

to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty-first day of March, 1950, both days

inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement”

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

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

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

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

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

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

*

*

*

*

*

***The Honourable Dr. B. R. Ambedkar :** I cannot accept this amendment. My Friends Mr. Kamat and Prof. Saksena have read a great deal into this article 312-E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been consid-

erably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

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

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

[Articles 312-A to 312-E, 312-G and 312-H as proposed by Dr. Ambedkar and as amended by Dr. P. S. Deshmukh's amendment were adopted and added to the Constitution.]

ARTICLE 313

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

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

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

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

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

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

*

*

*

*

*

†**The Honourable Dr. B. R. Ambedkar :** Sir, there seems to be considerable missapprehension as to the necessity of the provisions

*CAD, Vol. X, 7th October 1949, pp. 27-28.

†*Ibid.*, pp. 30-31.

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

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

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

Let me give one or two illustrations of the difficulties that are likely to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and Centre. On the 26th January next, when the Constitution comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and

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

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

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

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

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

The question is :

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

The amendment was adopted.

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

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

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

*

*

*

*

*

ARTICLE 307

***Shri Biswanath Das :** My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Mr. President: Without knowing what the Constitution is going to be!

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : My Friend is thoroughly misinformed. He does not know what is being done.

* * * * * *

[Article 307 as amended was added to the Constitution.]

* * * * * *

ARTICLE 308

†**Mr. President :** We go to article 308. Dr. Ambedkar.

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

“That for clause (3) of article 308 the following clause be substituted : —

‘(3) Nothing in this Constitution shall operate invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgement, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.”

Also :

“That after clause (3) of article 308, the following new clause be inserted :—

‘(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgement, decree or order of any court within that State shall cause, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.”

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed section 4—in case they are not finally disposed of before the 26th January, assuming that to be the date on which this Constitution comes into existence. The important words are—“to dispose of the appeal”. There is no power to entertain an appeal. And the other important words are—“such jurisdiction authorised by law”, that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction, no more jurisdiction than what we have

*CAD, Vol. X, 10th October 1949, p. 65.

†*Ibid.*, pp. 72-73

conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or a case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed of part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the Indian States there are Privy Councils which supervise the judgements of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Court, in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having definition of Privy Council in our article 306 so as to cover the the different nomenclatures and variations of these institutions.

* * * * *

***Mr. President :** Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments

do seem to have forgotten the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the foot-note to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constituion itself.

Mr. President : Then I will put he amendments to vote.

[Both the amendments moved by Dr. Ambedkar as mentioned before were adopted: Other amendments were negatived. Article 308, as amended, was added to the Constitution.]

ARTICLE 310

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

“That for article 310, the following be substituted :—

310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on his date the judges of the High Court in the corresponding State, and shall hereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the provisio to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include n acting judge or an additional judge.”

this article is merely what we used to call a “carry over article” merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

*

*

*

*

*

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

“That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article 310, for the words ‘as are provided for under article 197 of this Constitution in respect of the judges of such High Court’ the words as they were entitled to immediately before the said commencement’ be substituted.”

Clause (1) of this article provides that the Judges of High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that this amendment anticipates Schedule II ? This matter is to be dealt with under Schedule II and the proper time would be when Schedule II is before the House.

[Amendment of Mr. Ahmed was negatived. Dr. Ambedkar’s amendment as mentioned earlier was adopted. Article 310 was added to the constitution.]

ARTICLE 311

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

“That for article 311, the following article be substituted :—

<p>“311. (1) Until both Houses of Parliament have been duly constituted and</p> <p>Provisions as to provincial Presidents of the Union and the Speaker and Deputy Speaker thereof.</p>	<p>summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.</p>
--	--

Explanation.—For the purposes of this clause, the Constituent Assembly of the Dominion of India includes—

- (i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and
 - (ii) the members chosen to fill casual vacancies in the said Assembly.
- (2) The President may by rules provide for—
- (a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,
 - (b) the manner in which the representatives of such States or other territories in the provisional parliament shall be chosen, and
 - (c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a member of a House of the Legislature of a Governor’s Province or an Indian State, then, as from the date of commencement

*CAD, Vol. X, 10th October 1949, p. 77.

†*Ibid.*, pp. 79-80.

of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article."

Sir, I move :

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

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

Sir, I move :

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

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

The object of this clause is that when constituting a provisional Parliament, it is proposed to dispense with what is called double membership.

The other provisions are merely ancillary.

* * * * *

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

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, before I begin, I would like your permission to omit the word "becomes" in clause (3) of amendment No. 195, occurring between "thereafter" and "at any time before...". The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the

*CAD, Vol. X, 11th October 1949, pp. 98-100.

carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

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

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference.

It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. The reason why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.

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

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

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

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

Mr. President : I shall now put the amendments to vote one by one.

[6 Amendments by Mr. Kamath, 2 by Mr. Tyagi, 4 by Mr. Muniswamy Pillay, one by Mr. Saksena and 4 by others were negatived. Article 311 as amended by Dr. Ambedkar's amendment was added to the Constitution.]

ARTICLE 312-F

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

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

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

*CAD, Vol. X, 11th October 1949, pp. 103-104.

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

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

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

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

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

Explanation.—For the purpose of this clause

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

Then I come to sub-clause (2).

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

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

* * * * *

***The Honourable Dr. B. R. Ambedkar :** Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carry over on the ground that the Muslims and Sikhs have surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My, submission on this point is this, that whatever arrangements have been made, those arrangements are made in respect of the permanent structure of Parliament which is to come into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

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

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

*CAD, Vol. X, 11th October 1949, pp. 112-113.

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

[3 amendments were negatived. Article 312-F as amended by Dr. Ambedkar's amendment was added to the Constitution]

* * * * *

***Mr. President :** Then we take up Schedule IV.

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

Some Honourable Members : How can it be deleted ?

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

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

* * * * *

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

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister in the Matter of the election of members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so,

*CAD, Vol. X, 11th October 1949, p. 114

†*Ibid.*, pp. 115-116.

supposing the Prime Minister does not propose, for any special reason or circumstances, to include in his Cabinet members of the minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of Instruction to act in a particular manner. It is therefore felt, having regard to the fact there is no discretion in the Governor and there is no functionary under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such Instrument of Instructions which really can be effective in a different set of circumstances which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

Mr. President : The question is :

“That the Fourth Schedule be deleted.”

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

SECOND SCHEDULE

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

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

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

PART I

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

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

The President—10,000 rupees.

The Governor of a State—5,500 rupees.

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

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

*CAD, Vol. X, 11th October 1949, pp. 116-18.

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

PART II

"That in the heading in Part II, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

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

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

PART III

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

PART IV

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

PART IV

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

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

The Chief Justice—5,000 rupees :

Any other judge—4,000 rupees :

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

- (2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.
- (3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

- (4) Every judge of the Supreme Court shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.
 - (5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.
- 11.(1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice—4,000 rupees

Any other judge—3,500 rupees

- (2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.
- (3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.
- (4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

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

(a) the expression “Chief Justice” includes an acting Chief Justice, and a “Judge” includes an *ad hoc* judge.

(b) “actual service” includes—

- (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;
- (ii) vacations, excluding any time during which the judge is absent on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.”

PART V

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

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

- ‘14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.
- (2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor-General of India under article 310A of this Constitution shall in addition to the salary specified in subparagraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement.”

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

With your permission, I will explain the provisions tomorrow.

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

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

WEDNESDAY, THE 12TH OCTOBER 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock (Wednesday, the 12th October 1949), Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

SECOND SCHEDULE—(*contd.*)

***The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month *plus* a free house, and the salary for a puisne judge will be Rs. 4,000 per month *plus* a free house. With regard to the Supreme Court, the position is this, that

*CAD, Vol. X, 12th October 1949, pp. 119-122.

according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this : whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision Should be made for allowing him to continue to draw the salary which he now gets as a judge of the Federal Court. The decision of the Drafting Committee has been that while the normal salaries of the Supreme Court judges should be as stated in the Second Schedule, provision ought to be made to enable the Federal Court Judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories—those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, *i.e.*, those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule, so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under the Supreme Court also arises in the case of the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories those appointed before

the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule II and the scale of salary obtaining in other countries, for instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Anyone who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all, compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October 1948, if their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such grievance and therefore we have not introduced a countervailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the president. The president of the Union is obviously a functionary who would replace the present Governor-General

and in fixing the salary which we have fixed, namely Rs. 10,000 we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem*. This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors. One factor is that the salary of the President should be subject to income-tax. It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the president if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the president's salary carries with it certain allowances. With regard so these allowances I might mention that when the Government of India Act, 1935, was passed, the Act merely fixed the salary for the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act

did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

- (1) Sumptuary allowance of Rs. 45,000 per annum.
- (2) Expenditure from contract allowance Rs. 4,65,000.
- (3) State conveyance : Motor cars : Rs. 73,000.
- (4) Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed

by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed he will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

* * * * *

***Shri Prabhu Dayal Himatsingha :** ...Sir, I support the article put forward by Dr. Ambedkar.

Pandit Hirday Nath Kunzru : (United Provinces : General) : Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed....‡

The Honourable Dr. B. R. Ambedkar : President Rs. 5,500 a month.

* * * * *

‡**The Honourable Dr. B. R. Ambedkar :** Sir, all I wish to say is that there are three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule II allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally....‡

Shri H. V. Kamath : I did not refer to rent and I do not know whether it is a free house or not.

*CAD, Vol. X, 12th October 1949, p. 144.

‡*Ibid.*, pp. 146-148.

‡Dots indicate interruption—Ed.