

position. I am sorry that the report of that Sub-Committee not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

ADDITION OF NEW RULES 38-A TO 38-V

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

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

After Rule 38, insert the following :—

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

[This motion was followed by discussion. Then Dr. Ambedkar rose to reply to the criticism.—Ed.)

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†**The Honourable Dr. B. R. Ambedkar** : (Bombay : General) : Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realize that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not

*Constituent Assembly Debates, Official Report. Vol. VI, 27th January 1948, p. 18.

† *Ibid*, pp. 25-28.

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

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules which requires the assent of the Governor-General to the passing of a Bill adopted by the Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts, one part related to the making of the *future* constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has no place. His assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessary, but even the assent of the President is not required by the Rules now prepared. The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution. It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The question that arises is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it. What harm can there be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

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

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

In the light of this it will be clear that a provision for changing the exiting Constitution by a Bill is necessary. Those who realize this fact and also realize that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises is, why should a Bill of amendment not require the assent of the Governor-General ? Certainly, there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision contained in sub-clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-Genenral. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean that the Assembly is bound to submit a Bill amending the existing Constitution to the Governor-General by virtue

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

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

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

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

Shri M. Ananthasayanam Ayyangar : Another point which requires elucidation is this. It is laid down that when the Dominion Legislature passes a Bill, that Bill will require the assent of the Governor-General. But does this apply in so far as amendment of the present Constitution is concerned, because we are not sitting here as Dominion

Legislature, but as the Constituent Assembly of India which is a sovereign body ? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new Constitution is not going to be referred to the Governor-General, the amendment of the existing Constitution also need not be referred to him ?

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

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

[The motion of Smt. Durgabai was adopted.—Ed.]

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

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

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

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

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

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

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

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

[Rule 38-B was adopted.—Ed.]

[The Drafting Committee first met on August 30, 1947 and elected Dr. Ambedkar as its Chairman unanimously. The Committee sat from October 27, 1947 day to day, discussing and revising articles of the Draft prepared by the office of the Constitutional adviser. The Committee met in all on 44 days till February 13, 1948 in which Dr. Ambedkar himself conducted all the business. Fresh Draft of the Constitution as settled by the Drafting Committee was submitted to the President of the Assembly on February 21, 1948. The Committee continued to function and dealt with suggestions for amendments made from time to time. The Draft Constitution had been before the public for eight months and came up before the Constituent Assembly for discussion on 4th November 1948.—Ed.]



SECTION THREE

November 4, 1948 to November 9, 1948

FIRST READING OF THE DRAFT CONSTITUTION

The Constituent Assembly of India met in the Constitution Hall, New Delhi on Thursday the 4th November 1948.

After completing the formalities of presentation of credentials, signing the register and taking the pledge, the President, Hon'ble Dr. Rajendra Prasad addressed the Members to rise in their seats to pay homage and reverence to the Father of the Nation. He described Mahatma Gandhi as one, 'who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom'.

The Members stood up in silence.

Thereafter, the deaths of Quaid-E-Azam Mohamed Ali Jinnah, Shri D. P. Khaitan and Shri D. S. Gurung, were also mourned by standing in the seat and observing silence.

At the outset the Assembly discussed the Motion moved by Smt. G. Durgabai from Madras which was the amendment to Constituent Assembly Rules 5-A & 5-B. This was accepted by the House.

Then the President, Dr. Rajendra Prasad rose and addressed the House. He explained what would be the programme of the business. This was followed by discussion.

In the afternoon session, the President called upon Dr. Ambedkar to move his motion. Accordingly, Dr. Ambedkar introduced the Draft Constitution to the Assembly for consideration.

After the Draft Constitution was presented to the Constituent Assembly on 4th November 1948, a brief general discussion followed, which is called the first reading of the Constitution. The second reading commenced on 15th November, 1948. In the

second reading the Constitution was discussed clause by clause in detail. The discussion concluded on 17th October 1949.

The Constituent Assembly again sat on the 14th November 1949 for the third reading. This was finished on the 26th November 1949 when the Constitution was declared as, passed and there after the President of the Assembly signed it.

The Draft Constitution is placed in this part as Annexure. It will help the reader to understand the clauses and the discussion thereon by referring to the original articles.

—Editor