned with the day to day administrative problems of the provinces. The principle that we have laid down in article 3 is a highly sound one inasmuch as it is a better method of ascertaining the views of the people in general, because the legislatures are expected to reflect the views of the people of the province.

Now, Sir, without going into details I can easily show how anomalies are bound to arise. Take the case of West Bengal. At one time they were in favour of changing the name from West Bengal to Bengal. Subsequently, there was a change of mind and they wanted to retain it as West Bengal itself. In fact, in our final draft we have mentioned it as West Bengal. At the Third Reading Stage we again reverted back to the word "West Bengal". All these clearly show that even if a name is to be changed, we should ordinarily follow the sound principle which we have enunciated in article 3 that it should not be by the wishes of the Government which may be changing from time to time, but by the wishes of the Legislature which are likely to be more formal and firm.

Then, Sir, take the name of Koushal Vidharbh. In our first draft we mentioned it as Koushal Vidharbh which must have been after consultation with the Provincial government. Subsequently they changed their mind and wanted to have it as Madhya Pradesh. Would it not be better, therefore to follow the sound principle laid down in article 3? Governments change their views with changing circumstances and Governments are not really representative of the people in the sense in which Legislatures of the provinces are.

Mr. President : I do not think that this is a proposition which requires so much of argument.

Shri H. V. Pataskar : Another point that I want to make is this. In the Constitution we have laid down the principle which is enunciated in article 3. Today, just one day prior to the passing of the constitution, we want to go back on that principle, because some people seem to be in hurry to change the names of provinces. After all changing the name does not make much difference. As the poet said, a rose will smell as sweet if called by any other name. Therefore, why not stick to the principle enunciated in article 3? Why flout it at this stage? Well, Sir, I would strongly urge that it is a bad precedent, showing scanty regard for the principles which we have so solemnly laid down for those who come after us to follow.

I would, therefore, request that this simple amendment of mine will be accepted by the Members of this House. The only argument against it would be that it would involve some time. Most of the names of the provinces, are names given by foreigners. It is much better that the changes in their names are made after ascertaining the views of the different legislatures and in a more calm atmosphere rather than hastily as is tried to be done by the introduction of this Bill.

Shri R. K. Sidhva : Mr. President, my amendment reads thus :

"That at the end of the proviso to sub-section (1) of section 290 of the Government of India Act, 1935, the following shall be added, namely :-

'and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order.' "

Sir, section 290 is in such a limited form that it is very difficult for any honourable member to move a comprehensive amendment to avoid any discrepancy or any suggestion which may not be found acceptable to the House or to the country; therefore within the limit within which the section is confined, namely to change the name of the Province, I had no other alternative but to move this amendment in order to safeguard the right of parliament and the people of this country in not allowing any province to change the name according to its whim and fancy. While I have every regard for any province which wants to change its name quite historically or quite suitably otherwise, the necessity for my amendment has been substantiated by the arguments advanced by my friend Mr. Mohan Lal Gautam. He came in a challenging mood and said his province was the supermost compared to all the other provinces. (*Interruption*.) My point is that if there are some Provinces with that kind of mentality, this House has a right to see that such a mentality does not prevail. I am glad, Sir, that among their own provincial Members there was difference of opinion in naming the province as Aryavarta.

Mr. President : Please do not bring in any particular name. You go on the merits of the case.

Shri R. K. Sidhva : Well, Sir, what is the remedy? My friend Mr. Pataskar rightly apprehended the position and said there is no other alternative but to consult the legislature. The purpose of consulting the legislature also will not be served because the majority of the Members there would say, "Have it Aryavarta or Hindustan". Supposing they change it to Hindustan, what will be the remedy if the Provincial Legislature also says that U. P. will be known as Hindustan? India in future will be called Bharat but that does not mean that we discard the name Hindustan. Therefore you must tell me Sir how to safeguard the interests of the country in setting that this word Hindustan is not adopted by the U. P. as they did make a venture in the past unofficially to introduce it in the Congress Committee but in which they failed? Therefore, I want a little guidance in this matter either from the Chairman or from you, Sir, as to what safeguard we have. It is not a Province which can change the name, it is the Governor-General who does it.

Pandit Balkrishna Sharma : (United Provinces : General) : If it will satisfy my honourable friends, I may say I hate the word 'Hindustan'.

Shri R. K. Sidhva : That is all right, but you did suggest for your Provincial

Congress Committee the name of 'Hindustan Congress Committee' in 1939.

Shri Mahavir Tyagi : (United Provinces : General) : You tell us those names which you do not want.

Mr. President : We are simply wasting time over a matter which does not require any interruption at all. The honourable Member may confine himself to his amendment.

Shri R. K. Sidhva : I only want to safeguard the interests of the country, in the event of the Governor-General subscribing to the views of the Provincial Government or whosoever it may be, because it naturally seems that the Governor-General will adopt whatever suggestion a Province may make. In that event, if we feel that name which has been adopted is not proper in the interests of India, then my amendment seeks that parliament should have a right – because that will be the only body after the dissolution of this Constituent Assembly – to consider that subject. That is the only remedy I find. I do not find proper the remedy which you suggest that the Governor-General is himself the safeguard because according to me Parliament is the proper body in such an important matter. My friend Mr. Pataskar has rightly stated that we are doing this in a hurry. Why should we unnecessarily hurry about this matter? Why cannot we do it after 26th January ? Let us decide in a calm mood. Let us consult everybody. You decided on one or two names and as Mr. Pataskar pointed out you had to change in this very Assembly two names within a short period.

I have no other suggestions to make for safeguarding the proper method of avoiding any name which may be detrimental to the interests of the country. Therefore, I suggest this method. I hope my friend Dr. Ambedkar will kindly bear in mind my suggestion which I make with the best of intentions. If he has any suggestions let me know them I am prepared to accept them. My U. P. friends are unnecessarily annoyed. My suggestion is put forward with the best of intention as my experience has shown in the past. I hope my amendment will be accepted or alternatively any other suggestion may be put forward to safeguard the interests of the country.

Mr. President : Shri Jaspat Roy Kapoor, I request the honourable Member not to go into the merits of any particular names or any particular action which may have been taken by somebody in the past. He may confine himself to the proposition before the House.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, Sir, I am opposed to both the amendments, the one moved by Mr. Pataskar and the other by Mr. Sidhva. The question of naming of a Province has assumed very great importance, greater importance than honourable Members would like to attach even to the question of creation of a new Province or increasing or diminishing the area of any Province, for Shri Pataskar's amendment suggests that if the Governor-General passes an order changing the name of a Province only he must consult the Provincial Legislature before passing the order, and Shri Sidhva's amendment seeks that even after the Order is passed, by the Governor-General changing the name of a Province it should be placed before the Parliament and the Parliament should have the right to accept or reject the order previously made by the Governor-General. In the case of any other order passed by the Governor-General under section 290, creating a new Province, changing the boundaries of an existing Province, may be quietly accepted by

the country as a whole with neither the legislature of that Province being consulted nor the Parliament having the right of say in the matter. It appears to me rather fantastic that the question of change of name should be considered so vitally important whereas the more vitally important question relating to the creation of a Province should not attract any attention of honourable Members at all. I must submit that the manner in which the United Provinces has been dragged in in this controversy hurts us because we of the United Provinces had always thought that we have been throughout acting in a manner which would receive the approbation of the rest of the country. As my honourable Friend Mr. Mohan Lal Gautam had said, there is absolutely no provincialism in our Province and we had therefore thought that some credit would be given to us by Members of other Provinces and they would give us at least the freedom of giving a suitable name to our province.

Mr. President : Your Province does not come in here.

Shri Jaspat Roy Kapoor : I was mentioning it just incidentally, Sir. I would not pursue it in view of the shortness of time.

My objection is to Mr. Pataskar's amendment, firstly on the ground that it simply does not fit in with section 290, and then that if it is accepted as it is worded it would simply set the legislature against the Government of the province and the Government against the Legislature, for Mr. Pataskar does not want to make any amendment to the proviso to section 290 of the Government of India Act which says that before an order under that section is passed by the Governor-General the Provincial Government should be consulted. According to the proviso the views of the Government of the province should be ascertained. Now what Mr. Pataskar suggests is that the views of the legislature should also be ascertained. Therefore it comes to this that firstly the views of the legislature should be ascertained and thereafter under the proviso, the views of the Government should be also ascertained. If it is presumed that the views of the Government and those of the legislature will not be different the amendment of Mr. Pataskar will be unnecessary and redundant. If their views are going to be different.....

Shri H. V. Pataskar : There are instances in which those views have been different.

Shri Jaspat Roy Kapoor : Well, if there are such instances, we sitting here in the Constituent Assembly should not give encouragement for such differences of opinion. Our object should be to bring about conciliation between the legislature and the Government and not to create further occasions for such differences of opinion. Therefore I submit that the amendment simply does not fit in here.

As regards the amendment moved by Mr. Sidhva, I would say that Mr. Sidhva has a very fertile brain and he can conceive of all sorts of amendments. But I never thought that even he is capable of conceiving an amendment of this kind which is almost meaningless. He suggests that the order of the Governor-General should be placed before Parliament and that Parliament should have the right either to accept it or reject it. Of course it would not have any power to amend the order. It can only either accept the name which has been approved by the Governor-General or reject it. Now, what will happen if the name proposed in the order is rejected by Parliament? That will create a lacuna. Therefore I suggest that Mr. Sidhva's amendment is almost meaningless. Then again, this amendment of Mr. Sidhva is that it should be added to

existing proviso. It means that the amendment of Mr. Sidhva would apply to all the orders which would be passed by the Governor-General under section 290 such as those relating to the creation of a new province, changing the boundaries of a province, etc. I do not think it is the intention of Mr. Sidhva that his amendment should be of such an all-embracing nature. But, as it has been worded, it would be applicable to all the orders passed by the Governor-General under section 290. I think Mr. Sidhva has not given careful consideration to his amendment. On reconsideration I am sure he will not press it. For these reasons I oppose both these amendments.

Shri M. Thirumala Rao : (Madras : General) : May I say a word, Sir?

Mr. President : I cannot stop any Member from speaking. But Members will remember that we have still several Members desirous of speaking on the Constitution.

Shri M. Thirumala Rao : I assure you, Sir, that I am not standing up merely to join in the debate. I have one point to make in connection with this Bill.

Mr. President : All that I can say is that the honourable member is taking away the time of others who want to speak, but have not been allowed an opportunity to do so. The honourable Member has had his say already on the Constitution.

Honourable Members : 'Closure'.

Mr. President : I would draw the attention of the honourable member to the demand for closure of the debate.

Shri M. Thirumala Rao : Is it fair, Sir, that I should be asked to sit down because closure has just now been moved ?

Sir, I have only a simple proposition to make. I do not mind whether the House accepts or rejects my proposition. I do not know why, when the Government bring in a measure before the House, the House should be deprived of an opportunity of judging whether the proposition is right or wrong. But this can be brought up after January 26. Nothing is going to happen if this proposition is brought before the House under article 3 of the Constitution. The Government can very well, in view of the discussion that has been raised here, withdraw the Bill now.

Shri Rohini Kumar Chaudhuri : (Assam : General) : Sir, may I.

Mr. President : No further discussion please.

Shri Rohini Kumar Chaudhuri : I want to say that when a provincial Government agrees to change the name of its province, as in the case of Assam which wanted to change the spelling of the name of the Province from 'Assam' to 'Assam', and the Prime Minister.....

Mr. President : The question does not arise in connection with this Bill.

Shri Rohini Kumar Chaudhuri : An amendment to bring about this change was not allowed to be moved. But I understand from the Premier of Assam that the

Government have agreed.....

Mr. President : You may raise this question at the appropriate time, but not in this connection.

Shri Rohini Kumar Chaudhuri : But, Sir, I have .....

Mr. President : I have ruled that the question does not arise now.

The Honourable Dr. B. R. Ambedkar : Sir, dealing first with the amendment of Mr. Pataskar, I am afraid I must point out that it would not fit in within the framework of section 290. My friend does not seem to have noticed that to the various sub-clauses of clause (1) of section 290 there is a general proviso which applies to all the sub-clauses (a), (b), (c) and (d). If he refers to that proviso he will find that his amendment would introduce double conditions for the operation of the new clause, namely sub-clause (e). Sub-clause (e) would be subject to the condition he wants to lay down in his amendment, namely, 'after ascertaining the opinion of the members of the legislature of the province whose name is proposed to be changed'. In addition to that, sub-clause (e) would also be governed by the proviso, namely that the Governor-General shall ascertain the views of the Government of the province. In view of this there would arise a very difficult condition. According to his amendment, the Governor-General will be bound to ascertain the wishes of the legislature. According to the proviso to section 290, he will be bound to ascertain the views of the Government of the province. He will therefore put himself in a double difficulty by reason of the fact that the Governor-General will have to consult two different bodies. That is not going to be a very easy matter. Secondly, he would realise that it is not quite justifiable that sub-clause (a) to (d) should be governed by a single proviso, while the new sub-clause (e) should be governed by two provisos.

Shri H. V. Pataskar : That is not so.

The Honourable Dr. B. R. Ambedkar : That is what I say. How do you know? Therefore it seems to me that he is putting himself and the Governor-General in a somewhat difficult position by making such a suggestion. I do not therefore think that at this stage it would be logical to accept it, whatever be the merits of the suggestion.

Coming to the amendment of my friend, Mr. Sidhva, he seems to me to have completely confused the intention of this article and the provisions contained in the new Constitution. He speaks of Parliament and requires that the Order made by the Governor-General be placed within three days of its making before Parliament. Mr. Sidhva has evidently forgotten that, when he speaks of the Parliament, he speaks of the Legislature which comes into being on the 26th January 1950. On that date the Governor-General disappears, and this section 290 as well as the sub-clause (e) which I am trying to introduce by this measure will also disappear. On the 26th January what will be on the Statute Book and operative would be the provisions contained in article 3 of the new Constitution. He has, I am sorry to say, not paid sufficient attention to the point that I have sought to make.

Shri R. K. Sidhva : What the Governor-General does will be binding upon the President.

The Honourable Dr. B. R. Ambedkar : It seems to me that both these suggestions are impracticable. As to the general proposition whether Parliament should be brought in or not, we have to deal with two matters. One is that there is a general desire on the part of some of the provinces that the names by which they have been called under the Government of India Act 1935 do not smell sweet according to them, and they would like to begin with the names which they think are good enough for them on the date on which the Constitution commences. The Constituent Assembly felt at the time when the matter was discussed last time that this desire of some of the provinces whose names are not good enough in their own opinion has a good case and therefore a provision ought to be made for the Governor-General before the commencement of this Constitution to take such action as he thinks necessary to carry out the desires of the Provinces. Therefore it seems to me that such a provision is necessary.

A certain amount of fear has been expressed that some provinces might suggest to the Governor-General names which may not be possible in the opinion of the other provinces, and consequently names which have been rejected by this House or disapproved by this House may be given to the new provinces without the knowledge of this Constituent Assembly or without the consent of the provincial legislatures concerned. It seems to me that that sort of suggestion is reading too much into section 290 as amended by this Bill, because under section 290 the Governor-General has absolute discretion in this matter and is not bound to act upon the suggestion made either by the Provincial Government or, if I accept the amendmen t of Mr. Pataskar, the opinion of the legislature. He is free to act and the only authority who is to advise him to act is the Cabinet at the Centre. All that is required under section 290 is to ascertain the views of the Government of the Province. That does not mean that the Governor-General is bound to accept any name that has been suggested. I am quite certain in my own mind that the discussion that has taken place in this House, the opinions expressed by this House on the suggestion made by Professor Saksena in regard to the name of the United Provinces will be taken into consideration by the Central Executive and by the Governor-General before he decides to take any action under the proposed amendment to article 290.

Mr. President : I will now put the amendments to the vote. Mr. Naziruddin Ahmad, do you want your amendment to be put to the vote? It is only a matter of punctuation?

Mr. Naziruddin Ahmad : It may be left to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : It is a wrong amendment.

Mr. Naziruddin Ahmad : If it is openly put to the vote, it will be rejected. Otherwise, they might accept it.

Mr. President : The question is :

"That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed' be added."

The amendment was negatived.

Mr. President : The question is :

"That at the end of the proviso to sub-section (1) of section 290 of the Government of India Act, 1935, the following be added, namely: -

'and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order."

The amendment was negatived.

Mr. President : The question is :

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 wad added to the Bill.

Mr. President : The question is :

"That the Preamble stand part of the Bill."

The motion was adopted.

The preamble was added to the Bill.

Mr. President : The question is :

"That the title stand part of the Bill."

The motion was adopted.

The title was added to the Bill.

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

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed."

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have, got before us a Bill to amend the Government of India Act of 1935 the repeal of which is to take effect from the 26the January 1950. Therefore, Sir, we want this Bill only for two months. Why this hurry? Under the Government of India Act there is no provision for

altering the names of provinces. We want to alter the name of one province or more than one province. Therefore we have this Bill. I am absolutely unable to understand the necessity of this Bill at all. I have come here to oppose this Bill entirely. I feel we can very well wait for two months more. We want that this Bill should take effect from the 26th November, that is from tomorrow, instead of waiting for two months more. The whole of the Government of India Act will itself be repealed by our passing this Constitution. We have mentioned there that the Government of India Act 1935 will stand repealed from the 26th January 1950. Then why this hurry for the change in the names of Provinces? You can very well do it after two months. You can decide now that you want to change the name of the U. P. or any other province and then that can take effect from the 26th January. I have very strong objection to this. We are spending on this Constituent Assembly Rs.30,000 a day. We work for five hours a day. That means that we are spending Rs.6,000 per hour. How we have been talking on this Bill which I consider to be absolutely unnecessary for an hour and twenty minutes, and by the time I finish, it will be an hour and a half. It means that Rs.9,000 will be wasted, because I think this is an absolute waste of time. With these words, Sir, I want to oppose this. I think it should not be pressed and should be withdrawn. With these words, Sir, I oppose the Bill entirely.

Mr. President : The question is :

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed."

The motion was adopted.

DRAFT CONSTITUTION – *(Contd.)*

Mr**. President** : Then we take up the discussion of the Draft Constitution. I am afraid I had thought that this Bill would take about a quarter of an hour, but instead it has taken six quarters of an hour and naturally as many speakers as could have been accommodated if we had started say at quarter past Ten cannot be accommodated now. Even in the list I have, I have got about 20 names still there. I thought of accommodating at least fifteen today but now I do not think I can accommodate anything like that number. I will leave it to the Members who will speak to take as little time as possible so that as many of them as wish to take part in the debate may be accommodated. I may assure them that. I have been all through the debate from the beginning; I have not missed a single word or a single sentence of any Member; there is nothing new that can be said by any Member and the only object in speaking at this stage is not to add anything to the knowledge or to the information which has been given to the House to enable it to decide about the merits of the Constitution but to enable Members to have their names recorded, so that when the reports are published, they may know that they also participated in the final discussions of the Bill and that can be done with one sentence. I assure them that their names will go down on the record even if they support the Bill with one single sentence and with this suggestion I now ask the honourable Members to take up the discussion.

Mr. Frank Anthony : (C. P. & Berar : General) Mr. President, Sir, first of all I wish

to thank you for the unfailingly courteous and gracious manner in which you have invariably presided over the deliberations of this House. Deserving tribute has already been paid to the Drafting Committee for the way in which it has performed its arduous and responsible duties. I would like very briefly to pay a particular tribute to my honourable Friend, who is sitting on my right, Dr. Ambedkar. I do not believe that any one of us can really gauge the volume of work and the intensity of concentration that must have been involved in the production of this voluminous and by no means easy document. And while, on occasions, I may not have agreed with him, it always gave me the very greatest pleasure to listen to his tremendous grasp not only of fundamentals but of details, of the clarity with which he invariably presented his case. It has been said that this Constitution has received a mixed reception. It is inevitable that its reception should have been mixed because, inevitably, it is a mixed constitution. It is composite in character. I believe that it is a blend and a proper blend between idealism on the one side and realism on the other. I know that some of my ardently idealistic friends have criticized it. They would like to have seen instead of this blend something in the nature of a decalogue or the Ten Commandments, something which was so wholly idealistic that it would have wilted and died under the first impact of administrative realities and political difficulties.

As I have said, I believe that we have borrowed enough from idealism to make the Constitution a fairly attractive and an aspiring document and on the other hand we have not based it entirely on material, from mundane considerations so as to retard or in any way to take away from this the inspiring elements. I realize, sir, that it is not a perfect document, but at the same time I feel that in hammering it out, we have traversed all the processes of the democratic manufactory, that we have ranged through the whole gamut of democratic factors; there has been careful thought; there has been close analysis; there has been argument and counter-argument; there has been fierce controversy and at one time I thought that the controversy was so fierce that we might reach the stage of what the Romans called *Argumentum ad baculum* that is, settling it by actual physical force. But in the final analysis has pervaded a real sense of accommodation and a real feeling of forbearance.

So far as the minority provisions are concerned, Sir, I cannot speak on behalf of any other minority but I do claim to speak on behalf of the Anglo-Indian Community. I have paid repeated tributes to the generous and understanding way in which the Anglo-Indian Community has been dealt with under this Constitution. All I feel I need say at this moment is to reiterate my own gratitude and appreciation for the very generous way in which the Anglo-Indian community has been treated.

Now I shall deal very briefly with certain aspects of the Constitution. I agree with my honourable Friend, Pandit Hirday Nath Kunzru when he says that it might have been wiser for us not to have extended the franchise at one bound to universal suffrage. I recall the experience in Britain and the precedent of Britain. I am aware that the precedents and experience in other countries are not sacrosanct for us. But what happened in Britain in this matter of franchise? Representative parliamentary Government was introduced in Britain in the 19th Century but it was not till as recently as 1928 that universal franchise or adult suffrage was introduced. Though some of us are in the habit of talking about democracy without understanding its real purpose and its real content, to my mind a mere counting of heads has never constituted democracy. Democracy has always carried the postulate, the implication that at least the exercise of the franchise would be made, if not on an essentially rationalistic basis, would be made at least on a common-sense basis. And my own feeling is, Sir, that if

we had pursued the path of wisdom – more than that – of statesmanship, that we would have been justified to hasten slowly in this matter, that we would have not at one bound adopted the device of adult franchise but will have proceeded progressively not necessarily gradually but progressively. As it is I am one of those who can only express the very sincere hope that when the next elections are fought or the elections after that and with an electorate which will be predominantly illiterate, with an electorate which will be predominantly unaware of exercising the franchise on a basis of being able to analyse political issues in a rational way, that this electorate will not be stampeded by empty slogans by meretricious shibboleths into chasing political chimeras which will not only lead to chaos but to the very destruction of the democracy which we have chosen to give them.

And, Sir, I feel that there has been unjustified criticism of what has been stigmatized as over-centralization. I will say quite frankly that I was very happy, I was jubilant at every provision that tended to place more and more power into the hands of the Centre. Here again, we tend to mouth slogans about democracy but in the final analysis, in its actual spirit and content, what does democracy imply? It does imply the greatest good of the greatest number I say it with regret, I say it without pointing a finger, what is the increasing evidence which rises every day before our eyes, evidence with regard to most of the Provincial administrations? Do we not see that there is an increasing evidence every day, of increasing maladministration, of an increasing negation of the fundamental principles of democracy? Quite frankly, in the transition stage I would have been one of those who would have supported our going the whole hog that we should have avowedly and without any qualification accepted a unitary form of Government. We might have administered the provinces either through Governors or Rajpramukhs supported by a permanent civil service. At any rate, Sir, I feel that I ought to place on record my disappointment that certain vital subjects like Education, Health and Police should have been left entirely within the ambit of provincial autonomy. We have given a head to provincial regimes in the matter of education, and today, I regret to say, within a very short time, they have taken the bit between their teeth and are running wild. What is happening in the Central Provinces? When I say this, I say advisedly, that the educational policy of the central Provinces represents a deliberate negation of democracy, represents a travesty of the provisions of secular democracy. The linguistic minorities in the Central provinces only look forward to educational and linguistic death. That is what is happening. They have no regard for the linguistic minorities. Overnight they are pursuing an intolerant, parochial, aggressive linguistic policy which, as I said, is an absolute negation of every provision we have embodied in the fundamental rights. Not only that. You have given a head to these provinces and they are running amock. National progress, the larger interests of the country mean nothing to them. My own conviction is that a few years will be sufficient to make the leaders of the country realise the great blunder that we have committed in allowing education to remain entirely in the provincial sphere. You will see balkanisation of the country will take place so quickly, because through this powerful lever which you have left in the hands of the provinces they will split this country up into linguistic enclaves, seal one from the other, so that the idea of a common nationality will recede more and more into the background. I feel very strongly about this. I do not know how the damage that is going to be done can be undone, unless some radical steps are taken in the not distant future.

Another matter which I would have liked to have brought at least in the Concurrent List is Health. May is say, Sir, in some provinces, it is all right. Bombay is fortunate in having a person of the stature of Kherji. The country would have been more fortunate

to have transported outstanding men from the provinces to the Centre to administer the country on a unitary basis. As I said, about health, we have left it in the hands of the provincial Governments and inevitably this greatest nation building subject will be dealt with in a feeble, halting manner, according to the different capacities of the different provincial regimes.

Last but not least, I should like to have seen police made central subject. Police in a province like Bombay have a deservedly good reputation. But, let us be honest. What kind of reputation or lack of reputation do the police administrations in many of the provinces enjoy? What does the man in the street think of the police regimes in many of the provinces? I know what he thinks you know what he thinks. The police have fallen into disrepute in many of the provinces. They are not regarded as guardians of law and order but as agencies of corruption and oppression. I should like very much to have been the Police administration at least brought on to the Concurrent List.

May I say a word about the Directive Principles? I know my honourable Friend Mr. Kher will not agree with what I say and my views will be regarded as heterodox and as perhaps striking a discordant note. I would not like to have seen prohibition put in the Directive Principles. I am not advocating the cause of drunkards or drunkenness. Far from it. I think prohibition as an ideal is a very good ideal. But, what I am afraid of is this : having put this into the Directive Principles, once again, you are giving a head to certain provinces which, without considering the realities, may rush ahead with this scheme. I am one of those who regard it probably from a rationalistic point of view or from the point of view of a psychologist. I regard this question of prohibition fundamentally as a psychological problem. I believe that there is a fundamental similarity in human nature everywhere, and that an Indian is no different in certain fundamentals from an European. I believe that essentially legislation in this matter has tended to be resented and regarded as an entrenchment on the domain of private life and private liberty. As I was trying to explain to my honourable Friend Mr. Kher will you be able to legislate for morality? Can you create morality through legislation? You can ever do it; it has never been possible. I agree you may be able to wean certain people from drinking provided your process and programme of prohibition was so graduated and you accompanied it *pari passu* with measures of social reform. As long as you have your *chawals* for workers in the urban areas, and you cannot even provide them with a semblance of decent living conditions, what is the good of trying to make them moral or weaning them from drunkenness by legislation? As an ideal, I have nothing against it. What I am against is this. While the Prime Minister keeps on asking us to let first things come first, we have fallen into the unfortunate habit of making last things come first. What should be the first priority in any administration? What are the most urgent nation-building activities on which we should concentrate? Surely, health and education. But, today, ask your average provincial Government what it is doing in these matters. It pleads poverty on the one hand in the matter of the most urgent nation-building subjects which should have received top priority, and on the other hand chases these idealistic chimeras. We are throwing away crores and crores of Rupees. That is my main objection to the precipitate introduction of a measure like prohibition. Not that I have any radical objection against it; as an ideal it is a very good thing and if we succeed, it will be a great boon to many families.

While on the matter of Directive Principles, I would like to refer to this provision regarding cow slaughter. I know, again, here, that I will be treading on difficult ground. But, I want to make my position clear. What I resent in this Directive Principle

is the insidious way in which this provision with regard to the banning of cow slaughter has been brought in. It was not there before. I cannot help saying that those fanatics and extremists who could not bring in this provision through the front door have succeeded in bringing it through the back-door. Sir, I am not a beef eater; I am not holding a brief for beef eaters. I say, you may ban co-slaughter, but we should have done it honestly without our tongues in our cheeks, without resorting to methods which may give rise to the accusation of subterfuge. I ask my Hindu friends, does cow-slaughter offend your religious susceptibilities.

Shri K. Hanumanthaiya : (Mysore State) : Yes; it does.

Mr. Frank Anthony : All right; I am glad you have said so. I you had said that, I would have sponsored a provision that a ban on cow-slaughter should have been introduced in the Fundamental Rights and that cow-slaughter should be made a cognisable offence. But, there were not people who were prepared to do that. Why bring in this provision in an indirect way? If it offends your religious susceptibilities, just as much as I expect you to respect my religious susceptibilities. I am prepared to respect yours. As I said, why bring it in, in this indirect way, as an afterthought into the Directive Principles? Look at the way you have brought it in. The clause reads :

"for the purpose of protecting the cattle wealth of India, for the purpose of protecting cattle, milch and draught cattle, a ban on cattle slaughter may be imposed."

Shri K. Hanumanthaiya : On a point of order, Sir, is it right for the honourable Member to attribute motives, subterfuge and all that? I draw your kind attention to it. The honourable Member is saying that we have introduced a provision by way of a subterfuge. He has attributed motives in regard to the way we have put in this provision in the Directive Principles. Whether attributing motives is right, I leave it to you, Sir to Judge.

Mr. Frank Anthony : I apologise to you and to the House if what I may have said even remotely raises the suggestion of unparliamentary language. I was not attributing motives. I am merely stating objectively what had happened. As I have said, what has happened raises the accusation that perhaps motives may have been there to bring in this provision in an indirect way; I will not say it tantamounts to subterfuge. As I have said, I repeat, if this gives you offence, I would have been the first person to suggest that it should have formed part of the Fundamental Rights. In the way it has been done, it has been attached to a clause purporting to protect the cattle wealth of this country. Any child knows that in this country, in proportion to the population, we have more cattle than in any other country in the world. Any intelligent child also knows that in spite of this huge cattle population, our output for milch and draught purposes is the lowest per capita in the world. The preservation of cattle-wealth and the preservation of the best interests of the country would have required not the banning of cattle slaughtering but the slaughtering of over half of your present cattle population in this country. That is why I say, it should not have been done in this particular way. I only draw your attention to it and I leave it at that.

Finally I wish, to say a word about article 21. As a lawyer I will say quite clearly that this article 21 which says that a person may not be deprived of his life or liberty except by procedure of law as established, gave me cause for considerable misgivings. I am afraid, that in this form article 21, if the Executive and Government of the day choose to, can be abused and made a handle for totalitarian oppression. The Executive

can make it a handle for superseding rule of law they can make it a handle for depriving citizens of the elementary principles of natural justice, and of jurisprudence. But the reason why it was disposed not to oppose this particular article, the reason why we are prepared to suffer an abatement of what I regard as a Fundamental human right – was because we are in a period of transition – and it may be necessary to give Governments and administrators extraordinary powers, not to be abused but in order to prevent any drift towards chaos and towards anarchy. And with that warning I sincerely hope that there will be no tendency on the part of any Provincial Government or on the part of Central Government to misuse or abuse the tremendous powers which we have given them under article 21. If they choose to, all that is required is that the procedure of law should be observed. We hope that the procedure of law which will be prescribed by provincial or Central Government will not be such as to represent the negation of the principle of natural justice.

May I end on this note – I believe that by and large we have hammered out a good Constitution. It will be fallible and it will be necessarily imperfect as it is the product of imperfect human beings. But I believe we have done a good job of work and I believe that this Constitution deserves not only our good wishes but our blessings. But in sending it out on its mission with these blessings, I feel that the paramount consideration which should be before us permanently is not that we have framed a voluminous and important document – not that we have sought to give careful and elaborate guarantees to minorities, but that ultimately the final test by which this Constitution will be judged and by which it will stand or fall, the final test will be the intention and the spirit with which the provisions of this Constitution are worked.

Dr. B. Pattabhi Sitaramayya : (Madras : General) : Mr. President, Sir, it is rather hard lines for one who is garrulous to be limited to stated time, the more so, when he is called upon to speak at the fag end of the deliberations of this Assembly. On the eve of our concluding our deliberations it is not without some trepidation that I come to speak and it is aggravated by the fact that I am to speak for a very short time. I had intended to review the whole position but this is not the opportunity for it. You very well remember how we had lisped, - we hesitated to talk in full and in clear language, the words "Constituent Assembly " in 1927; then we renewed our talks in 1934, soon after the failure of our Second Salt' Satyagrahic campaign and then we thought we were covering our retreat with bluff. Finally we came to a stage – all unawares –when this Constituent Assembly of a sort was thrust upon us with its *sections* and *groups* which we fortunately got rid of by paying a very heavy price for it and when we began our deliberations on the 9th December 1946 we were anxious to finish them and some of us had even hoped to finish our deliberations within six months. If we had finished our Constitution in 1946 it would have been a mess, if we had finished it in 1948 it would have been a medley. Fortunately this delay that has occurred has enabled us to see things in their true perspective and it has enabled us to develop administrative changes *pari passu* political developments. Supposing we had finished this before 15th August 1947, what would have been the nature of the Constitution? It would have been quite different. This delay has enabled the legacy which we had inherited from the British to be set right. Many people have considered that this Constitution is a base or bare imitation of the 1935 Act – that the Constitution is not a 'revolutionary document' and that we have merely imitated where we should have originated. These are all half-truths. A 'revolutionary document' is a contradiction of terms. Revolutions do not yield documents nor documents beget revolutions. We have imitated the 1935 Act because through a fortunate or unfortunate chance, it turned out that it was not through a bloody revolution that we have worked out our emancipation. It was by an imperceptible transition from the stage of bureaucracy and dependence to the stage of

a *republic* and *cooperative commonwealth* that we have wrought these transformations. Accordingly we have never faced martial law, we have never hanged people at street-corners or on tree tops, we have never shot down people for their crimes and we have never shed a drop of blood either our own or of our enemies and therefore we have been obliged to pass from a civil government where tranquility prevailed unaffected by the perturbations of the moment into another kind of civil government which was our own and which was also a popular government. This delay has enabled us and our new administrators to piece together the 562 States which were detached and altogether unconnected with one another. Thus it is that while we were developing the Constitution or making efforts in the process of developing this Constitution, we were also taking up administrative measures in order to consolidate this country which we had inherited from the British in a very disorganized condition.

What is it that we inherited ? We inherited a country that was divided longitudinally into Provinces and States, horizontally into communities, transversely into rural and urban areas and obliquely into Scheduled and non-Scheduled Tribes. All these have been pieced together – the Provinces must be there for purposes of administration convenience, but the States have been assimilated in their forms of Government into those of the Provinces. Thus we have one homogeneous country under one Central Government with one federal Structure. Then we have disestablished the separate electorates which the Britishers had brought into existence assiduously from 1906 onwards dividing one community from another, first the Muslims from Hindus, later the Sikhs from the Hindus and finally the Harijans from Hindus. All these groups have been pieced together into one joint electorate and this is not a small achievement.

And next, you have also been able to remove untouchability which had divided one section of Hindus from the rest. Mahatmaji began his fast unto death on the 20th September 1932 and worked a miracle in the space of six days. Now we have removed untouchability not merely in name, not merely in word and spirit, but also in law, so that nobody can hereafter say that so-and-so is an untouchable, for he would be punished with fine and imprisonment. We have also assimilated the tribes in our frontiers in the north-west and north-east and in other places as far as possible to progressive forms of Government, and we have built up tribal republics. In this manner we have implemented in developing our Constitution, those principles which have been advocated by Mahatmaji. You may remember in his tours of 1921, he was always mentioning only three sentences in each village and taking away three to thirty thousands of rupees from there. These related to Khaddar, Untouchability and Hindu-Muslim Unity. Khaddar we have perpetuated as the fore-runner of village industries and we have emphasised the development of cottage handicrafts in the development of the country. Untouchability we have removed by law. Hindu-Muslim unity we have carved out by joint electorates.

An Honourable Member : Prohibition?

Dr. B. Pattabhi Sitaramayya : Prohibition is a thing which has been left to the Provinces to be worked out. We have included it as one of the Directives in our Constitution. It will be great moral reform, the monetary equivalent of which may mean loss to the government of the province, but the moral equivalent of it would be a great asset to the nation in future years. *(Cheers)*

And, finally, we have extended the franchise which gave us three and a half crores of voters at the time when the British left this country, to seventeen crores of voters

who will adorn the electoral rolls immediately next year.

It is thus that we have converted a dependency into a cooperative commonwealth. Who dares to say that this not an achievement worthy of our labours, and worthy of this great country, and all in the space of three years? When Canada was emancipated, her people assembled in 1842 when Lord Durham, the Lord High Commissioner was dubbed by the *London Times* as the "Lord High Seditioner," and the Canadian Constitution was only finalised in 25 years thereafter, *i.e.* in 1867, whereas we have taken three years in order to complete this Constitution.

I wish to draw attention only to two points with regard to the contents of our Constitution, the one dealing with the Fundamental Rights and the other dealing with the Comptroller and Auditor-General.

The Fundamental Rights chapter is of great interest to me since we had laid down the foundations of it at my house at Masulipatam through the labours of a committee which was appointed in Karachi in April 1931. Then we wanted to speak of not merely fundamental rights but also fundamental duties. But it did not look as if these were capable of being tabulated, because in the first instance every right implies and includes a duty. What is my right is my neighbour's duty to me. The right of the wife to equality with the husband is the duty of the husband towards the wife in respect of the matter of equality. The right of the people to rebel against a government is also the duty of the government to hang the people for the rebellion. These go together. They are opposites, rather they are the obverse and the reverse of the coin, and the criticism that has been levelled by some friends in this House that the duties were not mentioned, is not quite correct because every right implies and includes a duty.

The second point on which I wish to say something is about the Comptroller and the Auditor-General, and in that we have done a great thing, in respect of the position that we have assigned to the Comptroller and the Auditor-General. No matter how perfect your Constitution may be, no matter how numerous may be the checks and the balances and safeguards for the right conduct of business of the future, it is money that counts, and we have to deal with about three hundred and seventy crores at the Centre and as much money in the provinces, and if all this money is not spent aright, and if the people deliver cheap gibes at men like me who count rupees, annas and pies, and to whom every rupee means sixteen annas and every anna means twelve pies, then there is no government at all worth mentioning, it is anarchy, it is chaos. It is loot. It is dacoity. And who is to control this? Is it to be a man who is appointed by the Ministry that should control this? No. The Comptroller and the Auditor-General must be as supreme and independent as the Judges of the Supreme Court perhaps even more so. He is not merely an Accountant-General, but he represents a judicial authority with a judicial frame of mind, and his acts must be acts of justice between what he considers to be right and what is actually done by the executive. At times he is called upon to criticise the executive and to expose it even to contempt. He should not therefore, come under the ire of the government or of any party or of the treasury or of the Finance Department. Till 1806 in England the Auditor-General was not independent, and till 1921 in this country we never thought of the independence of the Auditor-General. Later on we have built up this kind of independence, step by step and stage by stage, so that today, we have installed him as the supreme master, who has his own judgment to look to and who has no frowns or favours to be guided by from outside. Even so this is not yet perfect. The Auditors' Act is yet to be passed in this country, as in other self-governing countries and when

this is done, we shall have placed the Auditor-General and the Comptroller as the supreme arbiter of India's finances, and then alone our Swaraj will be a proper Swaraj.

Finally let me ask you :- "What after all is a constitution?" It is a grammar of politics, if you like, it is a compass to the political mariner. However good it may be, by itself it is inanimate, it is insensitive, and it cannot work by itself. It is of use to us only in the measure in which we are able to use it, because it has tremendous reserve force, and everything depends upon the manner in which we approach it, whether we observe the letter and ignore the spirit or whether we observe both the letter and the spirit in equal measure. The words of the lexicon are the same, but they give rise to different styles of composition with different authors. The tunes and the notes are the same, but they give rise to different music with different singers. The colours and the brushes are the same, but they are rendered into different pictures by different painters. So it is with a Constitution. It depends upon how we work it. I shall take only one simple example – the joint electorate. We have established the joint electorate. Have we discharged our duty? Shall we leave the electorate to do what it pleases? The Muslims are some thirty-five millions in this country, less than about 8 to 7 per cent. of the whole population. Is it possible for them in the joint electorate to win a single seat by their own unaided strength, without our co-operation? It is a gentleman's agreement that we have entered into, a terrible responsibility that we have taken upon our shoulders, when we asked them to give up their reservations and their separate electorates. We have to find as many representatives from the Muslim community through the medium of the joint electorate as would have been their legitimate share, if they had their separate electorates. Even so with the Indian Christians and others. And the way to all this was pointed by our women. I admire the women who in the Provincial Model Constitution Committee and in the Central Constitution Committee came forward and said, "No separate electorate for women, no reservation for women". Of course, they stand to gain now. But it required courage and imagination to say so then. They showed the way to the Muslims. The Christians had all along been fighting against reservation and separate electorates. But they had been compartmentalized. All the electorates were made not only water-tight, and air-tight but vote-tight; nobody from this compartment could cast his vote to one in the other.

The majority community has to see to it that this implied gentlemen's agreement is honoured in letter and in spirit and that we give our friends more seats that their population entitles them to receive. If we are not able to do that we shall not be able to justify the great concessions that they have made.

Then again, there is the question of non-violence. Have we been true to Gandhiji's teachings? Yes. We have been. We have carried out his wishes to the last. If at all, Gandhiji was not able to get his wishes carried out, it was only during his own life-time that he failed; for he had set his face against partition yet ultimately he had to yield to it. Otherwise, the cardinal principles, like the four-pronged attack against the British and also the mission of reconstruction in the country, we have incorporated in our Constitution and therefore with a clean conscience we can say that we have carried out his wishes.

So far as non-violence is concerned, it is not a thing that can be worked into the laws of the country through a non-violent state. It is an attitude and an approach, a direction and not a destination. It is an attempt, not an attainment. Therefore, so long as we are working towards the direction of non-violence, so long our labours are

bound to bear fruit. The only example I can cite on this point is the great achievement of our Prime Minister in his recent tour of America where he won laurels as the key man of the age and possibly as the first Prime Minister of a World-State. He has been able to impress the westerners with this philosophy of ours. There is no doubt that we are saturated and surcharged with the spirit of non-violence, no matter if we still employ the police on the one hand and the military on the other, or even if we be prepared to wage wars in anticipation of wars in which we may be involved.

When all is said and done, we must realize how much we owe to the half a dozen men that have fashioned this constitution and given it a shape and form. Our friend, Dr. Ambedkar, has gone away, else I should have liked to tell him what a steam-roller intellect he brought to bear upon this magnificent and tremendous task : irresistible, indomitable, unconquerable levelling down tall palms and short poppies : whatever he felt to be right he stood by, regardless of consequences.

Then there was Sir Alladi, with his oceanic depths of learning, and a whole knowledge of the Constitutional Law of the world on his finger tips. He has made great contributions towards the drawing up of this Constitution. He only has to perfect it all by writing a commentary upon it. That was the latest request of Mr. Santhanam to him and I hope he will fulfil it.

Then we have Mr. Gopalaswami Ayyangar : copy as a maiden and unobtrusive, but rising to the full heights of the necessities of the occasion, combining always the real with the ideal, and bringing a soft and kindly judgment on to a severe issue.

Next you have Mr. Munshi, the like of whom we cannot see for his resiliency and receptivity; his wide and varied knowledge, his sharp intellect and his ready resourcefulness have been a tremendous aid to us.

Mr. Madhava Rao is not here now. He was a Diwan of Mysore. He had laboured hard in our Committee. He had vast experience from that of an Assistant Commissioner, Mysore, when I was still in my medical studies, until he became Diwan. He too has done his good bit in this work.

Then there is a man, who is almost unnoticed, and whose name has not been mentioned by any of my friends, to whom I would like to refer, the sweet and subdued Sa'adulla, who has brought a rich experience to bear upon the deliberations of this House.

Finally, comes the slim, tall man, who sits opposite to me, with his ready and rapier thrusts of repartee and rejoinder, whose (sharp-pointed) intellect always punctures or lacerates the opposition. But he is always able to cover up the injury with his plastic surgery and recuperative powers : and that is Mr. T. T. Krishnamachari.

We have all had the help of these people, but, Sir, the work of all these friends would have been of no use but for the sweetness, the gentleness, with which you turned towards a person when you wanted him to stop in his further speaking : the patience with which you waited in order to catch his eye, - not he to catch your eye, - and the very gentle manner in which you cast the hint that he should now wind up; and when some of us were rebellious, disorderly and chaotic, you simply smiled in

order to choke that attitude.

It is a great thing I tell you that we have achieved. It is not right to under-estimate what we have achieved. Much has been done behind the curtains and but for the discipline and drilling of the majority party in this House, these deliberations would not have come to this happy end.

I thank you all for the great task that you have achieved and I congratulate you on it.

All that remains for me to say is that this Constitution is a good enough Constitution for us to begin with. Work it, work upon it : work at it : work it out for all that you are worth and as the great Parliamentarian said in the seventies of the 19th Century when the franchise was developed, in the British House of Commons, say to yourselves. "Let us educate our Masters."

Shri Jagat Narain Lal : (Bihar : General) : Sir, following the speech of Dr. Sitaramayya made in his lofty style, there is hardly very much left for me to say. But I want to add a few words about this Constitution. It has been attacked and criticized by various friends and supported by various others. I consider this Constitution to be both Federal and Unitary. It is a Federal Constitution, yet it is Unitary. It is a Unitary Constitution yet it is Federal. Neither is it based entirely on the American model, nor on the British model. It combines both these models and has added something of its own to suit our Indian conditions. The powers of control which have been given to the Centre, are, I consider very necessary. The one crying need of our country has been the maintenance of solidarity. Time after time in its history, we have found this solidarity being broken and India falling at the feet of foreign Conquerors. Therefore, Sir, at a time when all foreign rule has been eliminated, the one crying need of the hour is the maintenance of solidarity and unity in this country. Following upon that, I would further add that any distribution of provinces on a linguistic basis must be completely avoided. We have strongly held the view that if a redistribution of provinces is to take place, it should be carried out on an administrative basis. Sir, the formation of an Andhra province is to be welcomed from that point of view. In our deliberations and enquiries we found that if there was a strong case, there could not be a stronger and a riper case than for the formation or an Andhra Province on administrative grounds. We also came to the conclusion that there was necessity of a redistribution of provinces on administrative grounds in the case of certain other provinces too. If and when the necessary-conditions are there, and an opportune time comes, that redistribution may also take place.

I have found that even the incorporation of directive principles in our Constitution has been attacked by some people inside and outside too. But, these directive principles are very necessary. They contain the principles on which our State has to act and those principles are both Gandhian and socialistic, a mixture of both in their character. Article 45 of the Irish Constitution also contains those directive principles.

Now, Sir, I come to some of the drawbacks, or, I might say, some of those omissions which I regret. For example, Sir, I would have liked the name 'Bharat' to come before India. It is a fact that 'Bharat' and India have come in, but I would have liked 'Bharat' to come before India.

I am sorry, Sir, that there has been an undue anxiety in our minds about the

avoidance of the name of God. Looking to the foreign constitutions, Constitutions of other countries, I find that there is at least one constitution, the Constitution of South Africa which in its very first article says : "The people of the Union acknowledges the sovereignty and guidance of Almighty God." In our country, Sir, which has always remained religious and has retained its spiritual character and which has produced one of the greatest spiritual personalities in the world in modern times too, I would have liked that the name of God should have been introduced. Again, the words "Secular State" should not have come into the Constitution. It would have been enough if it had been said that the State should not interfere with any religion. Or, we could have said that the State should have a spiritual and moral outlook, instead of saying that it should be secular. The introduction of these words has created a lot of misunderstanding.

Many of us do not like the introduction or the acceptance of international forms of numerals. But, I have all along held the view that we should not force our views on others and whatever has been achieved by unanimity is welcome. I hope that when the time comes, we shall be able to see one another's point of view.

I also dislike reservation in the case of Anglo-Indians. Anglo-Indians are a cultured and enlightened community and they do not need any reservation. They should be able to come on their merits.

So far as the question of the banning of Cow-slaughter is concerned, I agree with the previous speaker that it should have been brought in a clear and direct manner into our Constitution. Banning of cow killing should not have been introduced in the way it has been done. The majority of the people of this country hold the cow sacred. They hold very strong views on this question and the cow represents, as Mahatma Gandhi said the entire animal kingdom. There was a time in this country when not only the killing of the cows but also of any other animal was prohibited.

I do not want to take more time of the House. With these few reservations, I support the Constitution. I hope and trust the dawn of a new era is near at hand which will lead the country to a brighter future and which will make the state stronger, more solid, more prosperous and more stable.

In the end, I wish to pay my high tributes both to the Chair, or President, and to the Members of the Drafting Committee, particularly, to Dr. Ambedkar, Mr. Munshi and Mr. Krishnamachari amongst many others.

Mr. President : I might inform the House that Dr. Ambedkar will take up one hour in the afternoon; Mr. Krishnamachari will take the rest of the time from now up to one o'clock. So we have an hour in the afternoon and I shall try to accommodate as many Members as possible.

May I have the permission of the House – because it is not provided in the rules – to accept the written speeches of Members ?

Some Honourable Members : No. Sir.

Mr. President : I take it, it is not the wish of the House. But within that one hour

in the afternoon, I shall try to accommodate as many Members as possible.

Shri T. T. Krishnamachari : Mr. President, Sir, at the outset I would like to express the thanks of the Drafting Committee to the Members of this Honourable House, who, whatever their views might be on certain provisions of this Constitution, have, practically, one and all, paid tributes, to the work of the Drafting Committee – and, Sir, not the least of them all to my septuagenarian leader who in such kind terms singled out every member of the Drafting Committee for recognition of his services, which I think we would all cherish to the end of our lives.

Sir, so far as the criticism that has been levelled against the Constitution or some provisions thereof are concerned, it would not be possible for me to cover the entire ground and perhaps it is not necessary. But at this stage it is likely that the public and those for whose purpose this Constitution has been framed are likely to get an erroneous view of the provisions of this Constitution if certain criticisms voiced by certain Members of this House which in my view arise out of certain misconceptions, about or out of an imperfect understanding of the provisions of the Constitution are not controverted. In the time at my disposal and with the permission o the House and your goodself, I propose to deal with some of these criticisms.

Sir, if I am to catalogue the various criticisms, it might take the entire time at my disposal. But I would like to tell the House that they form a bewildering complexity, one criticism contradicting the other. I might read out a few of the criticisms that I have jotted down. One of the basic defects of this Constitution is supposed to be that it is not a federal constitution, but a unitary one. There are other Members who feel that it is a constitution midway between the two –whatever that might mean. A third class of persons said it is a decentralised unitary state – I think it is Mr. Gupte who said it. And then again Mr. Gupte took objection to our using the word "state", as statehood is not conferred on the units of this Federation. The general complaint has been that there is too much centralisation in the Constitution which deprives the units of any initiative. One complaint which has been common to the criticisms voiced by most of the people claiming to speak for the Provinces is that the Provinces have been left in a bad way financially. Another complaint has been that we have merely copied the provisions from other Constitutions. Reference has also been made that we would have been wiser to have modelled the Constitution on the United States Constitution or the Soviet Constitution. Mr. K. T. Shah, Who is not here, has said that we have not provided for a working democracy.

Another set of complaints – mostly coming from speakers whose speeches I was not able to understand in their entirety, because of my own particular defect of not being able to understand the language in which they spoke was that it is entirely un-Indian in outlook and does not bear the stamp of Indian culture. Yet another complaint was that it does not have any economic guarantees. This was the complaint voiced by Mr. Damodar Swarup who, therefore, wanted the rejection of this Constitution.

Then the complaint was made that it is too long and goes into unnecessary details and thus stifles growth. A Member from Travancore State (I think somebody also repeated that criticism) that the Weimar Constitution produced a Hitler and this Constitution might very well be the means of producing another Hitler. Of course, the complaint generally has been about Fundamental Rights particularly about those provisions which deal with individual liberty and about the emergency provisions.

Article 360 and 365 have come in for a lot of criticism.

Some of the Members from the Indian States have complained that the States have been treated badly. On the other hand, some Members from the Indian States have said that the States should not have been treated on the same footing as the Provinces. Separation of powers is another theoretical consideration that has been urged and the speakers said that that has not been recognised and provided for in this Constitution. There have been honourable Members who have said that this Constitution makes the President an autocrat. Others have said that the Prime Minister has been made an autocrat in this Constitution. Yet another point which is perhaps of fundamental character is that there is no mention that the President is a constitutional head of the State. There are other matters like the suggestion that the language provisions are halting and that the Constitution must have been framed in Hindi. Of course the cow has figured largely in the debates for these last seven days. The cry has been that socialism is not possible under this Constitution and more or less tacked on to it has been the complaint of some honourable Members that property rights have been safeguarded beyond necessity. Yet again, there was my honourable Friend Begum Aizaz Rasul who made the complaint that property rights have not been adequately safeguarded. So honourable Members will please note that there have been contradictory criticisms, one cancelling the other, and perhaps if the whole lot of criticisms are put together it might be that we might feel, - the Drafting Committee and the Members of this House might feel, - that we have not done a bad job after all.

Sir, I would like to go into a few fundamental objections because as I said it would not be right for us to leave these criticisms uncontroverted. Let me take up a matter which is perhaps partly theoretical but one which has a validity so far as the average man in this country is concerned. Are we framing a unitary Constitution? Is this Constitution centralising power in Delhi? Is there any way provided by means of which the position of people in various areas could be safeguarded, their voices heard in regard to matters of their local administration? I think it is a very big charge to make that this Constitution is not a federal Constitution, and that it is a unitary one. We should not forget that this question that the Indian Constitution should be a federal one has been settled by our Leader who is no more with us, in the Round Table Conference in London eighteen years back. I suppose his stand had to some extent shaped the provisions of the Government of India Act, though the question of Provincial autonomy had been decided largely because of the likes or dislikes of the Muslim members of the Round Table Conference. Now, what is a federation? I am glad that my honourable Friend Pandit Hirday Nath Kunzru is here because he alone of all Members of this House warned us against going into details in regard to what is a federation. It is not a definite concept, it has not got any stable meaning. It is a concept the definition of which has been changing from time to time. Leaving alone political theories of the ages before Christ and in the middle ages, in modern times or in relatively modern times, the first time that people who have exercised their minds about a federal constitution were the people of the thirteen American colonies and we find a reference to it in the writings of those who have framed the American Constitution, who produced several articles which were brought together in a book called the "Federalist". It does happen that the connotation which is now current so far as the theoretical circles are concerned has been given to it by the Federalists in America in the 18th century but even between that connotation and the modern one there is a considerable amount of difference. Students of politics will know that Hamilton did not think the same way as Jefferson or as Madison did. Though the issues between them were comparatively narrow and dictated by considerations that obtained at the time they framed the American Constitution, they were nevertheless

wide enough in so far as they affected the interpretation of the Constitution subsequently. In fact, honourable Members who are familiar with the American Constitution will realise that Marshall who gave more or less a tone to the Status of the national Government in America has been taking the view that Hamilton did and whatever he did by way of strengthening the national Government's power was more or less neutralized by his successors, particularly Chief Justice Taney who was an out and out Jeffersonian. Sir, I do not want to go into the details of the American Constitution and its progress, but the one fact which we have to realise is that whatever might have been the intention of the frames of that Constitution and their own particular connotation of what federalism should be, the whole thing changed after the American Civil War and from that day right to today there has been a progressive increase in the power of the National Government by a series of interpretations of the provisions of the Constitution, excepting for a very short period somewhere in 1919-20 when there was reversion to Jeffersonian ideas. I am laying stress on this particular point even though it might appear theoretical, to cover a number of criticisms against this Constitution. I would also like honourable Members to note these points merely because that would answer partly the charge that the Constitution is very long.

Many honourable Members have said that we should have copied the American Constitution. Some very worthy leaders outside who have the reputation of being students of constitutional law occupying high positions, have stated that we should have copied the American Constitution and that this long Constitutional document is worthless, or that we should have had a Constitution outlining only a few general provisions which would have allowed for growth. But I would ask those gentlemen outside and honourable Members here just to look at the decisions that are today an integral part of the American Constitution and they will then find that to understand the American Constitution it will be necessary to take into account not only the bare text but also the decisions of the supreme court over these hundred and fifty years. From 1862 onwards the powers of the national Government have been steadily augmented by various devices. For instance, even Marshall said there were implied powers. Subsequent judicial pronouncements have said there are inherent and express powers assigned to the national Government. Then again, judicial decision have granted powers to the national Government because they were necessary for the exercise of the main functions of the Government. Again the Federal legislatures have enlarged their scope because they were incidental and necessary for their function. Sometimes some of these powers have been called resulting powers mainly because of the action of the exercise of the powers that have been enumerated. The treaty-making power of the national Government that finds mention in the American constitution has been considerably enlarged. In fact, sometimes the Centre has made inroads into the provincial power as a result of this power. The legislative power for the grant of judicial power has also made inroads into the State power but not the least of them all are the three powers which have had a wide implication one was the general welfare power which finds mention in the Preamble and in article (1), Section 8, then the Commerce clause and the taxing power. In fact my honourable friend Mr. Alladi Krishnaswami Ayyar had made mention of these in his speech. Again, the taxing power has been further stretched by using the appropriate spending power of the Centre so that in America today there is a central federal public health service, there are various other bureaus which administer directly their own departments in the various States.

I have gone into these details merely to tell the honourable Members of this House that if we should frame a Constitution on the American model we should perhaps have

gone into greater detail, than what we have done and we should perhaps have given the Centre greater powers than we have given in this Constitution.

Sir, it is rather difficult to say what the present position of Federalism is in so far as the American Constitution is concerned. But, in the latest book on the American Constitution written by Laski, practically in its closing paragraphs, he says "that if people want to understand the American Constitution, let them look at the position of the President. The significant increase in the powers and the Status of the President has been the greatest charge in the Federal system in America." He thinks that the classic theory of federalism would become obsolete in its historic form before long.

Are we, Sir, in framing our Constitution, merely to take only those features that are obsolete, only those features which have only historical value in the American Constitution and really leave the operative portion of that Constitution in order to please the aesthetic susceptibilities of certain honourable Gentlemen here or elsewhere who feel that we should have a Constitution that would be short like a Prayer Book capable of being put in the Ladies handbag and taken along wherever one wanted. A Constitution should give the average man an idea as to what it really means. He should not be left in such a position as to make him dependent on judicial decisions and the advice of expert lawyers to expound it to him.

I would in this connection deal with a point raised regarding the vesting of the residuary powers. I think more than one honourable Member mentioned that the fact that the residuary power is vested in the Centre in our Constitution makes it a unitary Constitution. It was, I think, further emphasised by my honourable Friend Mr. Gupte in the course of his speech. He said : "The test is there. The residuary power is vested in the Centre'. I am taking my friend Mr. Gupte quite seriously, because he appears to be a careful student who has called out this particular point from some text book on federalism. I would like to tell honourable Members that it is not a very important matter in assessing whether a particular Constitution is based on a federal system from the point of view whether the residuary power is vested in the States or in the Central Government. Mr. K. C. Where who has written recently a book on Federalism has dealt with this point. But he has dismissed it as of no account. But even at the risk of going into some detail, I would like to mention that it is the German political philosophers who evolved the peculiar theory called the Competence – Competence theory. This theory is whether the national Government or the State is allowed to appropriate competences which have been formally left to one or the other or had come into being at a later date. Only when the State is left with this competence such a Constitution would, be a Federation. In actual practice such states had never come into being. 'If so happens that a component State has to concede the power categorically to the Central Government it would not be a Federation. It would be a Confederation. It has been pointed out that definitions attaching such conditions are futile for the reason that the change sought to be made can be achieved by the amending power. And so far as the amending power is concerned, the initiative is always with the Centre.

I am glad that Mr. Pataskar in a very devastating but superficial criticism of the Constitution was able to concede that the best point in this Constitution was the amending power. I agree that the best point is the amending power and observe that in regard to most of the matters covered by the Constitution the amending power rests with the Centre. Applying the logic of the unitary this fact alone makes it a

Federal Constitution.

Shri H. V. Pataskar : I did not say it was the only satisfactory provision but said that it was a satisfactory provision.

Shri T. T. Krishnamachari : I am quite prepared to accept my honourable Friend's emendation of his speech. These factors do not go to constitute whether a Constitution is a federation or not. If you look into detailed provisions of any Federal Constitution you will find that so long as there is a National Government there is a sector in that Constitution which has a unitary character. But that does not mean that the Constitution becomes a Unitary Constitution merely because of the fact that whenever there is a National Government there are certain powers given to it whether by enumeration or otherwise. When those powers are exercised it would not merely by reason of this fact alone become a Unitary Constitution.

I would ask my honourable Friend to apply a very simple test so far as this Constitution is concerned to find out whether it is federal or not. The simple definition I have got from the German school of political philosophy is that the first criterion is that the State must exercise compulsive power in the enforcement of a given political order, the second is that these powers must be regularly exercised over all the inhabitants of a given territory, and the third is the most important and that is that the activity of the State must not be completely circumscribed by orders handed down for execution by the superior unit. The important words are 'must not be completely circumscribed', which envisages some powers of the State are bound to be circumscribed by the exercise of federal authority. Having all these factors in view, I will urge that our Constitution is a Federal Constitution. I urge that our Constitution is one in which we have given power to the Units which are both substantial and significant in the legislative sphere and in the executive sphere.

Now if you ask me why we have really kept the residuary power with the Centre and whether it means anything at all, I will say that it is because we have gone to such absolute length to enumerate the powers of the Centre and of the States and also the powers that are to be exercised by both of them in the concurrent field. In fact, to quote Professor Where again, who has made a superficial survey of the Government of India Act, the best point in the Government of India Act is the complete and exhaustive enumeration of powers in Schedule VII. To my mind there seems to be the possibility of only one power that has not been enumerated, which might be exercised in the future by means of the use of the residuary power, namely the capital levy on agricultural land. This power has not been assigned either to the Centre or to the Units. It may be that following the scheme of Estate Duty and succession duty on urban and agricultural property, even if the Centre has to take over this power under the residuary power after some time, it would assign the proceeds of this levy to the provinces, because all things that are supposed to be associated with agriculture are assigned to the provinces. I think the vesting of the residuary power is only a matter of academic significance today. To say that because residuary power is vested in the Centre and not in the provinces this is not a Federation would not be correct.

Let me draw the attention of my honourable Friends to one or two good things we have done in regard to this question of the relationship between the Centre and the Provinces. We have dealt very carefully with the possibility of a vacuum in Governmental power. There will be no chance of a defect of power so far as the

enumeration of powers is concerned even without going to the residuary power, which would leave a vacuum in the field of governmental action. We have avoided to the extent possible the possibility of matters being taken to court on the ground that there is overlapping of federal and units powers which are mutually exclusive. This is one of the defects of the Canadian Constitution. The powers enumerated under Section 91 and section 92 of the Canadian Constitution are supposed to be mutually exclusive that it has resulted in a lot of overlapping or to use a legal term in the creation of "a twilight zone" between the Central field and the provincial field, and has also resulted in a large number of judicial decisions. We have taken care, while copying these federal constitutions to avoid the pitfalls into which the Canadian Constitution has fallen.

Again, so far as the concurrent field is concerned, we have made a considerable improvement both on the Government of India Act and the Australian Constitution the only other Constitution where concurrent powers are specifically mentioned. So far as the Australian Constitution is concerned, its concurrent field has given rise to a lot of conflict. There is no clear demarcation of division of jurisdiction in the field of executive action. This has given rise to a lot of conflict. We have tried to avoid these defects which were copied in the Government of India Act, by the wording of article 73. Though that particular article was the subject of a lot of discussion in this House, I still feel that that is one of the wisest decisions which have been taken by this House. In this we have avoided the ambiguity of section126 of the Government of India Act. Here under the new Constitution, whenever the Centre interferes in the concurrent field, in matters of legislation, if it wants to have the executive power, it must take it explicitly. I am laying emphasis on this point because of the charge made here by honourable Members that the provincial governments are left without any responsibility. I would like to say even if it savours of boasting that in the Drafting Committee I have been rather keen to seen that there is no blurring of responsibility. Some Members in this House have been very keen that the responsibility of the Governments concerned should be clear; and I think this article avoids blurring of responsibility.

Another question that I would like to deal with is the question of the fiscal power, the sharing of fiscal powers between the units and the Centre. The charge has been very generally made in this House that the provinces have been left without any resources, and the Centre has taken away everything. I am afraid I must join issue with this statement that is either made merely because it has got a propagandist value or is made from a superfluous examination of the position as is revealed by the Constitution. What happens today in the provinces is – here I do not want to enter into any controversy with provincial Finance Ministers – that the provincial Finance Minister in order to support their own financial policies have been saying, "we have no money; the Centre would not give us any money; the Centre has got all sources of taxation." I have heard recently one or two provincial Finance Ministers making the statement that after the introduction of the new Constitution, the provinces will have no financial power whatsoever. I am laying particular emphasis on this criticism because I think it is wholly wrong, wholly inaccurate, and even mischievous. In fact, this Constitution has not made any fundamental change so far as the apportionment of the finances is concerned between the Centre and the units, from the scheme of the Government of India Act. As honourable Members of this House know, we have not been able to have a complete and comprehensive examination of the question. There has been no taxation inquiry in recent times. You, Sir, appointed an expert Committee. It had naturally very limited terms of reference and their report was made in a perfunctory sort of way. Therefore we had to adopt the scheme of the

Government of India Act more or less. Now I would like to mention that in a conference between the Finance Ministers and Premiers of the Provinces and the States and some of the Ministers of the Central Government and the Drafting Committee, I put forward the suggestion that the difference between agricultural and on-agricultural property so far as direct taxes are concerned may be done away with, so that it would help in putting more money in the poor : and that, the entire income from income-tax on agricultural income can be handed over to the provinces. A few provincial Ministers did appreciate this suggestion, but the tallest amongst them said that they were not yet ready for the change. So it happens that conditions have more or less forced us to incorporate the provisions of the Government of India Act so far as finances of the Centre and the Units are concerned. It may be that in one or two matters certain restrictions have been placed upon the financial power of the provinces, for example in the matter of the levy of sales tax, but that does not mean that the Centre gets any benefit whatever thereby. It is merely to benefit the economy of this country rather than to benefit the Centre that such restrictions were placed on the levy of sales tax. I cannot understand the basis of the complaints made during the last seven days that this Constitution has deprived the provinces of the initiative because they would have no finances, that the Centre has all the financial resources in its hands, and therefore the Constitution is a unitary one. I would beg honourable Members of this House, most of whom are going to be Members of Parliament in the future, to examine this matter in all seriousness, and here I would like to recall the words of Dr. John Mathai when he appeared before us or rather on the only occasion in which he appeared before us, when he categorically stated that there was really no rivalry between the Centre and the units so far as the financial power is concerned. In reality the Centre's needs are covered largely by defence, administrative expenses and so on, and the Centre has no territory so to speak in which it has any special interest and on which it might want to spend money.

Here I think I had better take note of the complaint made by honourable Members from Assam. I agree that Assam may be in a very bad way, partly because of the exigencies of circumstances, and partly because of the acts of its Government. Whatever it may be, it would be the duty of the Centre and the responsibility of the future national governments to see that no province, no frontier province, no province which is economically weak, is allowed to go under for want of finances. As I told the House before, there is really no rivalry between the Centre and the units in this matter. The provisions that we have made so far as finances are concerned are article 268 under which there will be Central levy and State collection of certain duties, particularly on medicinal and toilet preparations, the proceeds being earmarked for the States. Under 269 there will be Central levy and Central collection for the benefit of the States of the proceeds of succession duties, estate duties and so on. Article 270 is the one which deals with income-tax. Honourable Members know that income-tax pure and simple goes into the pool to be divided between the States and the Centre, Article 271 gives power to the Centre to levy a surcharge on income-tax and other taxes for the benefit of the Centre. Article 272 gives the Union the power to levy excise duties, the proceeds of the whole or part of which may be distributed among the States. Article 273 covers export duty on jute and jute products, which for a period of ten years will be distributed among certain States. Article 280 deals with the Finance Commission which will advise the Centre on the distribution of the proceeds of taxes between the Centre and the units and the determination of the criteria that will govern grants made available from the Centre to the provinces. That is the best that we could possibly do in the Constitution in the light of the facts before us. I agree that what we want is that the total amount of financial resources available both for the Centre and the units has to be augmented and it has to be augmented if the ultimate purpose of

this Constitution, namely, the economic betterment of the common man is to be undertaken; but the remedy does not lie in throwing stones at the Centre or at the Constitution and merely trying to shirk responsibility, so far as Provincial Ministries are concerned by saying that the Centre has got all the taxing power and we have none. Let me tell my honourable Friends in the House that the drift of taxing power in all Constitution has been towards the Centre and merely because of circumstances that have now come into being that the States have become, where it is federal or unitary, welfare states from being Police States and the ultimate responsibility as for the economic well-being of the country has become the paramount responsibility of the Centre. Switzerland has handed over Income-tax to the Centre. By the sixteenth amendment the U.S.A. Constitution hands over the entire income-tax to the national Government without any burden or any obligation to be distributed to the States by the Centre. Australia by means of a compact has taken over income-tax from the States and the Rowell-Sirvois report so far as the dominion-provincial relations in Canada are concerned has recommended the complete obliteration of any power to levy income-tax on the part of the provinces, while it has also laid down certain duties and obligations has to be assumed by the Centre. It has not been recognised that there is no natural coincidence between the ability of a Government to handle a set of functions and its ability to collect revenues, and if today we hand over the excise duties to the units, what will happen? What happens in so far as the sales tax is concerned, would be repeated in a much worse form. There would not be any uniformity; there will be a large field open for evasion and in the result the economy of the whole country will suffer. If the money that the Centre will collect, which will be surplus to its requirements is intended for the States *i.e.*, the units and we have made a provision so far as the distribution of this surplus is concerned, I think the charge that the Centre has taken over all the financial powers and along with all the money that goes with it is completely baseless.

There is only one point which I would like to make before going to the next subject, though I have made a note of a number of points on this subject with which I cannot possibly deal with now, and it is the intricate question which my honourable Friend Mr. Gupte raised and I think it was also raised in this House on previous occasions also, though not explicitly. It has been mentioned that one of the chief defects of this Constitution is that we have not anywhere mentioned that the President is a Constitutional head and the future of the President's powers is, therefore, doubtful. I am referring to this point merely because it has a certain amount of validity in that in certain dominions attached to the British Empire this problem has been raised because of the peculiar circumstances In which the Governor-General of that particular dominion has been acting in the past. Chief Justice Evatt, as he then was, Mr. Evatt the Minister for External Affairs in Australia, has written a book in which he wanted specific provisions to be made in regard to the exercise of power by the Governor-General as the Constitutional head of the Dominion and incidentally mentions therein that even in the case of the king of England it would be better if it is laid down that he should exercise this power in a certain manner and on certain occasions by means of a statute. This is a matter which has been examined by the Drafting Committee to some extent. The position of the President in a responsible Government is not the same as the position of a president in a representative Government like America and that is a mistake that a number of people in the House have been making, when they said that the President will be an autocrat, and no one appears to realize that the President has to act on the advice of the Prime Minister. There might be some truth in the charge made that the Prime Minister might be an autocrat. Yes, the Prime Minister would be an autocrat if the party that elects him as leader and the Parliament to which he is responsible are both inactive because the

tenure of office of a Prime Minister is perhaps only that amount of time that is necessary to pass a vote of no confidence on him. How a Prime Minister can be an autocrat when his tenure of office is so limited, unless there are other reasons which gives him the pull both over the Parliament and his party, is difficult for me to understand. So far as the relationship of the President with the Cabinet is concerned. I must say that we have so to say completely copied the system of responsible Government that is functioning in Britain today; we have made no deviation from it and the deviations that we, have made are only such as are necessary because our Constitution is federal in structure. Otherwise, that is the scheme of responsible Government that is envisaged both in the Centre and in the units. So far as the units are concerned the responsibility of the ministers has perhaps been in a very small measure curtailed only to the extent that it is absolutely necessary and has been expressly laid down in the Constitution. Honourable Members will please note that in article 163 we have said that the Governor should take the advice of the ministers excepting where he has been expressly asked to act in his discretion. An honourable Member asked me today what that meant. That was necessary because of Schedule VI, paragraphs 9 and 18 referring to Assam, which is the only matter in which the Governor has to use his discretion; in paragraph 9 of the Sixth Schedule which is a matter of arbitration and in paragraph 18 of the Sixth Schedule he has to report to the President; otherwise, there is no discretionary power at all vested in the Governor and we want the Governor to act in a manner which would mean that he will be taking the advice of his ministers in all matters. It has been expressly laid down in regard to assent of bills which he had to reserve for the assent of the President by reason of the fact that it falls in the concurrent field or that it is a matter which relates to the High Courts. But the position of the President in not the same as the King of England because he has no prerogatives such as the King of England possesses. His part in the assent to Bill is a matter which has been defined. All the powers that are left to him are perhaps those in which there will be a marginal use of discretion, perhaps when there happens to be a question of dissolution of the Parliament that is the dissolution of the House of the People, the question of calling upon any particular person to form the Ministry and the question of dismissing the Ministry. Sir, the time at my disposal is very short but I would like to assure my honourable Friends that in all these points, the conventions that have grown round the powers of the King of England in so far as his relationship with his Cabinet is concerned today are sufficiently strong for us to rest content with the there will be no misuse of these marginal powers by the President. The power of the Prime Minister in England has been progressively increasing, and instances in which probably the King had to use his discretion, namely in 1924 when he agreed with the suggestion of Prime Minister MacDonald to dissolve the House and then again in 1931 when he called upon MacDonald to form the Government in spite of the fact that the party to which he belonged had gone over to the opposition, these were matters where the discretion were more or less of a marginal nature. There were subsequent instances, notably the instance where the Prime Minister felt that even the King should not remain on the throne because of certain things that he was going to do, his abdication and subsequently in matter in which he had to take the advice of the Prime Minister, in setting up of a temporary commission by counsellors to act in his stead. These and other things in England have more or less established that the Prime Minister's advice is paramount, paramount in so far as the King cannot even call any people for consultation unless it be the Leader of the Opposition, and even then he has to tell the Prime Minister what transpired between them. The conventions are sufficiently strong and well established but a marginal instance might come into being and therefore, we cannot put in the Constitution precisely where the President must do this and what the Prime Minister can ask him to do and where he can use his judgment between two matters which are

rather difficult to decide. Of course there may be an error or misassessment of facts or an error of judgement or it happens to be *bona fide* and it cannot be helped. We have considered this matter and on balance of considerations we felt that we ought to leave it to conventions and to such conventions that have been established in other countries following a system of responsible Government.

May I ask for 15 minutes in the afternoon, Sir?

Mr. President : Yes, Then we adjourn to three o' clock.

The Assembly then adjourned for Lunch till Three P.M.

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri T. T. Krishnamachari : Mr. President, Sir, I would like to deal with the points raised by honourable Members in regard to the Fundamental Rights. With many of the provisions in that Part, honourable Members have been in agreement. But the attack has been focussed on two sets of provisions, one dealing with the liberty of the individual citizen, and the other dealing with property. Sir, it is a moot question whether in a country with a Parliament elected on the basis of adult suffrage, where the common man is supposed to have a preponderant voice in the administration of the country and the making of the laws, it is necessary to have a set of fundamental rights incorporated in the Constitution. My honourable Friend Shrimati Purnima Banergi mentioned that she would have preferred that the fundamental rights were left without any subtraction therefrom in the same manner as is found in the American Constitution. Again, I have to mention that those friends who wanted a set of fundamental rights, particularly those dealing with individual liberty and so on, copied from the American Constitution, forgot the historical background of the incorporation of such fundamental rights in the American Constitution. These were incorporated merely because of the fear of a group of people who framed the Constitution, who felt that the newly-created Centre would develop to be a monster and would make inroads not merely into the rights of the States, but also into the rights of the individual-the natural abhorrence of those people of the same type of mind as Jefferson who were responsible for the incorporation of the fundamental rights in the American Constitution to a powerful national Government was the main cause. But, it would not be right to incorporate those provisions without any variations, or any amendment or subtraction in a Constitution that we are framing in 1949.

Let me take the provision in regard to economic matters, particularly, article 31. As I said at the outset, my honourable Friend Begum Aizaz Rasul said that they did not go far enough. I agree; I think she is perfectly right. Fundamental rights are intended only for the people who represent a certain class of persons usually called the vested interests. It is the vested interests that are afraid of the future Parliament elected on adult suffrage which might want to democratize, socialise and equalise the wealth and opportunities in the country. It is the vested interests that have to be afraid of the future. It is perfectly correct, though it may not be on merits proper to concede, for Begum Aizaz Rasul to make the complaint that the Fundamental Rights in regard to property do not go far enough.

On the other hand, a number of my friends here, including my honourable Friend Shrimati Renuka Ray, felt that the rights conceded to property owners in article 31 went far.

An Honourable Member : Too far.

Shri T. T. Krishnamachari : The position of these people who took up that attitude should be that fundamental rights are not necessary to be safeguarded in a constitution where adult suffrage is the order of the day, where Parliament will be elected by every adult citizen in the country. That is the natural corollary. On the merits of the question, I have a little more to say.

I do want the House to understand that there are two conflicting moods in the minds of the people while approaching the fundamental rights : those that feel that the fundamental rights have gone too far, and those that feel that the fundamental rights have not gone far enough. Let me take up the position of my honourable Friends Pandit Kunzru and Pandit Thakur Das Bhargava whose objections to articles 19, 21 and 22 and even to some other ones, were that there has been a subtraction of the rights conceded to the individual. Well, I must say that on pure merits, and in the light of what is happening now about us and what has happened in the past my sympathies are entirely with them. All of us who came into politics as a result of a desire for freedom and dislike of the British rule, have done so because we were attracted by libertarian traditions attached to the rights of the individual. We wanted those rights to be safeguarded at a time when a foreign ruler was ruling over us. But today, if there is to be any subtraction of those rights, it would be effected by Parliament and by the legislatures of the States; in fact, Parliament will have the ultimate say, because most of the subjects which cover personal liberty are in the Concurrent List and Parliamentary enactments will predominate. If objection is taken to Parliament passing any act, it means that there is a certain amount of lack of confidence in the Parliament which would be elected on adult suffrage. It might appear to be an ingenious argument; but that is a grim fact. My honourable Friends might choose between the two. Yes; what we have done is merely to state the proposition, and we have stated that if Parliament so wills, it can subtract from the propositions (a), (b), (c), (d) and (e), the rights conferred to the extent stated. If Parliament does not want it, it need not, and the fundamental rights stated will be there without any diminution therefrom, Any subtraction can only be done by a positive Act by Parliament enacting laws in regard to every particular right. That is the point I want honourable Members to understand. I also want those people who criticise the Constitution on the basis that the fundamental rights conceded are worthless because they have been subtracted from to understand the point that the subtraction can only be affected by Parliament, and if they have any confidence in Parliament, Parliament will not do it unless it is absolutely necessary. I agree that the present circumstances colour our vision make us look at them in a way which distorts the picture. I have not been in charge of law and order in any province; I have not been in power; so it is fairly easy for me to sympathise with my friends who feel that notwithstanding the fact that the British have gone, the hangover is still there both ways. It affects us citizens who criticise the Government. It affects those in Government because they have imbibed the traditions of our former rulers. I do not for one moment question the validity of the objections raised by my honourable Friend Pandit Thakur Das Bhargava or Pandit Kunzru on the ground that at the present moment there has been a certain amount of what appears to be miss-use of authority or rather extra use of authority. But I do not think that is a matter which would exist for all times. At any rate if the

Parliament of the future is not going to safeguard the liberty of the individual, I do not think that anything we put in this Constitution can possibly safeguard it. Therefore any insistence on putting into the Constitution Fundamental Rights, completely unabridged and in a manner that was done somewhere about 160 years back by a country which had different ideals and different hopes is. I think, an argument which is besides the point and out of place altogether.

In regard to the economic provisions I should like to say a few more words. I perfectly agree with the tenability of the objections raised by friends like Shrimati Renuka Ray and others. In fact I have a lot of sympathy with these objections though I have always felt that the provisions as they now stand – the provisions which were originally the provisions of Section 299 of the Government of India Act did not permit any legislation undertaken by Parliament or the Legislature of a State relating to the principle of compensation to be taken to a court of law and to be decided thereafter. But why I feel that my honourable Friends who have criticized the provisions are right is because I see – in spite of my holding that view that view-in spite of the fact that my earned colleague Alladi Krishnaswamy Ayyar held the opposite view about a year and a half ago and now holds the view that those principles are not justiciable – the possibility of the matter being taken to Court is there and I feel that in this country we can not afford to have matters which are of great economic moment and importance to the average man in the country to be taken to court and for a period of uncertainty to ensue.

But I am coming to the most vital portion of the manner in which the structure of the Constitution was undertaken. Honourable Members must realize that this Constitution as it has been mentioned by other members-before me is a result of compromise. 296 people who have assembled here hold different views on economic matters and we cannot frame a Constitution in which if I say that I am not going to allow a particular thing to be done and other people must follow that, then there will be no agreement. The whole constitution practically – very important parts of this Constitution have been a matter of final agreement among the parties concerned and if anybody now objects to a single proposition after having agreed to most of the propositions. I am afraid they are doing something which is not proper. This Constitution has been completed as a result of agreement amongst most of us. I feel that in that particular matter we have exposed the common man to become the subject of litigation which might probably take years before a final decision is reached and might retard our economic progress. I have done so because there are a number of points in this Constitution which have been agreed to by friends who hold different views. Sir, I have no desire to stand in the way of honourable Friends who might like to speak for a few minutes.

Shri P. T. Chacko (Travancore State) : May I know one thing? In part VII there is no provision for the appointment of Rajparamukh. Under Section 155 there is provision for the appointment of Governor which is deleted in Part VII and in some States there is no right of succession to Rajpramukhs. I would like to know whether a provision for the appointment of Rajpramukh is not necessary in such cases where there is no right for succession.

Shri T. T. Krishnamachari : I would ask my honourable Friend to look into article 366 clause (21) which provides the answer. I did want to deal with this aspect but I do not think I have got time. Mr. Sarwate raised the point in regard to the position of a Rajpramukh who misbehave against which he felt there was no provision, whereas we

have a provision against possible misbehaviour by a Governor. I think that particular clause which is there [*i.e.* article 366 clause (21)] is adequate for all purposes in regard to keeping Rajpramukhs in proper behaviour. In fact there is another point that was raised by an honourable Friend who spoke to me also about it in regard to article 371 and in particular in regard to the position of High Court Judges in the States. Article 371, as it has been conceded by other friends here-Mr. Malaviya who spoke yesterday wanted it-is a purely transitory provision and you must leave it to the government of the day to see that it is not put into operation against States which are advanced and so far as salaries of High Court Judges in the States are concerned, well, so long as the salary of a High Court Judge in States in Part A is high, if we impose the same standard on the States – the States will become bankrupt. Certain anomalies are bound to arise because we have put the Indian States and the provinces together; but without putting them together we will have created a Constitution which would be something which will not be uniform. Actually that point has been raised by some of our honourable Friends but the limitations are there and we have aimed at uniformity subject to those limitations.

Before I close I would like to mention one matter which I think, the House will agree with me, is to be regretted. My honourable Friend and Colleague Shri K. M. Munshi was eager to participate in the debate at the final stages. In fact I think he has something constructive to say as well in regard to the criticisms made particularly about separation of powers, the nature of the Constitution and so on but unfortunately he has developed a temperature and has sore throat which keeps him more or less bedridden. I have no doubt the Members of this House who like him as much as I do would wish for his speedy recovery and regret that he is not with us today when we are finalising the work that we have carried on for over three years in which Shri K. M. Munshi had played a very important part.

Lastly, may I, Sir, mention the debts that we as Drafting Committee have to discharge particularly to the Ministries of the Government of India. The Ministry of Finance, the Ministry of External Affairs and the Home Ministry have been very good to us and have assisted us considerably. With regard to the States Ministry, we owe to Mr. V.P. Menon and his assistants this task of integrating the States into this Constitution and they have been very accommodating and helpful. So far as the Law Ministry is concerned, I should like to mention by name two persons –the Secretary and Joint Secretary –Mr. Sundaram and Mr. Bhandarkar – who have been of very great use to us insofar as ultimately the Constitution is to be handed over to them it is only right that they should do so but I think that I would be failing in my duty if I do not mention by name the great services they have rendered to us. I would also like to endorse what members of this House have said in regard to the services of Mr. B. N. Rau. His help we missed during the last stages but while missing his help we were aware of the enormous amount of assistance we had received from him during the earlier part of this work and particularly he was so progressive in his views, so sympathetic and so quick as to be able to evolve a formula whenever we had a difficulty. Sir, I should also be failing in my duty if I do not mention that very happy circumstance about which honourable Friends have also made mention – of the fact that we were able to find a Joint Secretary and Draftsman of the calibre of Shri S. N. Mukherjee. It is no exaggeration to say that he was a real find. Not only is his ability as a draftsman so profound, but more than that, his willingness to work was even greater. (*Cheers*) And the House will also like to be told that practically everybody from Mr. Khanna downwards, to the clerks, superintendents and the reporters, have had to work very hard. For the last eight to ten months having been closely associated with the work of the Drafting committee, and having voluntarily undertaken some

portion of its mechanical work, I was in a position to see that these young people were working on most days till ten o'clock in the night, all because they were so enthusiastic : and the last one month has been a month of very severe strain to them; and I do hope that the House will recognise the work done by them in framing this Constitution which is of a very vital and important nature.

Sir, it would be out of place for me not to mention the services of the two great leaders, and it is a pity that they are not here today to say a few words. But the Prime Minister, Pandit Jawaharlal Nehru has been a source of great strength and help to us. In fact, he has followed the constitution and its various articles right from the beginning, and in many instances, we have had his very great abilities as a draftsman and writer to touch up particular articles put before this House. It was no doubt, unfortunate that during the early portion of our work, the Honourable Sardar Patel, was not in a position to be with us because of his illness; but during the last three or four months, we had to go to him on several occasions for advice which he so willingly and cheerfully gave us. After all, they are the real architects of the Constitution.

I know it is very embarrassing, very embarrassing to me and to you, to speak of the person who has been in charge of the destinies of the Constitution of this country. I feel myself fortunate in having been associated with the Drafting Committee – a fact which I owe primarily to another friend about whom I have to mention – Dr. H. C. Mookerjee – who during the short time that you were away, functioned so effectively and so well as the presiding officer and it would be improper not to mention his name. But, Sir, the fact that I was in the Drafting Committee had been a matter of good fortune to me primarily in that I have been able to see you at close quarters. I have no doubt that it has been a matter of intense personal profit to me, and a matter of great pleasure. Members in this House have already mentioned about the work that you have done and there is hardly any need for me to repeat it. But the House knows that the President has been in close touch with the Drafting Committee and has practically had some say in most of the work that we have done, and his advice and guidance have been of great help to us.

There is only one final word and that…….....

Shri Mahavir Tyagi : Let others also have some time, please.

Shri T. T. Krishnamachari : On final word before I sit down and it is this. Let honourable Members realise that even those of us in the Drafting Committee had notions of our own, had bias of our own; but we approached this work purely without any bias, and the result is what is before the House. It may be good in parts like the Curate's egg, or it may be very good taken as a whole, but I would only say this in conclusion that people worked on this Constitution only for the purpose of giving the common man of this country a Constitution which will make his life worth living, and I would suggest that this Constitution be dedicated to him, and in that dedication lies the hope of the future good of this country and the efficient and orderly working of this Constitution.

Thank you very much.

Mr. President : Dr. Subbarayan. I would request you not to take more than five minutes.

Dr. P. Subbarayan (Madras: General): Sir, I must thank you for giving me this opportunity, and I shall confine myself to the five minutes.

There are only two points which I would like to touch upon in this Constitution. There are two things that the British have left behind for us; one is the efficiency of the civil services and the other is the rule of law. And I think both these points have been carried out and incorporated in this Constitution, because without an efficient civil service, it will be impossible for the government to be carried on and for the continuity of policy to be kept. The importance of governmental administration, according to me, lies in the fact that there is continuity, and unless there is continuity there is bound to be chaos, and I think the Drafting Committee have been very careful to provide for this, and the Deputy Prime Minister himself made a plea for the services and made a right plea, because I feel in the contentment of the services really lies the safety of a country.

The second point I wish to touch upon is the rule of law which I think is a peculiar part of the English legal system. If there is anything which I would like to cling to in the future of this country, it is this rule of law. Professor Dicey in his law of the Constitution has explained this position fully and I think we have provided in the Constitution, in the powers vested both in the Supreme Court and the High Courts of this country for any citizen to have his right established as against the government of the day, whether Central or Provincial, so that there is no question of encroachment of rights, and the judiciary has been left independent enough to fulfil this task. My friend Mr. Alladi Krishnaswami Ayyar pointed out, and rightly so, that the judiciary should not place itself as an *imperium in imperio*, and I feel satisfied that the provisions that have been made in this Constitution will not make the judiciary an *imperium in imperio*. Of course, there is always that danger also. When people talk of separation of power, this separation of power may be made in such a way that the judiciary may be invested with immense power that it might eventually lead to the break-down of the government of the day, which I think, is not the case in our Constitution.

One word more, sir, and I am done. Some people seem to have fears about adult franchise. It must not be forgotten that even today most of the voters under the franchise that obtains today are themselves illiterate. But the Indian humanity is such that they have enough common-sense, enough horse-sense, if I may say so, which will make it possible for them to chose their rulers with discrimination, and to choose the people whom they think would be able to carry on the administration in a manner which will be for the benefit of the common man, of whom we have talked so much in this House. I am sure, Sir, we are forgoing ourselves a Constitution which will stand the test of time and it will lead this country to take her proper place in the comity of nations.

I am done. Thank you, Sir.

Mr. President : Mr. Mahavir Tyagi, you will please take only four minutes.

Shri Mahavir Tyagi : Sir, I am grateful to you for giving me this opportunity.

Sir, I assure you these four or five minutes granted by you are the most precious of my life, past, present and future, and they are the most thrilling movements. I stand today face to face with the picture of my old, old dreams and the fruits of my strenuous labours of thirty years. I concrete picture is before us. Dr. Ambedkar who

was the main artist has laid aside his brush and unveiled the picture for the public to see and comment upon. The House has already liberally commented on it. It is a picture drawn by us all and I do not want to enter into a further commentary about it. I am in support of whatever has been said in favour of this picture, and I fully support it. After all, in all sincerity and humility we must bequeath to our posterity whatever is best in us. we have put in our best labour and given our best thought to it, and after a lot discussions and deliberations we have arrived at this picture. We must now wholeheartedly bequeath it to posterity in the hope that they will forgive our shortcomings if any, and will make up these shortcomings with their wisdom. From the corner of my eye as I see it, and as also the world will see, the picture is also fraught with dangers and those dangers I want to bring on record.

We are experimenting with an experiment which has failed in the world. We are evolving a democracy; a democracy has not succeeded, in doing, any real good of the people and of the masses, wherever it was tried. We are making the same experiment but in an improved form. Our democracy is an improvement on both the Parliamentary democracy of England and the Republican democracy of America. It is perhaps a mixture of both. Let us see if this democracy succeeds here.

Yet there is another danger. Adult franchise has been supported by many friends. I am personally very glad, because when supporters of this Constitution could not get very many arguments, they harped on the few points which I and a few friends of my way of thinking had insisted on being put into the Constitution – I mean the village republics', the cottage industries' and prohibition.' These points were resisted by many responsible persons in the past. But now I see that those very persons are banking on these arguments to support this Constitution.

Another big argument they repeat in support of this Constitution is the great experiment of adult suffrage. My fears are that it is a monstrous experiment that we are going to make and this might work as a python. I do not know where it would lead us, but the experiment will have to be made. I hope the future generation will be responsible enough to come out successful from these experiments.

Although I have every respect and praise for this Constitution, yet there is one thing which I am most afraid of, and it is that this Constitution is tendenalous to create a class – a class that democracy has created everywhere – of professional politicians.' All democracies are run by professional politicians' and I am afraid that is the main cause of their failures, because such people begin to live on democracies. It becomes with them a profession, the Statecraft', becomes their only source of living. That is the bane of democracy and I want to make the future generations aware of this. It creates professional politicians' – those whose earning depend on politics, with the result that they cut themselves adrift from all creative professions. If this democracy is also to be run by such persons who will have nothing else to fall back upon, and who live on Ministries or on the memberships of the Parliament, then this democracy is doomed, I am sure.

Such is the danger. I therefore want the coming generations not to play into the hands of persons who are professional'. This Constitution should rather be run by political professionals' – persons who have their won professions to live upon, but who come here to run the State voluntarily or on small pays because along with their own personal professions they had an interest in politics and had a will to serve the country. This is how I would like this picture to work. But the picture from the

villagers' point of view is dull and dead. I cannot give argument to convince the villager that from 26th January 1950 his lot will be better. Nor is there anything tangible through which he can better understand this Constitution; because we give the villager nothing but the vote, which we will take from him after two years. That is the only thing we give him. So, I submit that it is only when those who till the soiled are enabled to run this Constitution, that they would appreciate it to be their charter of rights and freedom. Otherwise the Constitution is dull. There must be a leader. I hope our Indian earth is not so sterile that it will not give birth to a leader who will whisper life into this mould of the Constitution so that it could speak. It would speak if only we had the courage of our conviction, and I tell you that the chanting of a Maha Mantr is necessary, and I am sorry that there is no one in India today who can whisper that Maha Mantr which could make the whole of our Nation dance about this little book. And may I hint what it is? I know at this stage the House cannot accept anything, but future generations may. Only one thing will make this Constitution attractive. If the whole of this Constitution were provided with one supreme provision or safeguard, then I think the whole thing will be all right. It is this : if we could add a proviso to it as follows :

"Notwithstanding anything contained in this Constitution, no citizen of India shall draw for his personal use either from the public exchequer or from private enterprise a pay, profit or allowance which exceeds the rings of an average wage earner."

If that were there the whole of India will at once come round this Constitution. So long as this is not there, India will not appreciate it because this Constitution will only safeguard the bread of those whose hands are full of bread and not of those whose hands are empty.

Shri Suresh Chandra Majumdar : (West Bengal : General) : Mr. President, Sir, as the Constitution for a free, sovereign India is being finalised, may I be permitted by this august House to strike a personal note and recall the memory of a painful shock felt by a school boy's heart on a night nearly half a century back? On that night I was reading my school text book of Indian history and had arrived at the beginning of the so-called "British Period". Of course, it required no reading of history books to make one aware of the country's subjection to foreign rule – even a child could feel it. What shocked my young heart and filled it with anguish was to learn how the British Power, continuously fed on our internecine quarrels, raised itself on the ruins of Sivaji's dream that had almost come true. The failure of the Mahrattas struck me as the greatest of tragedies and the adolescent, who was already dreaming of a free Indian again, felt depressed and wondered whether we could ever triumph over our own past and emerge as a free united nation. Today I recall those bitter reflections and am all the more happy and proud of what the nation has achieved.

I shall not dilate on the events of the intervening years. Today I remember vividly the time when Sri Aurobindo came to Bengal from Baroda and inaugurated a renaissance movement and a new era of fearless, vibrant nationalism. He inspired an activist revolutionary organization and I had the privilege of becoming an humble camp-follower through my guru, the late Jatindra Nath Mukherji. Then followed the wonderful days of the Swadeshi and the Revolutionary movements with their trials and tribulations – people struggling on against the foreign domination with blood, sweat and tears. Then suddenly came the first World War and with it also came the mighty engine of oppression – the Defence of India Act. And under its wheels the whole freedom movement was mercilessly crushed – as if never to rise again. The whole

country was plunged into impenetrable darkness; - not a speck of light was to be seen anywhere. But it was only a temporary phase. That is how I felt it then. With the end of the first World War there appeared on the Indian scene the refulgent figure of Gandhi – new India's man of destiny, the Father of the Nation, under whose incomparable leadership the Congress of the country remoulded itself into a mighty instrument of struggle of national freedom. The darkness began to melt away. Through a series of struggles the nation was led by him until he brought it to the goal – a free and sovereign India. One feels it was supreme privilege to have been an humble participant in this historical process as well as to be associated with my leaders and elders and colleagues in the making of a Constitution for the free Republic of India.

The Constitution – the fruit of so much labour and thought – is being discussed throughout the country. It has been praised to the skies and also abused in the harshest possible language. There are others – I think the majority – who see in it a mixture of things good and bad but on the whole practical and acceptable. How do I feel about this Constitution? There is on feeling in my mind which dominates every other – the feeling that this Constitution is wholly of our own, 100 percent. Indian making. It may be good, bad or anything but it is we, Indians, who have framed it. It has not been imposed upon us from outside nor by any alien authority. As we have made it, so we can amend it in the future if we want to. It is our very own with its good features and bad, if any. The making of this Constitution has been itself a supremely free act, a supreme expression of national freedom and I hail it as such. This gives me an immediate feeling of freedom and I would offer this personal testimony to that section of my countrymen who under a frenzied delusion are crying. *"Ye Azadi Jhutha Hai".* I think that cry is contradicted not only by my feeling but by that of all Indians barring a handful.

It is a commonplace but it would bear repetition, namely, that the success of a Constitution, even of the most meticulously written Constitutions, will depend not so much on its language as on the spirit in which it is worked. It depends on us, the people, to make it or mar it. I, therefore, humbly appeal to all my countrymen to approach the Constitution in a spirit of co-operation and to bring to its working all the patriotism and selfless devotion of which the nation is capable of and if they do so, I have no doubt that this Constitution will prove to be an instrument for the enlargement of our freedom, prosperity and happiness.

Sir, one other thing which I cannot help mentioning in connection with the making of this Constitution is this. When the Constituent Assembly was convened it was given the task of framing a constitution for the whole of India. But since then the country has been partitioned into two and necessarily the present Constitution covers one part only. Future alone knows whether it would again be possible to have a Constitutional covering the country as a whole.

In conclusion may I offer my respectful congratulations to Dr. Ambedkar and to my elders and colleagues in this House on the successful performance of a great, arduous and historic task? And I am sure I am echoing the sentiment of every one here when I thank you Mr. President, for the calm, patient, courteous and altogether exemplary manner in which you have guided the deliberations in this House.

Jai Hind!

Vande Mataram ! !

Shri Deshbandhu Gupta : *[Mr. President. I thank you that in spite of little time at your disposal you have been kind enough to give me a few minutes. Now is the time for rejoicing as we are closing the last chapter of the great work which we had started three years ago. This is the time of offering greetings and thanks and not criticism. For three years we have worked together and now we have given it a final shape. Now that we have framed the constitution bitter criticism is not proper but I would like to remind my honourable Friends that the constitution which we, in Delhi have been making and which now has come before the country and the world, does to inspire enthusiasm in the hearts of the citizens of Delhi. I am not complaining because I am sure that the Members of this Assembly have every sympathy for the demand of the citizens of Delhi. If hey could they must have made such alteration in the Constitution which might have provided an occasion for rejoicing for the people of Delhi, and verily with the enforcement of this Constitution on the 26th of January, a better day must have dawned on Delhi. I know that the Members of the Constituent Assembly have their personal attachments towards Delhi and have also some idea regarding its hardships. But due to the misfortune of Delhi we have been facing some such problems which have put obstacles in our way. that is why there is no provision for Delhi in this Constitution. Today when the whole country has achieved freedom and peoples' Raj has been established, twenty lakh citizens of this province are under the impression that no change has taken place in the administrative system of Delhi – Delhi which fought the battle of freedom in 1857 and for six months her people faced the enemy cannons in the face of starvation, that Delhi every particle of which reflects the History of India. The set up which was here before August 1947 will continue. You can imagine the despondency of the citizens of Delhi.

There is however one ray of hope. It is the assurance given by our Prime Minister that before 26th January Parliament could make a provision which would enable the citizens of Delhi to have an appropriate share in its administration. I hope that when such a bill comes before the Parliament no Member of this Constitution Assembly will forget the assurance given by the Prime Minister and let the proverb "Nearer the church farther from Heaven" to be applied to Delhi. I hope that you will keep in mind the citizens of Delhi. The Citizens of Delhi are not putting forward a big demand, they only want to have a place in this beautiful boquet and in this beautiful picture that you have drawn.

There is yet another point to which I would like to draw the attention of the House, under the chapter of Fundamental Rights, there is no article regarding the Freedom of Press. We have drawn much in this Constitution from different constitutions of the world. We have copied many things from the Constitution of Ireland, America and other countries. But we have not derived any benefit from them regarding Press which is called Fourth State. In our Constitution there is no mention of it.

Mr. Jefferson, a great American Constitutionalist said : "Were it left to me to decide whether we should have Government without newspapers or newspapers without Government I should not hesitate a moment to prefer the latter. But I should mean that every man should receive these papers and be capable of reading them". After the American Constitution was framed the article regarding the Freedom of Press was inserted in the Constitution as an amendment. I want that there should be a mention

of the Freedom of Press in our Constitution also in specific terms. I am sure that time will come when the Members of our Parliament will also consider this issue and will not hesitate in inserting an amendment regarding this and our Press will also acquire the status which it deserves in our Constitution.

With these words I thank you once again and pray that may this Constitution be crowned with success.]*

Pandit Balkrishna Sharma : Mr. President, Sir, as I sat listening throughout this debate to the various speeches for and against this Constitution, I was reminded of Victor Hugo's famous book, "The Ninety-three". In that book Hugo writes about the convention, and he says "now we approach the convention. Now we approach the Himalayas" and he proceeds further on saying perhaps we are not in a position to realize the fullest importance of this occasion because we are too near it. He is right. Look at the mountain from a distance and to a certain extent you are able to realize the grandeur thereof, but if you be too near it is not possible for you to realize that grandeur.

I think, Sir, those of my friends – the critics and the supporters – who have spoken at this third reading stage of our Constitution, appear to me not to have had that vision, that breadth of mind, that capacity to appreciate the historic importance of this occasion. We have come here and criticized our own Constitution. Yes, it is very likely that there be flaws in it, it is very likely that there may be people whose views do not tally *in toto* with all the provisions of this Constitution, but then it does not lie in our mouth to come here and address this august Assembly in the spirit of carping criticism. Who, after all is responsible if there are defects in the Constitution? Is it not we who have been at it for the last three years that should be held responsible for it? I can understand a man like my friend Seth Damodar Swarup standing up and saying this is a Constitution which the people of this country will not accept, but I can tell him that we here for the last three years have been sitting in the capacity of the representatives of the people. We are the will of the people, what the Russians call, "Narodnia Volia". We are the will of the people and in that capacity we have sat here for the last three years and I can tell you each and every clause of this Constitution is acceptable to the people in this country. Let there be no doubt about that.

There are four or five points about which this Constitution has been criticised. Firstly, it has been said that we have leaned too much on the side of centralization. Secondly, the objection has been raised that the Fundamental Rights have been hedged round by so many obstacles. The third objection has been that it is un-Indian in spirit and the fourth objection has been that it is more or less a copy of the Government of India Act. Fifthly, it has been said that this Constitution does not give any occasion for the country to feel that glow of that economic freedom which we all wish the country to enjoy.

These are the five points on which the Constitution has been criticised. Let us take into consideration each and every objection and try to bring to bear upon it the light of reason. When we say that we have erred too much on the side of centralisation and when we criticise our Constitution on this account, do we not lose sight of that historical tendency of drifting apart in our history, in our traditions? This country has been afflicted with that fissiparous tendency which has been the bane of its progress. And, remember, India has been able to raise her head in history only when there has been a strong Central Government established. Otherwise, there has been nothing like

Indian history, nothing like the glory that was Indian. Therefore, we should not forget that when we have to counter that tendency, that fissiparous tendency, that centripetal tendency, let us not forget that it is very necessary that the Centre must be made strong.

The second objection has been that the Fundamental Rights have been given by one hand but have been taken away by the other. I have never been able to appreciate that argument. Does civil liberty, in the words of Mahatma Gandhi, mean criminal licence? Civil liberty does not mean criminal licence. If there is freedom of speech, it does not mean I should be free to go on abusing any and everybody that I dislike, and it is this sort of subtractions that have been introduced in our Constitution, and therefore this argument seems to me to be very hollow and I have never been able to appreciate it.

With regard to the third argument that it is a copy of the government of India Act and that it is un-Indian, all I can say is that it is to the credit of the Drafting Committee and Dr. Ambedkar and all those who have been associated with him, that they were not inspired by any spirit of narrowness. Here, after all, we are framing a Constitution and the modern tendencies, the modern difficulties, the modern problems that are facing us are there and we have to provide for them all in our Constitution, and if we have leaned on the Government of India Act for that matter, then I do not think that we have at all committed any sin.

As for the criticism that it is un-Indian in spirit, all that I can say is that we Indians have sat here, we have framed a Constitution. The phraseology of course is un-Indian, but then there are so many problems facing us today which are un-Indian in nature and therefore I say even though the phraseology is there even though the English phraseology is there what of it? Let it be there, but is it un-Indian for that matter? Our difficulties are there in this Constitution and all those problems that we have to solve have been given in this Constitution and a certain line of conduct for the governance of this country has been laid down in the Constitution. Therefore, I say it is not un-Indian.

My friend Mr. T. T. Krishnamachari was rather apologetic about this centralisation business and about the Fundamental Rights. He said, "Yes, yes. looking to our past history, we are very sure on that point". I am not at all apologetic about it. Whatever you have decided, Mr. Krishnamachari, in your wisdom, whatever the Drafting Committee and Dr. Ambedkar have done, is just the right thing for us and it is the only thing which can save us from anarchy. Therefore, I say that those who criticise this point in this spirit are not justified in doing so.

Where is the spirit of this Constitution? The point is who is to work this Constitution? Will it be a clean, honest, pure, well-integrated political party or will it be a rabble that will administer this Constitution? Today I am seeing before my very eyes the great national organisation which the Father of the Nation created, in a disintegrating process. The question is who shall come today and take the torch and unite once again this great organisation which made one of the most wonderful Revolutions in human history, the freedom of the country, by non-violent means, of course under the inspiration of a superman, of course under the inspiration of a man who comes only once every two thousand years. But then what does the future hold for us? If the Congress is permitted to disintegrate, if the Congress is permitted to be spoiled by the self-seeks, then I tell you, even a better Constitution will not be able to

work its way here in this country. Therefore, today somehow I feel that there is only one way to work this Constitution and that one way is that our great Prime Minister should resign from his office, should come back and accept the Presidentship of the Indian National Congress and thereby inspire a new confidence in the people and thereby create a thereby create a situation in which it would be easy to work the Constitution.

(Mr. Tajamul Husain rose to speak)

Mr. President : We shall go on with the discussion for another seven minutes during which I want to give an opportunity to speak to three or four Members.

Shri Raj Bahadur (Rajasthan) : Mr. President, Sir, I am grateful to you for giving me this me opportunity to associate myself with the high and well-deserved tributes that have been showered upon your good self, upon the Drafting Committee and the members of the staff of the Constituent Assembly. This is an occasion of the greatest historical significance. I say of the greatest significance because it is for the first time in our history that the chosen representatives of the nation have gathered together and framed a Constitution for the country. It is doubly so because the great and worthy leaders who brought freedom to our country have been the architects of our Constitution. Again for the first time in our history, Fundamental Rights, fundamental human rights, are being guaranteed and secured to the common citizen. I call the occasion great on account of these reasons. Sir, it is impossible in any human adventure of this type, namely that of framing a Constitution, to arrive at any degree of absolute unanimity. Unanimity may be possible perhaps only in a society of fools. So, if there are differences of opinion, it is only a sign of our intelligence, a sign that we are a thinking and thoughtful nation. It is impossible for all of us to agree on everything and on all points. The wonder is not that we have not been able to produce a better Constitution. The wonder is that we have been able to achieve and arrive at a degree of agreement that is incorporated in the Constitution. I would submit most respectfully that so far as the people of the Indian States are concerned, it is a matter of the highest gratification for all us. When we entered the portals of this great House we had lurking fears in our minds that the States would have to summon their own Constituent Assemblies as provided in the various covenants. Fortunately all such fears have proved unfounded. When the Constitution is now being finalized, when this stupendous task is coming to an end, it is a matter of deepest satisfaction to us that the same Constitution, which would be the symbol of our unity and the symbol of our national oneness and solidarity, shall apply to the States also. That does not, however mean that I have got no regrets altogether about the provisions of this Constitution. I regret certain provisions which relate to the States. I regret that because of the control of the centre that is sought to be imposed on the administration of these States for a period of ten years under article 371, a sort of double standard of democracy for the country is going to be provided for the various units. There is one type of democracy being provided for the States in Part A and another type of democracy for the States mentioned in Part B. Here I may give expression to the experience we have had in these States and State Unions. We have seen how in the States Unions the Ministries have been chosen by the States Ministry, the advisers and secretaries are appointed by the States Ministry, the day to day policies and programmes are controlled by the same Ministry,……

The President rang the bell at this stage.

and yet the blame from the people is borne by Congress man of the local Congress organisation. I would simply add at the end that whatever be the merits or the demerits of this Constitution, every thing depends upon the working of it. As Bryce has said, "it is easy to transplant a Constitution but it is not easy to transplant the temperament that is needed for the working of it." So, let us in all humility remind ourselves of the words of the great American statesman Benjamin Franklin, which I would humbly commend to all inside and outside this House – "Let us prick the bubble of our vanity. Let us doubt our own infallibility." None of us is infaliable. This Constitution, whatever be its merit or demerit, is, without the least shadow of a doubt a workable constitution. The limitations of this Constitution are the limitations of our peculiar circumstances, its achievements are the achievements of this generation – the generation that led the country from the slavery unto freedom. I therefore hail it as a great achievement for our leaders. If we work the Constitution in the spirit of the preamble, I am sure this country of ours will have a great future.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have been criticised for taking a long time for the framing of this Constitution. I would like to remind my critics that two Dominions started at or about the same time to frame their Constitution. We have finished, and the other has hardly yet begun.

Now, Sir, nothing in this world is perfect. Nobody says that we have got a perfect Constitution but it is the best that could possible be produced. I doubt if anyone else could have produced a better one. In may own opinion, this is a model Constitution. The judiciary will be independent; we shall have liberty, equality and fraternity; we have now a united India; the Princely order has gone; the minority question has been solved; there is no reservation of seats; not separate electorates; untouchability has been abolished. The credit for producing such a wonderful Constitution goes, Sir, to all of us in general because we, the Members of this House, extended our fullest co-operation to you, Sir. We were short in our speeches. We never tried to obstruct. We followed the procedure laid down by you. But I would like to mention the names of those who were mainly responsible for producing this Constitution in such a short time. First and foremost, I will mention your name. You guided and conducted the proceedings of this House in a most remarkable and effective manner. You tactfully handled difficult situations. You were a model of integrity and trustworthiness and your manner towards us was sympathetic….

Mr. President : Better leave that alone.

Mr. Tajamul Husain : You were kind and gentle in the extreme. You are the fittest person to occupy this exalted Chair. In your absence, Dr. Mookerjee occupied the Chair and conducted the proceedings in a dignified manner. The credit for framing this Constitution goes to the Law Minister. He is a genius. He knows everything about all the Laws and Constitutions of the world. What he does not know is not worth knowing. He has worked very hard room the beginning to end in s spite of his indifferent health. Due to his ceaseless labour, this remarkable Constitution has been framed. We owe a debt of gratitude to our Leader, the Prime Minister. He has raised the prestige of India. His charming personality is irresistible wherever he goes. He has on many occasions come to our rescue when we were confronted with difficult and knotty problems, our Deputy Prime Minister has proved himself to be a strong and

able administrator. He has been able to do things which nobody else could have done. He has obliterated the Princely order. He has done away with separate electorates. New we can truly say that there is equality, fraternity and liberty in India. Last but not least is your staff, Sir, the spade work has been done by them; they have worked much harder than many of us; they have worked from early in the morning till midnight. In spite of some defects it is a unique and a remarkable Constitution and we should be proud of it. I shall now deal with a few defects. I have got only two.

(At this stage the President's bell rang.)

I will speak of at least one, Sir,

(The Bell was rung again).

I have been ordered by the Honourable the President to close my speech. I shall say no more but still I say that it is the best Constitution. There are two defects but they are worth mentioning and I do not want to mention it.

Shri Kamalashwari Prasad Yadav (Bihar : General) : *[Mr. President, many honourable Members here have expressed their great disappointment with this Constitution and have remarked that it is nothing but a fantastic mixture of the different Constitutions of the World. But, Sir, I am not aware of any constitution nor of any country which has not made use of the good provisions of the other constitutions. Perhaps no country will ignore to do so. We too have therefore taken some such selected provisions, as appeared to us to be useful, from other constitutions of the World. Our Constitution contains many note worth features. It lays down that India shall be a Union of States and that there will be one official language for the whole of the Union; it provides for the abolition of untouchability – a great sin – that has been tarnishing the name of our country. We are proud to have embodied such provisions in our constitution. The provision regarding adult franchise surpasses those of Australia, Canada and other countries. The same thing applies in case of the provisions regarding citizenship. Under the able leadership of Pandit Jawaharlal Nehru, we have made our Sate a secular one and have thereby maintained a very high ideal. There was a time, Sir, when the whole of Asia was looking to Japan but today the eyes of the whole of Asia are fixed towards India. They are watching if we are making any discrimination or not in our treatment to the citizens on the ground of religion, caste, language and race; they are keenly watching the progress we are making towards achieving our ideals.

Now coming to the shortcoming in the Constitution, the omission of a reference to the Father of the Nation – Respected Bapu – strikes me the most. It was Bapu who showed us the way, taught us to walk, moulded us to give the lesson of truth and non-violence. He taught us to make sacrifices. It is because of him that we have achieved our freedom; have been able to form this Assembly and to prepare the Constitution that we are going to adopt and enforce throughout the country. Really it is a very pity

that we have not made any mention of him in the Constitution.

There should be no Legislative Councils in the small Provinces that have little income. I fail to understand why provision for Legislative Councils, has been made for these small Provinces. In the Legislative Assembly of Bihar a unanimous resolution was adopted to the effect that there should be no Legislative Council in Bihar. But that unanimous decision has been reversed there. We could have made some other provision to carry out our idea that experts and learned people must be brought into the Legislatures. We could have provided for their inclusion in the Legislature for a limited period of time by the way of nomination with powers to express their views and to participate in the debate but not to vote. The words "the State shall endeavour to" or "the State shall take steps" have been used in all articles from 40 to 51 under the Directive Principles. So far the body of these articles is concerned they appear very attractive indeed but there is no life in them. Whenever one is unwilling to do something or wants to evade it, he just says "I shall try". The very motive seems to me to be behind the words "the State shall endeavour to" used in the articles under reference. The same thing can be said in regard to the provisions relating to prohibition. We have not put a complete stop to the slaughter of cows. The appointment of a Commission provided in article 340 to investigate the conditions of the backward classes, must be made within six months of the commencement of the Constitution for the problem is a serious one and unless they are brought at par with the advanced classes, the country can make no progress.

Lastly I would draw your attention, Sir, to the growing spirit of provincialism in the country. The bigger and more advanced Provinces want to devour the smaller and less advanced ones. For instance I may mention the case of Bihar. All the profit in respect of the mineral products of the Province is being drained away to Calcutta and Bombay. Something should be done to put a stop to it.]*

The Honourable Dr. B. R. Ambedkar : Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the

total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 *i.e.*, within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October, 1908 and the Constitution became law on the 20th September 1909 involving one years labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand. The Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drafting committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting committee. I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I

am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of he Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. (*Cheers*)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity of devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater, share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been as acquisition tot he Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. (*Cheers*)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tasseleted pavement without cement, a black stone here and a white stone there is which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P. S. Deshmukh, Mr. Sidhva, Prof sexena and Pandit Thakur Das Bhargava. Alongwith them I must mention Prof. K. T. Shah and

Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution making.

As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr.. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their purposes or will they prefer revolutionary methods of achieving them? If they adopt the prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to pay.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say no'. The Communist Party want a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the

Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place he has said:-

> "We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."

In another place, he has said :

> "The idea that institutions established for the use of the national cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living;"

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the constitution as in Canada or by making the amendment of the Constitution subject tot he fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these

features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said:

> "Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another."

The first charge of centralization defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer :

> "Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State ?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to all Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this – that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country (*Cheers*). What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lost it a second time? It is this thought which makes me most anxious for the

future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indian place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. (*Cheers*)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, *Res Judicata*, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lost it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon

the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity.

what does fraternity mean? Fraternity means a sense of common brotherhood of all Indians-if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is- I propose to recount it in the words of Bryce himself- that-

"Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words `O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word nation' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words `O Lord, bless these United States."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians, resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are antinational also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must no be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stresses on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame

except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

Mr. President : The House will adjourn till Ten of the clock tomorrow morning when we shall take up the voting on the motion which was moved by Dr. Ambedkar.

The Assembly then adjourned till Ten of the Clock on Saturday, the 26th November 1949.

[Translation of Hindustani speech.]