

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS--contd.

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death--(*cheers*)--Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of MY supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that

I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, e.g., of asking your attention to some pitfalls and difficulties in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers being derived from the people, minorities Rights, fundamental rights—all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitution have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and, limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for

gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to you the relevant parts of the Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a

consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that "representatives thus chosen", i.e. the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible". We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated the 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:

"A preliminary meeting will be held at which (1) the general order of business will be decided (2) a chairman and other Officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...."

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore, my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order. What is your point of order, Mr. Santhanam?

Sr. K. Santhanam: My point of order is that if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the

powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.

Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty--it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? It is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as, a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point. The Resolution moved by Pandit Jawahar Lal Nehru is out of order. This question should have been raised at the time when the Resolution was moved. But at this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You put it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says:

"These sections shall proceed to settle provincial constitution for the provinces included in each sections."

I understand these will meet in March or April. next. I leave the other irrelevant portions. Then comes clause (vi)-which relates to the stage at which questions relating to the Constitution can be settled.

"The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

That is the stage at which the fundamentals of the Constitution can be settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached yet. Therefore, my submission is, that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil (Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals--all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so that when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R. K. Sidhwa (C. P. and Berar: General),: I rise to a point of order, Sir. Dr. Jayakar's amendment says:

"...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly.

" He has quoted clause (ii) of paragraph 19. That clause says:

"It is the intention that the States would be given in the final Constituent Assembly appropriate

representation...."

" That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you further see.....

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M. R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M. R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck I congratulate you that you will have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, viz., relating to grouping and voting, you cannot go to the Federal Court on the last, point gained by the Muslim League, viz., the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been conceded the Muslim League viz., that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I

know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th (*Applause*).

The Right Hon'ble Dr. M. B. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", i.e., they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.

So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it will not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in. They have not come of their own accord.

The Right Hon'ble Dr. M. B. Jayakar: That is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M. R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M. R. Jayakar: yes.

The Hon'ble Pandit Govind Balabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there.

The Right Hon'ble Dr. M.R Jayalar: I place My interpretation on that and the Hon'ble Member is free to place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M. R. Jayakar: I am, not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not, come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result?(*Interruption*).

Mr. Chairman: I think it will be better if we allow Dr. Jayakar to continue.

The Right Hon'ble Dr. M. R. Jayakar: Won't you allow me to go my own way for about 20 minutes? The whole of this week, I understand, is going to be at your disposal to pick holes in my speech.

The Hon'ble Pandit Govind Ballabh Pant: We will have something more to do than pick holes in your speech.

The Right Hon'ble Dr. M. R. Jayakar: If the Muslim League does not come in, then in all probability the States will not come in. What happens? Probably you will frame a constitution for Section 'A'. Perhaps you will be framing a constitution for a Union Centre for the Provinces in Section 'A'. You may like to have a Union Centre for those Provinces. It is certain however that you will be unable to frame a constitution for Section 'B', the majority there being of the Muslim League. The result will be that there will have to be another Constituent Assembly, as Mr. Jinnah is wanting, for the purpose of framing a constitution for Sections 'B' and 'C'. Whether the minorities in those Sections can take advantage of the formula that unwilling parts will not be forced to accept the constitution, whether the Hindus and the Sikhs of the Punjab and the Hindus of Bengal and Assam can take advantage of that provision, I do not know. I can express no opinion on that. It may be that they will be able to take advantage of the principle of this dictum and say, "We had no hand in framing this constitution. Therefore that constitution should not be forced on us." That is a possibility. This much however is certain that our endeavour to frame a constitution for the whole of India as a Union will be defeated. The possible result of that will be that there may be one constitution for Hindus and another constitution for the Muslims and if this happens, there will be a third constitution for the States, and instead of having one United India, we may be forced to the necessity of having a Hindustan constitution, a mild, abbreviated, or qualified Pakistan Constitution and a Rajasthan constitution also. Your Union at the Centre will go. It will not be established. At present you have got at least this advantage that even though some form of Pakistan will be established in Sections 'B' and 'C', you have got a Union Centre, attenuated though it may be. Therefore the obvious necessity of the present occasion is that every effort ought to be made to invite the Muslims to come in here, and we should not make it more difficult. This is mainly because our work has to bear fruit. I admire in this behalf the sentiments expressed by Pandit Jawahar Lal Nehru in moving the Resolution. He said in effect that we seek the co-operation of the Muslims. We must continue to make an endeavour, though, in the past, our efforts did not evoke enough response. I do not think that my plea can be put in better words. It is clear that you cannot do any constitution-making at least till April next. Therefore, where is the harm in deferring the further consideration of this resolution for a few weeks more until at least you know that the Muslim League, by a formal resolution, has declared its intention not to come in. They must declare their intention during the next few weeks. I read the statement of Sir Stafford Cripps in the parliamentary debate that it was understood that, when Mr. Jinnah went back to India, if the Congress accepted the Statement of 6th December, he would call a meeting of the Muslim League and decide on this question. That was a statement made on the floor of the House of Commons. After you know that by an authoritative formal resolution, the Muslim League has decided not to come in, you can then decide what to do. One hurdle would have been crossed; but I am not disposed to take it for granted that the Muslim League will not come in. It is not practical politics. A

friend came to me this morning and said: "Until yesterday, Dr. Jayakar, I was entirely in favour of your Resolution but Mr. Jinnah's Press Conference in London has made the whole difference." I said, "what difference has it made?" He said, "Mr. Jinnah has now stated that he will never come into this Constituent Assembly." I do not think that Mr. Jinnah has made such a statement, and even if so made, I am not disposed to take that statement as the final, authoritative, deliberate, formal decision of the Muslim League. What is the harm in postponing the final vote on this Resolution till then? You are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim League to come in and take part in the proceedings. One answer to my plea is, "We are not doing anything to which the Muslim League can legitimately object." That does not touch my point. It is not a question of doing anything to which the Muslim League does not object. It is a question of giving it the right and the opportunity to be present here during the deliberations on this Resolution. That is what I am trying to obtain. Then it is said that there is nothing here which is contrary to the White Paper. That again does not touch my point. My object is to save the work of this Constituent Assembly from becoming infructuous. Wait, go slow. A few weeks are not going to make any substantial difference. It is not going to cause any great harm if you, instead of passing this Resolution in the present session, deferred it to a few weeks hence. The fact is that you are going to adjourn till the end of January but you will not do so, not in compliance with the terms of my amendment. That is a significant fact. Why don't you wait for a little while and thereby make it less difficult for the Muslim League to come in. I am told what is the grievance. The Muslim League can come in later after we pass this Resolution. My reply is that it is their right to be present at these deliberations, and to make their contribution. Please remember that the Muslim League leader has already raised the grievance in his Press Conference in London. "I do not want to be presented with a *fait accompli*", he complains. Will you now give him the opportunity of justly complaining that an important and vital question, like laying down the fundamentals of the Constitution, has been finished in his absence, knowing that he was likely to come in? Are you not thereby making it more difficult for the Muslim League to come into the Constituent Assembly? What I am urging on your attention is this: that as you are doing a good deal of what my amendment wants you to do, what is the harm in accepting my amendment? I say, "go slow". What is the harm? Do you wish to say we shall go slow, but not in compliance with your amendment i.e., not for enabling the Muslim League to come in? That is hardly dignified. It looks so petty. It will be a graceful gesture, if you say 'we are postponing because we wish to give the Muslim League of chance of coming in, so that this question may be discussed and finally adopted in their presence'. This is the position Sir, as Pandit Jawahar Lal Nehru said, there is great need of the spirit of co-operation and accommodation at the present time, having regard to the great difficulties through which we are passing. I have explained to you the difficulties and also the danger of this work becoming fruitless. In the light of that possibility and danger, I would urge, with all the words at my command, that the words of Pandit Jawahar Lal Nehru ought to be translated into action. We seek Muslim co-operation, we go out of our way to seek it by postponing this Resolution. Sir, miles away from here is working that solitary figure, whose steps we claim to follow, the great Mahatma; -alone, stinted of sleep, stinted in food and stinted in health, grieved and solitary, he is trying to win the Muslim community by friendly co-operation and goodwill. Why can we not follow his example here? Sir, if I may say so, I

am glad you are here to preside over the deliberations of this august Assembly, and from what I have known of you all these years, your great capacity for goodwill, your gentleness, your spirit of accommodation and your ability to see the opposite point of view, having regard to all these virtues, I think, it is very significant that at this time you are in the Chair and my effort is for establishing that atmosphere in which your efforts, with your particular gift of fascination, can best thrive. Therefore, I am making this plea that we should defer the consideration of this Resolution so that you will have the chance of obtaining Muslim co-operation. But it is said we will after the Resolution when they come in. it is neither wise nor easy to alter deliberately-adopted Resolution. The substance of my plea is to allow the Muslim League an opportunity to take part in the deliberations, sit by your side, make speeches not *ex post facto*, but before and during the passing of this Resolution. That is real co-operation and not asking them after they want to come in and accept what you have done.

From this view I fear many of you will differ. I was warned, "you are making yourself extremely unpopular." But I said to my friend. "unpopularity has been my guerdon since my childhood." I have passed through many unpopuliarities. When I helped to start the Swaraj Party, I was unpopular. When I started the Responsive Co-operation Party, I was unpopular. When I went to the Indian Round Table Conference in London, I was unpopular. When I joined in passing the 1935 Act, I was unpopular--that piece of legislation which you, very thoughtlessly in my opinion, turned down. Having done that you are now borrowing out of that detested legislation, four important features, a Federation, an attenuated Centre, Autonomous Provinces and lastly residuary powers in Provinces. May I say, however, that my unpopuliarities have, with lapse of time, swollen into bulky majorities. Unpopularity does not therefore frighten me at my age and with my experience. My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid, Sir, I have done.

Mr. Chairman: Sir Hari Singh Gour has given notice of an amendment. This appears to me to be out of order, but before ruling so, I would ask Sir Hari Singh Gour to point out how it becomes relevant. The amendment is this:

"That in the said Resolution for the words:

"This Assembly postpones the further consideration of this question to a later date to enable the representatives of these two bodies to participate, if they so choose in the deliberations of this Assembly."

The following words be substituted:

"This Assembly is of the opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Mussalmans and the other communities to constitute joint electorate reserving for the minority communities their equality of status for the next five years and providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he holds a certain percentage of the votes of the other community.",

It may seem that this amendment goes much beyond what is contained in

either the original Resolution or the amendment of Dr. Jayakar. I am therefore inclined to say, it will not be in order, but I am not giving my ruling at this stage. I will ask him to point out how it is in order.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): Mr. Chairman. The point that at present I am called upon to reply to, is the question of my amendment to the Hon'ble Dr. Jayakar's amendment being in order. I wish to submit that if Dr. Jayakar's amendment is in order, my amendment to that amendment is in order. It must be assumed that I have not done anything more than pointing out the legality or orderliness of that amendment. I have always been feeling that if Dr. Jayakar wants the whole thing to be shelved, it cannot possibly come in as an amendment. An amendment means correction. The Hon'ble Dr. Jayakar's amendment therefore means that the Hon'ble Pandit Nehru's original Resolution should be passed as corrected by him. That may mean an amendment. If you wish to completely obliterate the main Resolution and want that there should be no further discussion for an indeterminate period, I fail to understand what Dr. Jayakar is trying to amend. He had better amend his own amendment first. I assume that amendment may go through and therefore I have given notice of my amendment. But, Mr. Chairman, you will further find that with some mental reservation about the legality of his amendment and mine, I have supplemented it by giving notice of another amendment to the original Resolution, which substantially reproduce the terms of my present amendment. Now, briefly stated, my case is this. If this amendment of the Hon'ble Dr. Jayakar is in order and is to be, discussed, I am entitled to correct it. If on the other hand, that amendment is ruled out of order, I do not wish to move my amendment.

In that case I would move the second amendment of which I have given notice.

Mr. Chairman: We shall deal with the second amendment when the time comes.

The amendment of Dr. Hari Singh Gour would make the Resolution as a whole read as follows:

"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India, shall be for a free and democratic Sovereign State; but with a view to securing in shaping such a constitution, the co-operation of the Muslim League and the Indian States and thereby intensifying the firmness of this resolve, this Assembly is of opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Muslims and other communities to constitute a joint electorate reserving to the Minority communities a particular quota of seats for the next five years, providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he polled a certain percentage of the votes of the other community."

I am afraid Dr. Hari Singh Gour has not been able to connect the two parts of the Resolution, and it is out of order.

I propose to ask the Members who have given notice of amendments one after another to move them if in order. The Resolution and amendments may be discussed together. I think that will save time.

Dr. B. Pattabhi Sitaramayya: The Hon'ble Dr. Jayakar's amendment being in the nature of an adjournment motion of the consideration of the Resolution, it should gain priority both in discussion and in decision over the other amendments which are amendments of a substantive nature to the proposition.

Diwan Chaman Lall (Punjab: General): Dr. Jayakar's amendment is also a substantive one. It is not a procedural one. It also speaks of democracy, eliminating the word Republic and although it says that further consideration may be postponed, it cannot be considered merely as a procedural amendment.

Mr. Chairman: We have treated it as an amendment. The next amendment of which notice is given is by Mr. Somnath Lahiri. With regard to that amendment also, my view, as at present advised, is that it is not in order. I will ask him to show how it is in order.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, the original Resolution, to which mine is an amendment, resolves the aim of the Constituent Assembly to declare India as an Independent Sovereign Republic. My amendment would be considered an amendment for the very simple reason that it deal with the same subject and it does not go contrary to the main idea of the original Resolution. It is always within the scope of an amendment to extend the scope of the original Resolution.

Mr. Chairman: The objection that was taken to your amendment is that it lays down certain action to be taken that is not in the main Resolution. For instance, it wants to declare a Republic here and now. It calls upon the Interim Government to act in a particular way and there are several other matters of this character. It is a resolution which directs action to be taken here and now and in that sense it is suggested that it is out of order.

Mr. Somnath Lahiri: I think that if in furtherance of the objects of that Resolution, some action is suggested, that certainly is within the scope of the amendment. For instance, you have allowed in Dr. Jayakar's resolution certain things about the Muslim League and other things which are not contained in the original Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru. Just because he thinks that the Muslim League and others should be given an opportunity to come in, action to the extent of postponing this Assembly should be taken; and he has suggested his amendment and you have agreed that it is quite in order. Just as postponing is a kind of action, any other thing which may be suggested is also certainly in order. If I may remind you, Sir, of an incident in 1939, when you were the President of Congress, at the time of the declaration of War, a resolution came up at the A.I.C.C., where Pandit Jawahar Lal Nehru moved a resolution asking the British to declare their war, aims, and laid down certain conditions as a basis of co-operation, on which we could cooperate in the war. I remember myself having moved an amendment which said that we must prepare the country for a struggle and I remember that you, as Chairman, said it was quite in order although the Hon'ble Pandit Jawahar Lal Nehru pointed out that the intention of the amendment was just contrary to what was conveyed in the original resolution.

An Hon'ble Member: Is it a reported case ?

Mr. Chairman: I am afraid that cannot go in as a precedent. (*Laughter*).

Mr. Somnath Lahiri: This is my submission. If in spite of this you think that it should be ruled out of order, then I may be given an opportunity to speak on the main Resolution so that I can express my views.

Mr. Chairman : I think the amendment is out of order. I would give you an opportunity to speak on the main Resolution later.

I have received intimation that a number of the amendments, of which notice had been given by the members, have been withdrawn. I will only call upon those members who have not expressed such desire to move their amendments if they wish to. So, the next amendment which has not been withdrawn is that Rai Bahadur Syamanandan Sahaya, who may please come forward to move his amendment if he so wishes.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Mr. Chairman, Sir, I Move:

"That for the 1st and the 2nd paras. of the Resolution the following be substituted:---

"This Constituent Assembly declares its firm and solemn resolve to constitute India, within the shortest time, into an Independent Sovereign Republic, comprising initially of--

- (a) The territories that now form British India, and as soon as possible, also of,
- (b) The territories that now form the Indian States,
- (c) Such other parts of India as are outside British India and Indian States, and
- (d) Such other territories as are willing to join the Independent Sovereign Republic of India,

and further resolves that a constitution for the future governance be framed and laid down'."

It is not, Sir, without a certain amount of diffidence that I stand here to move my amendment. After the great and magnificent speech of the Hon'ble the Mover of this Resolution it took me a great deal of thought and vacillation before I decided to send in this amendment especially because I thought my amendment perhaps achieved the objective which the Hon'ble the Mover had rather than stand in the way of it. I have an apprehension that perhaps attempts might be made by interested parties to isolate those of us who constitute the Constituent Assembly to-day but whatever happens, it is my desire--my extreme desire, as I know it is the desire of every one assembled here--that this Constituent Assembly shall Proceed with its task. The Hon'ble Dr. Jayakar in his speech made eferences to several difficulties. One of the difficulties pointed out, was that we have to work under the limitations laid down by the Cabinet Mission. I am no where near him in the matter of knowledge of constitutional law but I heard the Chairman of this Constituent Assembly saying in his speech that although there may be limitations placed on the Constituent Assembly, it has the inherent right of getting over them. I have based part of my amendment on this consideration. I will now try to point out, Sir the difference between the original Resolution and the amendment as I have put it, for it will be necessary to explain why is it that I have introduced certain

changes in the Resolution. In the first place, I have altered the word 'proclaim' into 'constitute'. I shall give my reason for doing so at a later stage and I would point out now only what the difference is between the Resolution and the amendment. Then I have omitted the word 'Union'. I have introduced the words "within the shortest time" and I have said that the Constitution should not only be framed but should be laid down. These are some salient points of difference between the Resolution as proposed and my amendment. I have read the Resolution carefully and I had, on one occasion, an opportunity of placing my views to a certain extent before the Hon'ble the Mover of the Resolution, who agreed that the wording of the Resolution at certain places looked archaic. Perhaps in laying down a law or framing a constitution, it is necessary to use terms which were used 100 years before either by the framers of the American Constitution or the constitutions of other countries but I think, in our case, it might be more useful and more helpful to be precise and to state our view-point clearly in unambiguous and in easily understandable language rather than use words only because they were used in previous constitutions. I will now try to explain the reasons for the changes, I propose, I think the word "proclaim" is not exactly what you would like this Constituent Assembly to do. Proclamation of independence, I suppose, has been made on other occasions before this. It is now our duty to actually constitute the State into an Independent Sovereign Republic and therefore I introduced the word "constitute", instead of the word "proclaim". I have also, Sir, left out the word "Union". I believe that India is India. It needs no Union. It has got a providential Union, and I would not like even to reiterate it now as it might be interpreted that the Union of India was still to be achieved. It is quite another matter that for the time being, we may be able to enforce the Constitution we frame on only a part of India. But we look forward at the earliest possible moment to introduce it on other parts also. As such I would, if it were left to me, stick to India as such and not introduce the word "Union" where the word "Union" has been used in other countries there has been good reason for using that term. Here, I suppose we would be better advised to leave out the word "Union". Then, as I said, I have used the words "frame and lay down". I have heard it said in this House before that the Constituent Assembly has got the sanction behind it to enforce the Constitution that it frames. I have also read carefully the Declaration of May 16. It does not in any way state that this Constitution that is passed here will require the sanction of the British Parliament. The two essential conditions laid down are that a treaty will be entered into between England and India and that the minorities will be protected. I take it, therefore, that we assembled here, have not merely the right and the power to frame a constitution, but also to lay down the Constitution and enforce it. That is why I have omitted the word "draw up." and used in its place the words "frame and lay down".

The other important change, Sir, which I have made in the amendment is that I have tried to specify different stages when the Constitution will come into force on the whole of India. Even in the original Resolution, I may point out, there are certain territories envisaged which perhaps might come into the Union at a very late stage. I refer, Sir, to the two territories described as territories outside both British India and Indian States, and such other territories as might like to join the Union. Now these two parts of the Union surely are not going to come in now and here. Therefore different stages of the formation of the complete Union have been envisaged even in the original Resolution and I have tried in my amendment to clarify that the Independent Sovereign Republic will comprise initially of the territories that now form British India, and, as soon as

possible, also of the territories that form the Indian States. My whole purpose in moving this amendment is, as I said before, to see that in framing the first Resolution we should so word it that it may not have to be altered at any stage. After all, it is the first act of this Assembly and no one would like, that circumstances developing later on, might require the Resolution to be altered. An Independent Sovereign Republic for the territories that form British India has been accepted in the past by the majority elements constituting that territory. There may be difficulties pointed out by others. We shall probably have to take note of those difficulties and try to solve them. I therefore, introduced in the Resolution stages by which we could form the Independent Sovereign Republic ultimately in its entirety. But even if we may not be able to secure the association of people whose association we definitely seek and are anxious to secure, even then the march to independence will not be hindered and we shall not have to wait for all the territories to agree before the Constitution can be laid down. These, Sir, are the reasons which led me to move this amendment. I am very sorry that the Hon'ble the Mover of the Resolution is not here today. As a matter of fact my desire entirely was to bring to his attention the points which I had in mind and to request him to consider whether it might be possible to accept the amendments or portions of it that might not be in conflict with the original idea which he advocated.

Mr. Chairman: The next amendment which has not been formally withdrawn and of which notice has been given is by Shri Govind Malaviya. He is absent, but I have his authority--he had told me himself--that he would not like to move his amendment. So I take it that is also withdrawn.

Then, there is another amendment by Rai Bahadur Syamanandan Sahaya.

Rai Bahadur Syamanandan Sahaya: The second amendment, Sir, which stands in my name is that in para. 4 of the Resolution, the following words be omitted:

"of the Sovereign Independent India, its constituent parts and organs of Government."

The original Resolution reads as follows:.....

Professor N. G. Ranga: (Madras: General): Is a member entitled to speak more than once on 'the same Resolution? When he has got two or three amendments, let him move the whole lot of them and make one speech.

Rai Bahadur Syamanandan Sahaya: The amendments have been recorded according to the several paragraphs of the Resolution.

Mr. Chairman: He has got one other amendment in his name. He may move both of them.

Rai Bahadur Syamanandan Sahaya: The other amendment, Sir, is as follows:

"That in para. 5 of the Resolution the words 'of protection under the law' be substituted for the words

'before the law'."

I shall not move this.

Now, Sir, my reason for bringing this amendment asking the House to omit the words-

"Sovereign Independent India, its constituent parts and organs of Government."

was to avoid an impediment in the way of the smooth working and functioning of this Constituent Assembly and not to do anything before the other parts of it join this House which might frighten them here at the early stage.

Paragraph (4) says:

"Wherein all power and authority of the Sovereign Independent States, its constituent parts and organs of government, are derived from the people."

Among its constituent parts are territories that now form Indian States. I suppose the attention of most members of this House has been drawn to the recent statement in the Legislative Assembly (or whatever the name may be, of Bikaner wherein the Prime Minister said that so far as the States are concerned the power is derived from the sovereign and not from the people. I submit that these are matters on which there can be a difference of opinion and it would not be proper to pass a resolution containing such statements which might give the other important elements of this Constituent Assembly a real grievance to keep out. The Resolution as amended by me will read:

"wherein all power and authority are derived from the people."

I have purposely omitted the words "Sovereign Independent India, its constituent parts and organs of government". With regard to the constituent parts I have pointed out the difficulty and the reason why I move the amendment. Even the amended Resolution retains the purport of the Hon'ble Mover's Motion as it says,

"wherein all power and authority are derived from the people."

without in any way specifically bringing in the constituent parts. The Hon'ble Mover of the Resolution in his speech said that even in the Republic which has been envisaged, there will be room for ruling chiefs and States where there is a system of monarchy or kingship. That being so, it would not be advisable to pass a resolution saying that all power and authority of the constituent parts also are derived from the people. Perhaps members of the House have noticed the statement which was broadcast last night in which the representatives of the different States made a statement signifying some objection to the Resolution and complaining that there had been no consultation about it before. In view of all that, and in view of this extreme desire of every one assembled here to carry this difficult work through, I think we ought to avoid passing a resolution or making statements which might give reasonable cause for an

honest difference of opinion.

I do not move amendment No. 30 because that is only a verbal change and I shall not move it. There is one other amendment (No. 43) also standing in my name and I am not moving it.

Mr. Chairman: The next amendment stands in the name of Sir Uday Chand Mahtab-No. 25.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan
(Bengal: General): I do not propose to move the amendment.

Mr. Chairman: I find that the movers of all other amendments given notice of here have withdrawn their amendments. I suppose there is no mistake here, and if there is any, Hon'ble Member may point it out to me. There is one amendment of which notice has been given by Dr. Sir Hari Singh Gour, but unfortunately that was received only this morning. I had already put a definite limit to the time for giving notice of amendments and as Dr. Sir Hari Singh Gour has exceeded that limit, I am unable to allow his amendment.

Now, the Resolution has been moved, and also amendments to it have been moved. The Resolution and these amendments are now for discussion by the House.

I will ask Hon'ble Members to confine their speeches to as short a time as possible because we have already had two days on this, and though I do not wish to curtail the right of any Hon'ble Member to speak, I will ask Members to bear my remark in mind. I have got a list of names here who will take part in the debate, but I take it, it is not a complete list. There may be some other members who may be willing to speak, but I shall proceed according to this list and interpose other speakers also if they wish to speak. The first name that I have got here is Mr. Shri Krishna Sinha.

The Hon'ble Mr. Shri Krishna Sinha (Bihar: General): Mr. Chairman Sir, I stand here to support the Resolution as originally moved by Pandit Jawahar Lal Nehru: In my opinion, it is really unfortunate that a resolution of such a sacred nature should have been subjected to amendments. I purposely call it sacred because by this Resolution an attempt is made to give expression to that aspiration to be free which has stirred us for the last several years.

Sir, the Resolution, if carefully analysed, comes to this. It gives a picture of the vision of future India. That India of the future is to be a democratic and, decentralised republic, in which the ultimate sovereignty is to lie with the people and in which fundamental rights are too be safeguarded to minorities inhabiting this land. Now, Sir, these are the three fundamental features of this Resolution and it is because of these three fundamental features that I call this Resolution sacred. I shall try to be brief. Yet I cannot refrain from reminding this House that we are all assembled here in Assertion of a right, a cherished and valuable right which mankind has achieved for itself after undergoing untold sufferings and sacrifices. Some sort of political structure is required in every society to make life therein possible. A careful analysis of the process of

evolution of States in this world shows that the nature of these has changed with the change in the conception of life. Sir, I was not a little surprised to hear just now from an Hon'ble Member of a House which has assembled in assertion of the constituent power of the People that there can be honest difference of opinion regarding the place where political sovereignty resided in society. Certainly, Sir, not long ago, the world did not believe that all individuals composing society had an equal right to liberty and happiness. Society was composed of classes and the individual had no place in society. The place of man in society was determined by the class to which he belonged and so there was no individual liberty to be safeguarded. Poverty was not thought to be a disease which society must get rid of. Some of the great thinkers of the 18th century France, were of the opinion that the presence of poverty in society was necessary for the proper production of wealth. In such a society, Sir, there could be no place for the principle of the sovereignty of the people. Sovereignty belonged to the King whose privilege it was to rule. The people existed merely to pay the taxes demanded of them by the king and obey the laws enacted by him. But with the lapse of time, the conception of society and life changed. Men came to believe that every individual has an equal right to liberty and happiness. With this change in the conception of life, a change in the structure of the State became necessary. But those who held political power were reluctant to part with it and effect a change in the political structure. There was thus a clash between the ideologies which swayed the people and those which swayed the men in power. There were revolutions on both sides of the Atlantic at the end of the 18th century in which the principle that the power belonged to the People was vindicated. Even after this, there were rulers who would not recognise this principle and so another blood-bath in the shape of a revolution had to be gone through to get finally sanctioned the principle that political power belonged to the people. It was to achieve this constituent power that we in this country have been fighting British Imperialism for the last several years. It is this which moved this country from one end to the other in 1921 and made its millions rally under the banner of revolt raised by Mahatma Gandhi in that year. It was for asserting this basic right of a people that hundreds mounted the scaffold, thousands faced bullets and men, in lakhs swarmed the jails. There was a wide gap between the political ideals on which the Government of India was based and the political ideology which swayed the people, and the result has been strife. So, Sir, we are not here in this Assembly because the British Government in a fit of generosity have thought it proper to ask us to take over power. I have been in a position from where I can form my own opinion as to whether there is any sincerity behind all this talk of peaceful transfer of power. We are here because we have succeeded in compelling those who still entertain the dream of governing India according to the political ideals embodied in the Government of India Act, to give up that dream. We have succeeded because of that spirit of rebellion which spread all over the country in 1942. It is as a result of the 1942 rebellion that we are here in this Constituent Assembly. Gathered together in such an Assembly it should be our first duty to draw up a picture of future free India and present it to our people. The Right Hon'ble Dr. Jayakar who spoke eloquently, has drawn a picture of the difficulties which the absence of our Muslim League friends will cause. I do not think that we required a speech from a man of the eminence of Dr. Jayakar to point out these difficulties. We know what those difficulties are. If I understood him aright, however, he did not give us a counsel of despair. He has actually advised us to go on with our work if our friends of the Muslim League do not

come in after some time.

Sir, our leader, the Hon'ble Pandit Jawahar Lal Nehru, has made it quite clear that we are anxious to see our Muslim League friends occupying their rightful place in this Assembly. Every one of us is equally anxious to see them come back. But I fail to understand how this particular Resolution would stand in the way of their so coming here at a future date. If we have understood the political ideology of the Muslim League correctly, if we understood the Cabinet Declaration correctly, there is one matter in which all are agreed and that is that the future India is to be, a United India and that that India might also be outside the British Commonwealth of Nations, if the Indian people so decide. From the pronouncements made from time to time by Muslim League leaders I think we can rightly draw the conclusion that the Muslim League also stands for a free and independent India. So, Sir, according to all of us including the League, the future India is going to be an independent free India. In that independent free India the source of authority is going to vest in the people who inhabit this land. That is the cherished right which has been won for the people inhabiting this globe by those who have gone before. That is the principle for which we have been fighting all along. Now when this Constituent Assembly meets and we draw up a declaration, I think the first thing to be included in that declaration should be this elementary right of a people which decides to be free, and therefore to this feature of the Resolution no one can have any objection.

Now, Sir, the Union which we are going to have in India is going to be a Union of all the parts of India. This certainly means that the future India is going to be a united India. I will again say that the shape of that future India which this Resolution envisages certainly shows that the framers of this Resolution have taken pretty good care to see that nothing is said in this Resolution which can create difficulties in the way of our friends of the Muslim League coming into this Assembly at some later date. I know, Sir, there are members in this Assembly--and I must confess that I am one of those, who believe that-- there has arisen in Indian, an Indian nation, an Indian nation with an Indian culture and an Indian civilisation. Such men certainly are only too anxious to have a republic of the unitary type in this country. There has been such a tremendous increase in the economic forces of production in the world that if full use is to be made of these forces in this world, it is necessary that we should have still larger political units which will transgress the national boundaries of national states. It is a realisation of this truth which makes many Indians feel that India must have a centralised republic. But in spite of that, if we by this Resolution want to have a republic in India which will be democratic and at the same time decentralised, it is because the framers of this Resolution have taken care to take into account the feelings of our Muslim League friends. Sir, there was a time when because of the historical circumstances prevailing in the world of those days, States of large sizes, containing populations homogeneous in language and religion, could be erected. There can be no doubt that a national state with a homogeneous population is a force and a living force. But unfortunately at a time when there is a tendency for these national states to pass out of existence, we have to deal with a bitter legacy left behind by them and that is the legacy of small nationalities, consisting often of a few thousands or a few lakhs, clamouring for separate states of their own. This has been creating havoc in this world. The whole of Eastern Europe has

become the zone for breeding wars because in that portion of Europe are living small nationalities so intermixed that they cannot be divided into small states, and yet they clamour for separate political existence.

Sir, this Resolution gives expression also to the aspiration that India shall have her place, her rightful place, among the nations of the world. Every Indian legitimately aspires that one day India will drive a lead to the whole of Asia and we can give this lead now by successfully constructing a state which will be a democratic republic, and, at the same time decentralised so that different cultural groups based on language, on religion, may be integrated in a vast republic. It is hoped that very soon the flood of Western Imperialism will retreat from the lands of Asia, and no sooner it has retreated, these lands will have to solve the problem of erecting independent states of their own. This question of nationalities is bound to raise its head even in those countries. They have such problems in Palestine, in the Arab world, and in the small islands in the south-eastern portion of Asia. If we are to lead them rightly so that like the Balkans these Asiatic lands may not also become the battleground of the Imperialisms of the West, it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for cultural minorities. This is what this Resolution contemplates by further making provision for the fundamental rights of the individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.

Sir, it is because of these features of this Resolution that I said that the Resolution was of a sacred nature and one which is bound to rank with those declarations which were made on similar occasions in the past by peoples just after they had shed their shackles of slavery. It not only is sacred, it is arduous also, arduous not only because of the difficulties pointed out by Dr. Jayakar, but arduous because of the attitude of British statesmen over there in England. I have just now told you that from my personal experience as an administrator I do not feel that the Britishers have made up their mind to peacefully transfer power to the people of India. Only the other day you had the speech of Mr. Churchill. Not one word of cheer from that great imperialist. At a time like this in the history of our country when so many of us have assembled here to advise a constitution for this land, instead of giving a word of cheer, he was again at his old game. He had a fling at the Congress, he had a fling at Pandit Jawaharlal Nehru. In the advent of Pandit Jawaharlal Nehru into the Interim Government he sees the butchery of innocent men in Bihar. To Mr. Churchill, living seven seas across, I will say, you have been supplied with a lie by some interested person and you have made yourself the willing tool for the propagation of that lie. The Government of Bihar did not hesitate for one single moment to use force and it used force, whatever force it had, to give protection to the lakhs of Mussalmans living in that Province. The Bihar Government is a proud Government. It is not going to have dictations from the Government of India, so long as it is constituted under the Government of India Act, 1935. Pandit Jawahar Lal Nehru is our leader and so lie went to Bihar. He is a source of inspiration to us. I may tell Mr. Churchill that during his strenuous tours of a few days through the Province he gave the people a bit of his mind. I told the greatest official of this country that he could not restore order in Bihar in the short period in which we did it. Order could be speedily restored, not because of the bayonets that the Government of Bihar had or because of those bayonets

that were lent to them by the Government of India. It was the dynamic personality of Pandit Nehru, the saintly presence of Dr. Rajendra and the spectre of a fast unto death by the Mahatma that restored order Quickly in Bihar. Mr. Churchill has done great mischief by giving currency to such lies. I have taken much of your time. But I must tell you that before you pass this Resolution you must try to visualise the difficulties that may come in your way. I have not studied this declaration of the Cabinet from the point of view of a lawyer. Spurn to look at it from the point of a lawyer. I have been a soldier all my life and I would look at it from the point of view of a fighter. The statements of British statesmen are not quite helpful. It is just possible that not because of the difficulties that have been dangled before us by Dr. Jayakar but because of the difficulties which may be created in our way by those in power. This Constituent Assembly may one day have to go the way the Constituent Assembly of France in 1799, had to go, because of the attitude of the King and statesmen. of that time. So before I sit down, I would remind Hon'ble Members of the House that before they make up their minds to vote in favour of this Resolution they trust realise the difficulty that they may have to face in giving effect to their resolve. If we pass this Resolution we must at the same time take a firm resolve to tear down that political edifice which owes its existence in India to the Government of India Act, 1935--a monument of constitutional jugglery--and build on it a Republic of the type which this Resolution envisages, whatever may be the difficulties that may come in the way.

Mr. Chairman: It is already past five. I would like to know whether the Hon'ble Members would like to sit till half past five.

Many Hon'ble members: Half past five.

Mr. Chairman: Opinion is divided.

The Hon'ble Sardar Vallabhbhai J. Patel: Opinion is unanimous for five.

Mr. Chairman: Those who are in favour of half past five will please raise their hands.....

Those who are not in favour of half past five will now raise their hands.

Mr. Chairman: The "fives" have it. The House will now adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS--contd.

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death--(*cheers*)--Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of MY supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of

this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, e.g., of asking your attention to some pitfalls and difficulties in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers being derived from the people, minorities Rights, fundamental rights—all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitution have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and, limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has

accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to you the relevant parts of the Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution

at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that "representatives thus chosen", i.e. the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible". We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated the 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:

"A preliminary meeting will be held at which (1) the general order of business will be decided (2) a chairman and other Officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...."

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore, my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order. What is your point of order, Mr. Santhanam?

Sr. K. Santhanam: My point of order is that if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of

order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.

Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty--it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? It is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as, a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point. The Resolution moved by Pandit Jawahar Lal Nehru is out of order. This question should have been raised at the time when the Resolution was moved. But at, this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You put it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says:

"These sections shall proceed to settle provincial constitution for the provinces included in each sections."

I understand these will meet in March or April. next. I leave the other irrelevant portions. Then comes clause (vi)-which relates to the stage at which questions relating to the Constitution can be settled.

"The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

That is the stage at which the fundamentals of the Constitution can be

settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached yet. Therefore, my submission is, that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil (Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals--all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so that when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R. K. Sidhwa (C. P. and Berar: General),: I rise to a point of order, Sir. Dr. Jayakar's amendment says:

"...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly.

" He has quoted clause (ii) of paragraph 19. That clause says:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation...."

" That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you

further see.....

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M. R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M. R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck I congratulate you that you will have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, viz., relating to grouping and voting, you cannot go to the Federal Court on the last, point gained by the Muslim League, viz., the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been conceded the Muslim League viz., that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the

Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th (*Applause*).

The Right Hon'ble Dr. M. B. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", i.e., they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.

So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it will not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in. They have not come of

their own accord.

The Right Hon'ble Dr. M. B. Jayakar: That is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M. R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M. R. Jayakar: yes.

The Hon'ble Pandit Govind Ballabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there.

The Right Hon'ble Dr. M.R Jayalar: I place My interpretation on that and the Hon'ble Member is free to place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M. R. Jayakar: I am, not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not, come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result?(*Interruption*).

Mr. Chairman: I think it will be better if we allow Dr. Jayakar to continue.

The Right Hon'ble Dr. M. R. Jayakar: Won't you allow me to go my own way for about 20 minutes? The whole of this week, I understand, is going to be

at your disposal to pick holes in my speech.

The Hon'ble Pandit Govind Ballabh Pant: We will have something more to do than pick holes in your speech.

The Right Hon'ble Dr. M. R. Jayakar: If the Muslim League does not come in, then in all probability the States will not come in. What happens? Probably you will frame a constitution for Section 'A'. Perhaps you will be framing a constitution for a Union Centre for the Provinces in Section 'A'. You may like to have a Union Centre for those Provinces. It is certain however that you will be unable to frame a constitution for Section 'B', the majority there being of the Muslim League. The result will be that there will have to be another Constituent Assembly, as Mr. Jinnah is wanting, for the purpose of framing a constitution for Sections 'B' and 'C'. Whether the minorities in those Sections can take advantage of the formula that unwilling parts will not be forced to accept the constitution, whether the Hindus and the Sikhs of the Punjab and the Hindus of Bengal and Assam can take advantage of that provision, I do not know. I can express no opinion on that. It may be that they will be able to take advantage of the principle of this dictum and say, "We had no hand in framing this constitution. Therefore that constitution should not be forced on us." That is a possibility. This much however is certain that our endeavour to frame a constitution for the whole of India as a Union will be defeated. The possible result of that will be that there may be one constitution for Hindus and another constitution for the Muslims and if this happens, there will be a third constitution for the States, and instead of having one United India, we may be forced to the necessity of having a Hindustan constitution, a mild, abbreviated, or qualified Pakistan Constitution and a Rajasthan constitution also. Your Union at the Centre will go. It will not be established. At present you have got at least this advantage that even though some form of Pakistan will be established in Sections 'B' and 'C', you have got a Union Centre, attenuated though it may be. Therefore the obvious necessity of the present occasion is that every effort ought to be made to invite the Muslims to come in here, and we should not make it more difficult. This is mainly because our work has to bear fruit. I admire in this behalf the sentiments expressed by Pandit Jawahar Lal Nehru in moving the Resolution. He said in effect that we seek the co-operation of the Muslims. We must continue to make an endeavour, though, in the past, our efforts did not evoke enough response. I do not think that my plea can be put in better words. It is clear that you cannot do any constitution-making at least till April next. Therefore, where is the harm in deferring the further consideration of this resolution for a few weeks more until at least you know that the Muslim League, by a formal resolution, has declared its intention not to come in. They must declare their intention during the next few weeks. I read the statement of Sir Stafford Cripps in the parliamentary debate that it was understood that, when Mr. Jinnah went back to India, if the Congress accepted the Statement of 6th December, he would call a meeting of the Muslim League and decide on this question. That was a statement made on the floor of the House of Commons. After you know that by an authoritative formal resolution, the Muslim League has decided not to come in, you can then decide what to do. One hurdle would have been crossed; but I am not disposed to take it for granted that the Muslim League will not come in. It is not practical politics. A friend came to me this morning and said: "Until yesterday, Dr. Jayakar, I was entirely in favour of your Resolution but Mr. Jinnah's Press Conference in

London as made the whole difference." I said, "what difference has it made ?" He said, "Mr. Jinnah has now stated that lie will never come into this Constituent Assembly." I do not think that Mr. Jinnah has made such a statement, and even if so made, I am not disposed to take that statement as the final, authoritative, deliberate, formal decision of the Muslim League. What is the harm in postponing the final vote on this Resolution till then ? You are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim League to come in and take part in the proceedings. One answer to my plea is, "We are not doing anything to which the Muslim League can legitimately object." That does not touch my point. It is not a question of doing anything to which the Muslim League does not object. It is a question of giving it the right and the opportunity to be present here during the deliberations on this Resolution. That is what I am trying to obtain. Then it is said that there is nothing here which is contrary to the White Paper. That again does not touch my point. My object is to save the work of this Constituent Assembly from becoming infructuous. Wait, go slow. A few weeks are not going to make any substantial difference. It is not going to cause any great harm if you, instead of passing this Resolution in the present session, deferred it to a few weeks hence. The fact is that you are going to adjourn till the end of January but you will not do so, not in compliance with the terms of my amendment. That is a significant fact. Why don't you wait for a little while and thereby make it less difficult for the Muslim League to come in. I am told what is the grievance. The Muslim League can come in later after we pass this Resolution. My reply is that it is their right to be present at these deliberations, and to make their contribution. Please remember that the Muslim League leader has already raised the grievance in his Press Conference in London. "I do not want to be presented with a *fait accompli*", he complains. Will you now give him the opportunity of justly complaining that an important and vital question, like laying down the fundamentals of the Constitution, has been finished in his absence, knowing that he was likely to come in? Are you not thereby making it more difficult for the Muslim League to come into the Constituent Assembly? What I am urging on your attention is this: that as you are doing a good deal of what my amendment wants you to do, what is the harm in accepting my amendment? I say, "go slow". What is the harm? Do you wish to say we shall go slow, but not in compliance with your amendment i.e., not for enabling the Muslim League to come in? That is hardly dignified. It looks so petty. It will be a graceful gesture, if you say 'we are postponing because we wish to give the Muslim League of chance of coming in, so that this question may be discussed and finally adopted in their presence'. This is the position Sir, as Pandit Jawahar Lal Nehru said, there is great need of the spirit of co-operation and accommodation at the present time, having regard to the great difficulties through which we are passing. I have explained to you the difficulties and also the danger of this work becoming fruitless. In the light of that possibility and danger, I would urge, with all the words at my command, that the words of Pandit Jawahar Lal Nehru ought to be translated into action. We seek Muslim co-operation, we go out of our way to seek it by postponing this Resolution. Sir, miles away from here is working that solitary figure, whose steps we claim to follow, the great Mahatma; -alone, stinted of sleep, stinted in food and stinted in health, grieved and solitary, he is trying to win the Muslim community by friendly co-operation and goodwill. Why can we not follow his example here? Sir, if I may say so, I am glad you are here to preside over the deliberations of this august Assembly, and from what I have known of you all these years, your great capacity for

goodwill, your gentleness, your spirit of accommodation and your ability to see the opposite point of view, having regard to all these virtues, I think, it is very significant that at this time you are in the Chair and my effort is for establishing that atmosphere in which your efforts, with your particular gift of fascination, can best thrive. Therefore, I am making this plea that we should defer the consideration of this Resolution so that you will have the chance of obtaining Muslim co-operation. But it is said we will after the Resolution when they come in. it is neither wise nor easy to alter deliberately-adopted Resolution. The substance of my plea is to allow the Muslim League an opportunity to take part in the deliberations, sit by your side, make speeches not *ex post facto*, but before and during the passing of this Resolution. That is real co-operation and not asking them after they want to come in and accept what you have done.

From this view I fear many of you will differ. I was warned, "you are making yourself extremely unpopular." But I said to my friend. "unpopularity has been my guerdon since my childhood." I have passed through many unpopularity. When I helped to start the Swaraj Party, I was unpopular. When I started the Responsive Co-operation Party, I was unpopular. When I went to the Indian Round Table Conference in London, I was unpopular. When I joined in passing the 1935 Act, I was unpopular--that piece of legislation which you, very thoughtlessly in my opinion, turned down. Having done that you are now borrowing out of that detested legislation, four important features, a Federation, an attenuated Centre, Autonomous Provinces and lastly residuary powers in Provinces. May I say, however, that my unpopularity have, with lapse of time, swollen into bulky majorities. Unpopularity does not therefore frighten me at my age and with my experience. My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid, Sir, I have done.

Mr. Chairman: Sir Hari Singh Gour has given notice of an amendment. This appears to me to be out of order, but before ruling so, I would ask Sir Hari Singh Gour to point out how it becomes relevant. The amendment is this:

"That in the said Resolution for the words:

"This Assembly postpones the further consideration of this question to a later date to enable the representatives of these two bodies to participate, if they so choose in the deliberations of this Assembly."

The following words be substituted:

"This Assembly is of the opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Mussalmans and the other communities to constitute joint electorate reserving for the minority communities their equality of status for the next five years and providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he holds a certain percentage of the votes of the other community.",

It may seem that this amendment goes much beyond what is contained in either the original Resolution or the amendment of Dr. Jayakar. I am therefore inclined to say, it will not be in order, but I am not giving my ruling at this

stage. I will ask him to point out how it is in order.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): Mr. Chairman. The point that at present I am called upon to reply to, is the question of my amendment to the Hon'ble Dr. Jayakar's amendment being in order. I wish to submit that if Dr. Jayakar's amendment is in order, my amendment to that amendment is in order. It must be assumed that I have not done anything more than pointing out the legality or orderliness of that amendment. I have always been feeling that if Dr. Jayakar wants the whole thing to be shelved, it cannot possibly come in as an amendment. An amendment means correction. The Hon'ble Dr. Jayakar's amendment therefore means that the Hon'ble Pandit Nehru's original Resolution should be passed as corrected by him. That may mean an amendment. If you wish to completely obliterate the main Resolution and want that there should be no further discussion for an indeterminate period, I fail to understand what Dr. Jayakar is trying to amend. He had better amend his own amendment first. I assume that amendment may go through and therefore I have given notice of my amendment. But, Mr. Chairman, you will further find that with some mental reservation about the legality of his amendment and mine, I have supplemented it by giving notice of another amendment to the original Resolution, which substantially reproduce the terms of my present amendment. Now, briefly stated, my case is this. If this amendment of the Hon'ble Dr. Jayakar is in order and is to be, discussed, I am entitled to correct it. If on the other hand, that amendment is ruled out of order, I do not wish to move my amendment.

In that case I would move the second amendment of which I have given notice.

Mr. Chairman: We shall deal with the second amendment when the time comes.

The amendment of Dr. Hari Singh Gour would make the Resolution as a whole read as follows:

"This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India, shall be for a free and democratic Sovereign State; but with a view to securing in shaping such a constitution, the co-operation of the Muslim League and the Indian States and thereby intensifying the firmness of this resolve, this Assembly is of opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Muslims and other communities to constitute a joint electorate reserving to the Minority communities a particular quota of seats for the next five years, providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he polled a certain percentage of the votes of the other community."

I am afraid Dr. Hari Singh Gour has not been able to connect the two parts of the Resolution, and it is out of order.

I propose to ask the Members who have given notice of amendments one after another to move them if in order. The Resolution and amendments may be discussed together. I think that will save time.

Dr. B. Pattabhi Sitaramayya: The Hon'ble Dr. Jayakar's amendment being in the nature of an adjournment motion of the consideration of the Resolution,

it should gain priority both in discussion and in decision over the other amendments which are amendments of a substantive nature to the proposition.

Diwan Chaman Lall (Punjab: General): Dr. Jayakar's amendment is also a substantive one. It is not a procedural one. It also speaks of democracy, eliminating the word Republic and although it says that further consideration may be postponed, it cannot be considered merely as a procedural amendment.

Mr. Chairman: We have treated it as an amendment. The next amendment of which notice is given is by Mr. Somnath Lahiri. With regard to that amendment also, my view, as at present advised, is that it is not in order. I will ask him to show how it is in order.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, the original Resolution, to which mine is an amendment, resolves the aim of the Constituent Assembly to declare India as an Independent Sovereign Republic. My amendment would be considered an amendment for the very simple reason that it deal with the same subject and it does not go contrary to the main idea of the original Resolution. It is always within the scope of an amendment to extend the scope of the original Resolution.

Mr. Chairman: The objection that was taken to your amendment is that it lays down certain action to be taken that is not in the main Resolution. For instance, it wants to declare a Republic here and now. It calls upon the Interim Government to act in a particular way and there are several other matters of this character. It is a resolution which directs action to be taken here and now and in that sense it is suggested that it is out of order.

Mr. Somnath Lahiri: I think that if in furtherance of the objects of that Resolution, some action is suggested, that certainly is within the scope of the amendment. For instance, you have allowed in Dr. Jayakar's resolution certain things about the Muslim League and other things which are not contained in the original Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru. Just because he thinks that the Muslim League and others should be given an opportunity to come in, action to the extent of postponing this Assembly should be taken; and he has suggested his amendment and you have agreed that it is quite in order. Just as postponing is a kind of action, any other thing which may be suggested is also certainly in order. If I may remind you, Sir, of an incident in 1939, when you were the President of Congress, at the time of the declaration of War, a resolution came up at the A.I.C.C., where Pandit Jawahar Lal Nehru moved a resolution asking the British to declare their war, aims, and laid down certain conditions as a basis of co-operation, on which we could cooperate in the war. I remember myself having moved an amendment which said that we must prepare the country for a struggle and I remember that you, as Chairman, said it was quite in order although the Hon'ble Pandit Jawahar Lal Nehru pointed out that the intention of the amendment was just contrary to what was conveyed in the original resolution.

An Hon'ble Member: Is it a reported case ?

Mr. Chairman: I am afraid that cannot go in as a precedent. (*Laughter*).

Mr. Somnath Lahiri: This is my submission. If in spite of this you think that it should be ruled out of order, then I may be given an opportunity to speak on the main Resolution so that I can express my views.

Mr. Chairman : I think the amendment is out of order. I would give you an opportunity to speak on the main Resolution later.

I have received intimation that a number of the amendments, of which notice had been given by the members, have been withdrawn. I will only call upon those members who have not expressed such desire to move their amendments if they wish to. So, the next amendment which has not been withdrawn is that Rai Bahadur Syamanandan Sahaya, who may please come forward to move his amendment if he so wishes.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Mr. Chairman, Sir, I Move:

"That for the 1st and the 2nd paras. of the Resolution the following be substituted:---

"This Constituent Assembly declares its firm and solemn resolve to constitute India, within the shortest time, into an Independent Sovereign Republic, comprising initially of--

- (a) The territories that now form British India, and as soon as possible, also of,
- (b) The territories that now form the Indian States,
- (c) Such other parts of India as are outside British India and Indian States, and
- (d) Such other territories as are willing to join the Independent Sovereign Republic of India,

and further resolves that a constitution for the future governance be framed and laid down'."

It is not, Sir, without a certain amount of diffidence that I stand here to move my amendment. After the great and magnificent speech of the Hon'ble the Mover of this Resolution it took me a great deal of thought and vacillation before I decided to send in this amendment especially because I thought my amendment perhaps achieved the objective which the Hon'ble the Mover had rather than stand in the way of it. I have an apprehension that perhaps attempts might be made by interested parties to isolate those of us who constitute the Constituent Assembly to-day but whatever happens, it is my desire--my extreme desire, as I know it is the desire of every one assembled here--that this Constituent Assembly shall Proceed with its task. The Hon'ble Dr. Jayakar in his speech made eferences to several difficulties. One of the difficulties pointed out, was that we have to work under the limitations laid down by the Cabinet Mission. I am no where near him in the matter of knowledge of constitutional law but I heard the Chairman of this Constituent Assembly saying in his speech that although there may be limitations placed on the Constituent Assembly, it has the inherent right of getting over them. I have based part of my amendment on this consideration. I will now try to point out, Sir the difference between the original Resolution and the amendment as I have put it, for it will be necessary to explain why is it that I have introduced certain

changes in the Resolution. In the first place, I have altered the word 'proclaim' into 'constitute'. I shall give my reason for doing so at a later stage and I would point out now only what the difference is between the Resolution and the amendment. Then I have omitted the word 'Union'. I have introduced the words "within the shortest time" and I have said that the Constitution should not only be framed but should be laid down. These are some salient points of difference between the Resolution as proposed and my amendment. I have read the Resolution carefully and I had, on one occasion, an opportunity of placing my views to a certain extent before the Hon'ble the Mover of the Resolution, who agreed that the wording of the Resolution at certain places looked archaic. Perhaps in laying down a law or framing a constitution, it is necessary to use terms which were used 100 years before either by the framers of the American Constitution or the constitutions of other countries but I think, in our case, it might be more useful and more helpful to be precise and to state our view-point clearly in unambiguous and in easily understandable language rather than use words only because they were used in previous constitutions. I will now try to explain the reasons for the changes, I propose, I think the word "proclaim" is not exactly what you would like this Constituent Assembly to do. Proclamation of independence, I suppose, has been made on other occasions before this. It is now our duty to actually constitute the State into an Independent Sovereign Republic and therefore I introduced the word "constitute", instead of the word "proclaim". I have also, Sir, left out the word "Union". I believe that India is India. It needs no Union. It has got a providential Union, and I would not like even to reiterate it now as it might be interpreted that the Union of India was still to be achieved. It is quite another matter that for the time being, we may be able to enforce the Constitution we frame on only a part of India. But we look forward at the earliest possible moment to introduce it on other parts also. As such I would, if it were left to me, stick to India as such and not introduce the word "Union" where the word "Union" has been used in other countries there has been good reason for using that term. Here, I suppose we would be better advised to leave out the word "Union". Then, as I said, I have used the words "frame and lay down". I have heard it said in this House before that the Constituent Assembly has got the sanction behind it to enforce the Constitution that it frames. I have also read carefully the Declaration of May 16. It does not in any way state that this Constitution that is passed here will require the sanction of the British Parliament. The two essential conditions laid down are that a treaty will be entered into between England and India and that the minorities will be protected. I take it, therefore, that we assembled here, have not merely the right and the power to frame a constitution, but also to lay down the Constitution and enforce it. That is why I have omitted the word "draw up." and used in its place the words "frame and lay down".

The other important change, Sir, which I have made in the amendment is that I have tried to specify different stages when the Constitution will come into force on the whole of India. Even in the original Resolution, I may point out, there are certain territories envisaged which perhaps might come into the Union at a very late stage. I refer, Sir, to the two territories described as territories outside both British India and Indian States, and such other territories as might like to join the Union. Now these two parts of the Union surely are not going to come in now and here. Therefore different stages of the formation of the complete Union have been envisaged even in the original Resolution and I have tried in my amendment to clarify that the Independent Sovereign Republic will comprise initially of the territories that now form British India, and, as soon as

possible, also of the territories that form the Indian States. My whole purpose in moving this amendment is, as I said before, to see that in framing the first Resolution we should so word it that it may not have to be altered at any stage. After all, it is the first act of this Assembly and no one would like, that circumstances developing later on, might require the Resolution to be altered. An Independent Sovereign Republic for the territories that form British India has been accepted in the past by the majority elements constituting that territory. There may be difficulties pointed out by others. We shall probably have to take note of those difficulties and try to solve them. I therefore, introduced in the Resolution stages by which we could form the Independent Sovereign Republic ultimately in its entirety. But even if we may not be able to secure the association of people whose association we definitely seek and are anxious to secure, even then the march to independence will not be hindered and we shall not have to wait for all the territories to agree before the Constitution can be laid down. These, Sir, are the reasons which led me to move this amendment. I am very sorry that the Hon'ble the Mover of the Resolution is not here today. As a matter of fact my desire entirely was to bring to his attention the points which I had in mind and to request him to consider whether it might be possible to accept the amendments or portions of it that might not be in conflict with the original idea which he advocated.

Mr. Chairman: The next amendment which has not been formally withdrawn and of which notice has been given is by Shri Govind Malaviya. He is absent, but I have his authority--he had told me himself--that he would not like to move his amendment. So I take it that is also withdrawn.

Then, there is another amendment by Rai Bahadur Syamanandan Sahaya.

Rai Bahadur Syamanandan Sahaya: The second amendment, Sir, which stands in my name is that in para. 4 of the Resolution, the following words be omitted:

"of the Sovereign Independent India, its constituent parts and organs of Government."

The original Resolution reads as follows:.....

Professor N. G. Ranga: (Madras: General): Is a member entitled to speak more than once on 'the same Resolution? When he has got two or three amendments, let him move the whole lot of them and make one speech.

Rai Bahadur Syamanandan Sahaya: The amendments have been recorded according to the several paragraphs of the Resolution.

Mr. Chairman: He has got one other amendment in his name. He may move both of them.

Rai Bahadur Syamanandan Sahaya: The other amendment, Sir, is as follows:

"That in para. 5 of the Resolution the words 'of protection under the law' be substituted for the words

'before the law'."

I shall not move this.

Now, Sir, my reason for bringing this amendment asking the House to omit the words-

"Sovereign Independent India, its constituent parts and organs of Government."

was to avoid an impediment in the way of the smooth working and functioning of this Constituent Assembly and not to do anything before the other parts of it join this House which might frighten them here at the early stage.

Paragraph (4) says:

"Wherein all power and authority of the Sovereign Independent States, its constituent parts and organs of government, are derived from the people."

Among its constituent parts are territories that now form Indian States. I suppose the attention of most members of this House has been drawn to the recent statement in the Legislative Assembly (or whatever the name may be, of Bikaner wherein the Prime Minister said that so far as the States are concerned the power is derived from the sovereign and not from the people. I submit that these are matters on which there can be a difference of opinion and it would not be proper to pass a resolution containing such statements which might give the other important elements of this Constituent Assembly a real grievance to keep out. The Resolution as amended by me will read:

"wherein all power and authority are derived from the people."

I have purposely omitted the words "Sovereign Independent India, its constituent parts and organs of government". With regard to the constituent parts I have pointed out the difficulty and the reason why I move the amendment. Even the amended Resolution retains the purport of the Hon'ble Mover's Motion as it says,

"wherein all power and authority are derived from the people."

without in any way specifically bringing in the constituent parts. The Hon'ble Mover of the Resolution in his speech said that even in the Republic which has been envisaged, there will be room for ruling chiefs and States where there is a system of monarchy or kingship. That being so, it would not be advisable to pass a resolution saying that all power and authority of the constituent parts also are derived from the people. Perhaps members of the House have noticed the statement which was broadcast last night in which the representatives of the different States made a statement signifying some objection to the Resolution and complaining that there had been no consultation about it before. In view of all that, and in view of this extreme desire of every one assembled here to carry this difficult work through, I think we ought to avoid passing a resolution or making statements which might give reasonable cause for an

honest difference of opinion.

I do not move amendment No. 30 because that is only a verbal change and I shall not move it. There is one other amendment (No. 43) also standing in my name and I am not moving it.

Mr. Chairman: The next amendment stands in the name of Sir Uday Chand Mahtab-No. 25.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan
(Bengal: General): I do not propose to move the amendment.

Mr. Chairman: I find that the movers of all other amendments given notice of here have withdrawn their amendments. I suppose there is no mistake here, and if there is any, Hon'ble Member may point it out to me. There is one amendment of which notice has been given by Dr. Sir Hari Singh Gour, but unfortunately that was received only this morning. I had already put a definite limit to the time for giving notice of amendments and as Dr. Sir Hari Singh Gour has exceeded that limit, I am unable to allow his amendment.

Now, the Resolution has been moved, and also amendments to it have been moved. The Resolution and these amendments are now for discussion by the House.

I will ask Hon'ble Members to confine their speeches to as short a time as possible because we have already had two days on this, and though I do not wish to curtail the right of any Hon'ble Member to speak, I will ask Members to bear my remark in mind. I have got a list of names here who will take part in the debate, but I take it, it is not a complete list. There may be some other members who may be willing to speak, but I shall proceed according, to this list and interpose other speakers also if they wish to speak. The first name that I have got here is Mr. Shri Krishna Sinha.

The Hon'ble Mr. Shri Krishna Sinha (Bihar: General): Mr. Chairman Sir, I stand here to support the Resolution as originally moved by Pandit Jawahar Lal Nehru: In my opinion, it is really unfortunate that a resolution of such a sacred nature should have been subjected to amendments. I purposely call it sacred because by this Resolution an attempt is made to give expression to that aspiration to be free which has stirred us for the last several years.

Sir, the Resolution, if carefully analysed, comes to this. It gives a picture of the vision of future India. That India of the future is to be a democratic and, decentralised republic, in which the ultimate sovereignty is to lie with the people and in which fundamental rights are too be safeguarded to minorities inhabiting this land. Now, Sir, these are the three fundamental features of this Resolution and it is because of these three fundamental features that I call this Resolution sacred. I shall try to be brief. Yet I cannot refrain from reminding this House that we are all assembled here in Assertion of a right, a cherished and valuable right which mankind has achieved for itself after undergoing untold sufferings and sacrifices. Some sort of political structure is required in every society to make life therein possible. A careful analysis of the process of

evolution of States in this world shows that the nature of these has changed with the change in the conception of life. Sir, I was not a little surprised to hear just now from an Hon'ble Member of a House which has assembled in assertion of the constituent power of the People that there can be honest difference of opinion regarding the place where political sovereignty resided in society. Certainly, Sir, not long ago, the world did not believe that all individuals composing society had an equal right to liberty and happiness. Society was composed of classes and the individual had no place in society. The place of man in society was determined by the class to which he belonged and so there was no individual liberty to be safeguarded. Poverty was not thought to be a disease which society must get rid of. Some of the great thinkers of the 18th century France, were of the opinion that the presence of poverty in society was necessary for the proper production of wealth. In such a society, Sir, there could be no place for the principle of the sovereignty of the people. Sovereignty belonged to the King whose privilege it was to rule. The people existed merely to pay the taxes demanded of them by the king and obey the laws enacted by him. But with the lapse of time, the conception of society and life changed. Men came to believe that every individual has an equal right to liberty and happiness. With this change in the conception of life, a change in the structure of the State became necessary. But those who held political power were reluctant to part with it and effect a change in the political structure. There was thus a clash between the ideologies which swayed the people and those which swayed the men in power. There were revolutions on both sides of the Atlantic at the end of the 18th century in which the principle that the power belonged to the People was vindicated. Even after this, there were rulers who would not recognise this principle and so another blood-bath in the shape of a revolution had to be gone through to get finally sanctioned the principle that political power belonged to the people. It was to achieve this constituent power that we in this country have been fighting British Imperialism for the last several years. It is this which moved this country from one end to the other in 1921 and made its millions rally under the banner of revolt raised by Mahatma Gandhi in that year. It was for asserting this basic right of a people that hundreds mounted the scaffold, thousands faced bullets and men, in lakhs swarmed the jails. There was a wide gap between the political ideals on which the Government of India was based and the political ideology which swayed the people, and the result has been strife. So, Sir, we are not here in this Assembly because the British Government in a fit of generosity have thought it proper to ask us to take over power. I have been in a position from where I can form my own opinion as to whether there is any sincerity behind all this talk of peaceful transfer of power. We are here because we have succeeded in compelling those who still entertain the dream of governing India according to the political ideals embodied in the Government of India Act, to give up that dream. We have succeeded because of that spirit of rebellion which spread all over the country in 1942. It is as a result of the 1942 rebellion that we are here in this Constituent Assembly. Gathered together in such an Assembly it should be our first duty to draw up a picture of future free India and present it to our people. The Right Hon'ble Dr. Jayakar who spoke eloquently, has drawn a picture of the difficulties which the absence of our Muslim League friends will cause. I do not think that we required a speech from a man of the eminence of Dr. Jayakar to point out these difficulties. We know what those difficulties are. If I understood him aright, however, he did not give us a counsel of despair. He has actually advised us to go on with our work if our friends of the Muslim League do not

come in after some time.

Sir, our leader, the Hon'ble Pandit Jawahar Lal Nehru, has made it quite clear that we are anxious to see our Muslim League friends occupying their rightful place in this Assembly. Every one of us is equally anxious to see them come back. But I fail to understand how this particular Resolution would stand in the way of their so coming here at a future date. If we have understood the political ideology of the Muslim League correctly, if we understood the Cabinet Declaration correctly, there is one matter in which all are agreed and that is that the future India is to be, a United India and that that India might also be outside the British Commonwealth of Nations, if the Indian people so decide. From the pronouncements made from time to time by Muslim League leaders I think we can rightly draw the conclusion that the Muslim League also stands for a free and independent India. So, Sir, according to all of us including the League, the future India is going to be an independent free India. In that independent free India the source of authority is going to vest in the people who inhabit this land. That is the cherished right which has been won for the people inhabiting this globe by those who have gone before. That is the principle for which we have been fighting all along. Now when this Constituent Assembly meets and we draw up a declaration, I think the first thing to be included in that declaration should be this elementary right of a people which decides to be free, and therefore to this feature of the Resolution no one can have any objection.

Now, Sir, the Union which we are going to have in India is going to be a Union of all the parts of India. This certainly means that the future India is going to be a united India. I will again say that the shape of that future India which this Resolution envisages certainly shows that the framers of this Resolution have taken pretty good care to see that nothing is said in this Resolution which can create difficulties in the way of our friends of the Muslim League coming into this Assembly at some later date. I know, Sir, there are members in this Assembly--and I must confess that I am one of those, who believe that-- there has arisen in Indian, an Indian nation, an Indian nation with an Indian culture and an Indian civilisation. Such men certainly are only too anxious to have a republic of the unitary type in this country. There has been such a tremendous increase in the economic forces of production in the world that if full use is to be made of these forces in this world, it is necessary that we should have still larger political units which will transgress the national boundaries of national states. It is a realisation of this truth which makes many Indians feel that India must have a centralised republic. But in spite of that, if we by this Resolution want to have a republic in India which will be democratic and at the same time decentralised, it is because the framers of this Resolution have taken care to take into account the feelings of our Muslim League friends. Sir, there was a time when because of the historical circumstances prevailing in the world of those days, States of large sizes, containing populations homogeneous in language and religion, could be erected. There can be no doubt that a national state with a homogeneous population is a force and a living force. But unfortunately at a time when there is a tendency for these national states to pass out of existence, we have to deal with a bitter legacy left behind by them and that is the legacy of small nationalities, consisting often of a few thousands or a few lakhs, clamouring for separate states of their own. This has been creating havoc in this world. The whole of Eastern Europe has

become the zone for breeding wars because in that portion of Europe are living small nationalities so intermixed that they cannot be divided into small states, and yet they clamour for separate political existence.

Sir, this Resolution gives expression also to the aspiration that India shall have her place, her rightful place, among the nations of the world. Every Indian legitimately aspires that one day India will drive a lead to the whole of Asia and we can give this lead now by successfully constructing a state which will be a democratic republic, and, at the same time decentralised so that different cultural groups based on language, on religion, may be integrated in a vast republic. It is hoped that very soon the flood of Western Imperialism will retreat from the lands of Asia, and no sooner it has retreated, these lands will have to solve the problem of erecting independent states of their own. This question of nationalities is bound to raise its head even in those countries. They have such problems in Palestine, in the Arab world, and in the small islands in the south-eastern portion of Asia. If we are to lead them rightly so that like the Balkans these Asiatic lands may not also become the battleground of the Imperialisms of the West, it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for cultural minorities. This is what this Resolution contemplates by further making provision for the fundamental rights of the individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.

Sir, it is because of these features of this Resolution that I said that the Resolution was of a sacred nature and one which is bound to rank with those declarations which were made on similar occasions in the past by peoples just after they had shed their shackles of slavery. It not only is sacred, it is arduous also, arduous not only because of the difficulties pointed out by Dr. Jayakar, but arduous because of the attitude of British statesmen over there in England. I have just now told you that from my personal experience as an administrator I do not feel that the Britishers have made up their mind to peacefully transfer power to the people of India. Only the other day you had the speech of Mr. Churchill. Not one word of cheer from that great imperialist. At a time like this in the history of our country when so many of us have assembled here to advise a constitution for this land, instead of giving a word of cheer, he was again at his old game. He had a fling at the Congress, he had a fling at Pandit Jawaharlal Nehru. In the advent of Pandit Jawaharlal Nehru into the Interim Government he sees the butchery of innocent men in Bihar. To Mr. Churchill, living seven seas across, I will say, you have been supplied with a lie by some interested person and you have made yourself the willing tool for the propagation of that lie. The Government of Bihar did not hesitate for one single moment to use force and it used force, whatever force it had, to give protection to the lakhs of Mussalmans living in that Province. The Bihar Government is a proud Government. It is not going to have dictations from the Government of India, so long as it is constituted under the Government of India Act, 1935. Pandit Jawahar Lal Nehru is our leader and so lie went to Bihar. He is a source of inspiration to us. I may tell Mr. Churchill that during his strenuous tours of a few days through the Province he gave the people a bit of his mind. I told the greatest official of this country that he could not restore order in Bihar in the short period in which we did it. Order could be speedily restored, not because of the bayonets that the Government of Bihar had or because of those bayonets

that were lent to them by the Government of India. It was the dynamic personality of Pandit Nehru, the saintly presence of Dr. Rajendra and the spectre of a fast unto death by the Mahatma that restored order Quickly in Bihar. Mr. Churchill has done great mischief by giving currency to such lies. I have taken much of your time. But I must tell you that before you pass this Resolution you must try to visualise the difficulties that may come in your way. I have not studied this declaration of the Cabinet from the point of view of a lawyer. Spurn to look at it from the point of a lawyer. I have been a soldier all my life and I would look at it from the point of view of a fighter. The statements of British statesmen are not quite helpful. It is just possible that not because of the difficulties that have been dangled before us by Dr. Jayakar but because of the difficulties which may be created in our way by those in power. This Constituent Assembly may one day have to go the way the Constituent Assembly of France in 1799, had to go, because of the attitude of the King and statesmen. of that time. So before I sit down, I would remind Hon'ble Members of the House that before they make up their minds to vote in favour of this Resolution they trust realise the difficulty that they may have to face in giving effect to their resolve. If we pass this Resolution we must at the same time take a firm resolve to tear down that political edifice which owes its existence in India to the Government of India Act, 1935--a monument of constitutional jugglery--and build on it a Republic of the type which this Resolution envisages, whatever may be the difficulties that may come in the way.

Mr. Chairman: It is already past five. I would like to know whether the Hon'ble Members would like to sit till half past five.

Many Hon'ble members: Half past five.

Mr. Chairman: Opinion is divided.

The Hon'ble Sardar Vallabhbhai J. Patel: Opinion is unanimous for five.

Mr. Chairman: Those who are in favour of half past five will please raise their hands.....

Those who are not in favour of half past five will now raise their hands.

Mr. Chairman: The "fives" have it. The House will now adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th December, 1946.
